

Action brought on 14 August 2019 — Klein v Commission**(Case T-562/19)**

(2019/C 337/18)

*Language of the case: German***Parties***Applicant:* Christoph Klein (Großgmain, Austria) (represented by: H.-J. Ahlt, lawyer)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- declare that, by taking no action and failing to adopt a decision, pursuant to Article 8(2) of Directive 93/42/EEC, ⁽¹⁾ in the safeguard clause procedure initiated by Germany on 7 January 1998 concerning the CE-marked medicinal product 'Inhaler Broncho-Air', the European Commission has infringed its Treaty obligations;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission infringed Article 8(2) of Directive 93/42/EEC by failing to adopt a decision since the initiation of the safeguard clause procedure for the CE-marked medicinal product 'Inhaler Broncho-Air' on 7 January 1998 and that it had no discretion to do so.
2. Second plea in law, alleging that, by failing to adopt a decision (failure to act), the European Commission infringed Article 34 TFEU and the right to free movement of goods for the medicinal product 'Inhaler Broncho-Air'.
3. Third plea in law, alleging that, by failing to adopt a decision, the European Commission infringed Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), in so far as it denies the applicant access to review of the decision and the exercise of his rights of defence before a judicial body or the Court of Justice.
4. Fourth plea in law, alleging that the European Commission infringed Article 41 of the Charter since hitherto the parties concerned by the national banning order have not been consulted and no decision has been adopted within a reasonable time notwithstanding the requirements of EU law set out in Article 8(2) of Directive 93/42/EEC.
5. Fifth plea in law, alleging that, by failing to adopt a decision, the European Commission infringed the applicant's right to property in accordance with Article 17 of the Charter, since, for that reason, the applicant is not in a position to place his product 'Inhaler Broncho-Air' on the market.
6. Sixth plea in law, alleging that the European Commission's failure to act also constitutes an infringement of Article 20 of the Charter, the principle of equality before the law, since it has adopted decisions in comparable cases. Equally, this results in an infringement of the prohibition of discrimination under Article 21 of the Charter.
7. Seventh plea in law, alleging that, because of the European Commission's failure to adopt a decision, the applicant has been precluded for more than 20 years from exercising his right to work in his freely chosen profession as inventor of the 'Inhaler Broncho-Air', and that this amounts to an infringement by the European Commission of Article 15 of the Charter.

⁽¹⁾ Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1).