

Defendant: European Commission (represented by: F. Jimeno Fernández, G. Conte and C. Urraca Caviedes, acting as Agents)

Re:

Application pursuant to Articles 278 and 279 TFEU seeking the suspension of the operation of the decision of the European Commission C(2019) 743 final of 28 January 2019 on an objection to disclosure submitted by Lantmännen ek för and Lantmännen Agroetanol AB pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the functioning and terms of reference of the hearing officer in certain competition proceedings (Case AT.40054 — Ethanol Benchmarks).

Operative part of the order

1. *The application for interim measures is dismissed.*
2. *The order of 14 February 2019, Lantmännen and Lantmännen Agroetanol v Commission (T-79/19 R), is cancelled.*
3. *The costs are reserved.*

Action brought on 18 February 2019 — Magnan v Commission

(Case T-99/19)

(2019/C 206/47)

Language of the case: French

Parties

Applicant: Nathaniel Magnan (Aix-en-Provence, France) (represented by: J. Fayolle, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- declare the present action admissible in respect of the European Commission's failure to act and establish the non-contractual liability of the Commission on the basis of Article 340 TFEU;
- declare the present action for annulment of the European Commission's implicit decision to refuse to act, in a letter dated 20 December 2018, admissible;

- as regards the substance, first,
 - give a ruling stating that Article 55(a) of the Loi sur l'Assurance-maladie (LAMal) (Law on medical insurance) infringes:
 - Article 2 (non-discrimination), Article 7 (right to equal treatment) and Article 13 (standstill obligation) of the Agreement on the Free Movement of Persons between Switzerland and the European Union (AFMP);
 - Article 55 of Directive 2005/36/EC on the recognition of professional qualifications;
 - find that the horizontal directive of the Canton of Geneva relating to 'Recruitment procedure within public law institutions and subsidised entities' infringes the Agreement on the Free Movement of Persons between Switzerland and the European Union (AFMP) and that all the other Swiss federal laws on national preference infringe the AFMP;
 - find that, in return, there are no discriminatory measures by the Member States vis-à-vis doctors who are Swiss nationals;
 - find that the European Commission, which must ensure the application of the Treaties, wrongfully failed to act, thereby infringing the principle of legitimate expectations and the principle of certainty of the acquired rights of Dr Nathaniel Magnan;
 - find that there is a causal link between the European Commission's wrongful failure to act and the harm suffered by Dr Nathaniel Magnan;
 - find that the European Commission failed to act;
 - order the European Commission to pay the sum of EUR 1 141 198.10 euros (one million one hundred and forty-thousand one hundred and ninety-eight euros and ten cents; exchange rate of 7 January 2019 at 11:39 UTC) corresponding to CHF 1 281 444 (one million two hundred and eighty-one thousand four hundred and forty-four Swiss francs) to Dr Nathaniel Magnan, in respect of damage already suffered since 2013 on the basis of the non-contractual liability of the Commission on the basis of Article 340 TFEU;
 - order the European Commission, on the basis of Article 340 TFEU, for failure to act, to pay the sum of EUR 500 (five hundred euros) per working day to Dr Nathaniel Magnan as a result of the continuous, permanent and current financial damage, corresponding to daily financial damage until the Swiss Confederation complies with the AFMP, or the withdrawal of one of the parties from the agreement;
- secondly,
 - find that the European Commission's letter of reply dated 20 December 2018 constitutes a decision to refuse;
 - annul the implied decision of the European Commission to refuse to act against the Swiss Confederation for infringement of the Treaties and not to pay compensation for the damage suffered.

Pleas in law and main arguments

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

1. First plea in law, alleging Switzerland's failure to comply with the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ 2002 L 114, p. 6) and Directive No 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22). The applicant submits that the Swiss Confederation, in July 2013, adopted a provision restricting doctors from setting up in overstuffed areas covered by compulsory Swiss medical insurance, which constitutes indirect discrimination on grounds of nationality, in so far as that restriction does not relate to doctors with 3 years' experience in Swiss university hospitals.
2. Second plea in law, alleging that there are no discriminatory measures on the part of the European Union vis-à-vis doctors who are Swiss nationals, in the name of the principle of reciprocity in international law, which the General Court should find, in the submission of the applicant.
3. Third plea in law, alleging the Commission's wrongful failure to act, in so far as it was obliged to act because it is the guarantor of the Treaties under Article 17(1) TEU and of the fundamental rights of European Union citizens. In that regard, the applicant relies on the principles of legitimate expectations towards institutions and legal certainty of acquired rights.
4. Fourth plea in law, alleging that the Commission's failure to deal with the applicant's request to act urgently constitutes, as fact, an implied refusal and therefore a decision adversely affecting him.
5. Fifth plea in law, alleging that the Commission is non-contractually liable on the basis of Article 340 TFEU for failure to act.

Action brought on 15 March 2019 — Breyer v Commission

(Case T-158/19)

(2019/C 206/48)

Language of the case: German

Parties

Applicant: Patrick Breyer (Kiel, Germany) (represented by: J. Breyer, lawyer)

Defendant: European Commission