

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that, as a result of the failure to address to the applicant an express decision regarding its request for access, within the time-limits for processing of confirmatory applications contained in Articles 8(1) and 8(2) of Regulation 1049/2001, the defendant impliedly refused access within the meaning of Article 8(3) thereof. It is argued that this implied refusal decision was unmotivated and the applicant therefore submits that it should be annulled because of the Commission's breach of its obligation to state reasons under Article 8(1) of Regulation 1049/2001, Article 41(2), third indent, of the Charter of Fundamental Rights of the European Union, and Article 296 TFEU.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

⁽²⁾ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 5 February 2021 — Mendes de Almeida v Council

(Case T-75/21)

(2021/C 128/50)

Language of the case: Portuguese

Parties

Applicant: Ana Carla Mendes de Almeida (Sobreda, Portugal) (represented by: R. Leandro Vasconcelos and M. Marques de Carvalho, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Council Implementing Decision 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office, in so far as it appoints to the position of European Prosecutor of the European Public Prosecutor's Office as a temporary agent at grade AD 13 for a non-renewable period of three years, from 29 July 2020, José Eduardo Moreira Alves d'Oliveira Guerra, candidate nominated by Portugal;

— order the Council of the European Union to pay both parties' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rules applicable to the appointment of European Prosecutors, which guarantee the principle of the independence of the European Public Prosecutor's Office. The applicant submits that the Portuguese Government's objection — by letter sent to the Council of the European Union on 29 November 2019 — to the ranking, drawn up by the selection panel referred to in Article 14(3) of Regulation (EU) 2017/1939, of the candidates submitted by the Government itself, indicating a different candidate preferred by it, and the approval thereof by the Council, call into question the rules for the process for appointing European Prosecutors. The purpose of those rules is to ensure the independence of the European Public Prosecutor's Office and of the European Prosecutors. The legitimacy of the European Prosecutors is drawn from the EU institutions involved in the appointment procedure, in particular the Council of the European Union, but also the European Parliament, not from the involvement of the national governments. The abovementioned letter of the Portuguese Government and its approval by the Council seriously call into question the independence, and therefore the credibility, of the European Public Prosecutor's Office and of the European Prosecutors.

2. Second plea in law, alleging a manifest error in the grounds on which the decision is based. The applicant submits, in particular, that the letter of 29 November 2019, sent by the Portuguese Government to the Council, contained two serious errors, acknowledged moreover by the Portuguese Government itself. These were the reference to the Portuguese Government's preferred candidate, on six occasions, as 'the deputy prosecutor general, José Guerra', and the statement that that prosecutor held an investigating and prosecuting role in an important case concerning crimes against the European Union's financial interests. However, the prosecutor appointed by the contested act neither was nor is deputy prosecutor general, nor did he participate in the aforementioned case at the investigation stage. While it is true that the Council denies that those two errors were of relevance to its decision, it is also true that it never referred to them and corrected them, despite accepting the remaining arguments put forward by the Portuguese Government in the letter. In fact, the Council only addressed the issue of the errors after the facts under consideration became public, giving rise moreover to a considerable public clamour, both in Portugal and in Europe.
3. Third plea in law, alleging misuse of powers. The applicant submits that the objectives in view of which the Council of the European Union was conferred competences, in the framework of the selection and appointment process for European Prosecutors, consist in ensuring the independence of the Office, as well as appointing the most qualified national candidates whose independence to perform their duties as European Prosecutors is beyond doubt. The intervention of the Portuguese Government and the action of the Council pursued, or at least resulted in, ends different from those invoked. The selection and subsequent appointment, by means of the contested act, of the Portuguese Prosecutor, do not necessarily contribute to the appointment of the most qualified national candidates whose independence to perform their duties as European Prosecutors is beyond doubt, to the detriment of the objectives stemming from the abovementioned regulations and decisions, thereby undermining the legitimacy of the prosecutors appointed and the credibility of the Office itself.

Action brought on 12 February 2021 — Darment v. Commission

(Case T-92/21)

(2021/C 128/51)

Language of the case: English

Parties

Applicant: Darment Oy (Helsinki, Finland) (represented by: C. Ginter, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision to reduce the quota allocated to the applicant for the year 2021 for the placing of hydrofluorocarbons on the market about which the applicant was informed via F-Gas Portal System of the defendant on 15 December 2020 and by the email of 12 January 2021;
- order the defendant to pay the costs.

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 that the defendant infringed Article 266 TFEU by imposing the penalty on the applicant even though the Court annulled the defendant's decision finding that the applicant exceeded in 2017 its quota for the placing of HFC on the market and imposing the penalty on it;