

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 7 August 2015 in Case R 2808/2014-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order OHIM and the other party to the proceedings before the Board to pay the costs.

Plea(s) in law

- Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 1 October 2015 — Syndial v Commission

(Case T-581/15)

(2015/C 398/85)

Language of the case: Italian

Parties

Applicant: Syndial SpA — Attività Diversificate (San Donato Milanese, Italy) (represented by: L. Acquarone and S. Grassi, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should (i) annul and/or alter the note of the European Commission — Secretariat-General Ref. Ares (2015)3238796 of 03/08/2015, headed '*Decision of the Secretary General on behalf of the Commission pursuant to Article 4 of the Implementing Rules to Regulation (EC) No 1049/2001*', concerning the '*Confirmatory application for access to documents under Regulation (EC) No 1049/2001 — GESTDEM 2015/2796*', confirming the refusal of the Commission's Directorate-General for Environment, by note ENV.D.2/MC/vf/ARES(2015) of 16 June 2015, to grant the application for access to documents made by Syndial SpA by note INAMB-10/15 of 6 May 2015, sent by certified e-mail on 8 May 2015, and, as a consequence, (ii) find that Syndial is entitled to acquaint itself with the documentation relating to infringement procedure No 2009/4426 and therefore order full or partial disclosure of the documents requested in the application for access made by abovementioned note INAMB-10/15 of 6 May 2015, sent by certified e-mail on 8 May 2015, and/or find that Syndial has the right to be formally heard by the Commission in order to clarify and confirm the information that underpins the infringement procedure in question.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement and/or incorrect application of Article 4(2) of Regulation (EC) No 1049/2001.

- The applicant submits that there has in the present case been an incorrect assessment of the limit to the exception relied on by the Commission to refuse access to the documents relating to infringement procedure No 2009/4426, that limit consisting in the existence of ‘*an overriding public interest in disclosure*’, to which the final part of Article 4(2) of Regulation No 1049/2001 refers.

- The reclamation plan authorised and now completed, which was to be directly implemented by Syndial (the owner of the land), on the site at Cengio, fully complies with Community principles relating to the remediation and rehabilitation of areas affected by historical contamination.

- The position adopted by the Italian Republic in procedure No 2009/4426 appears, unexpectedly, to surrender the public interest pursued at national level by uncritically accepting the Commission’s complaints, forgetting that the procedure which culminated in authorisation of the reclamation plan for the site followed the steps laid down at national level for the purpose of obtaining authorisation — and did so before the Ministry which is now challenging its validity. There is therefore an important and overriding public interest within the meaning of Article 4(2) of Regulation 1049/2001 in allowing Syndial to ascertain whether any checks are actually being carried out as to whether there is compliance with Community principles.

- Syndial’s requests do not pursue a private interest — which would in any event be legitimate — but rather the, more significant, public interest in ensuring that the propriety and proper conduct of the Community procedure in question and of the domestic administrative procedure are effectively protected (matters which are expressly protected, as regards the Community procedure, under Article 41 of the Charter of Fundamental Rights of the European Union and, as regards the domestic administrative procedure, under Article 97 of the Constitution of the Italian Republic): that interest is related not only to the rights of defence of the individual (directly concerned by the effects of the decisions adopted in the infringement procedure) but, in particular, to the fundamental right to environmental information which is confirmed by the principles of EU law (Article 191(2) and (3), first subparagraph, TFEU in conjunction with the principle in Article 11 TFEU, also given effect by the accession of the European Union to the Aarhus Convention of 27 June 1998).

2. Second plea in law, alleging infringement and/or incorrect application of Article 4(6) of Regulation (EC) No 1049/2001. Unlawful refusal to grant partial access

- The general presumption of non-disclosure provided for in the third indent of Article 4(2) of Regulation No 1049/2001 ‘*does not exclude the right of interested parties to demonstrate that a specific document disclosure of which has been requested is not covered by that presumption, or that there is an overriding public interest in disclosure of the document by virtue of Article 4(2) of Regulation No 1049/2001*’ (judgment in *Sea Handling v Commission*, T-456/13, EU:T:2015:185, paragraph 64).

- The present case involves a request for documents whose disclosure is not contrary to any public interest but in fact serves that interest, inasmuch as it is only if access to those documents is granted that it will be possible to obtain information that may be used not only to rebut from a technical and legal point of view the complaints raised in the infringement procedure but also to demonstrate the legitimacy of the procedure that has, in full agreement with the competent bodies, been followed in order to select the most appropriate remediation plan for the former ACNA site at Cengio, in accordance with the Community principles concerning the rehabilitation of sites affected by historical contamination and the sustainability of environmental measures, and to implement that plan.

- Access could have been limited to indicating the documents produced in the procedure by the Italian Republic, following exclusion of the other documents in the case-file.

Action brought on 12 October 2015 — Rose Vision v Commission

(Case T-587/15)

(2015/C 398/86)

Language of the case: Spanish

Parties

Applicant: Rose Vision, S.L. (Pozuelo de Alarcón, Spain) (represented by: J. Marín López, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- first, pursuant to Article 263 TFEU, annul Commission Decision C(2015) 5449 final of 28 July 2015 relating to the recovery of a total amount of EUR 535 613,20, plus interest, owed by Rose Vision;

- second, pursuant to Article 272 TFEU, declare that the Commission has failed to comply with paragraph 1(a) of Article II.14 and paragraph 5 of Article II.22 of the General Conditions of the Seventh Framework Programme ('General Conditions FP7'), in relation to the final audit report 11-INFS-025 and audit 11-BA119-016 concerning Rose Vision and its participation in the project 'Support action to the Integral Satcon Initiative (sISI)', the project 'Implementing cooperation on Future Internet and ICT Components between Europe and Latin America (FIRST)', the project 'Supporting the future of the NEM European Technology Platform (FutureNEM)', the project 'Support Action for the NEM European Technology Platform (4NEM)' and the project 'Structural Funds for Regional Research Advancement (SFERA)';

- third, pursuant to Article 272 TFEU, declare that the final audit report 11-INFS-025 and the audit report 11-A119-016, which are in breach of paragraph 1(a) of Article II.14 and paragraph 5 of Article II.22 of General Conditions FP7, are, in contractual terms, null and void and have no validity or legal effect;