

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB incorrectly interpreted and applied Article 41 of the Charter on Fundamental Rights of the European Union by falsely assuming that the right of every person to his or her file pursuant to Article 41(2)(b) of the Charter is limited to the ability to review the file in order to be able to exercise a right to be heard with respect to a specific reviewable decision within the meaning of Article 263 TFEU which the relevant institution is currently contemplating. The applicant claims that the right pursuant to Article 41(2)(b) of the Charter codifies a broader principle that administration should be transparent for those who are concerned by the administration and that this is reflected by the fact that, unlike Article 41(2)(a) and Article 41(2)(c), Article 41(2)(b) is not qualified by any reference to a decision.
2. Second plea in law, alleging that the ECB incorrectly interpreted and applied Article 22(2) SSMR ⁽²⁾ and Article 32(1) SSMFR. ⁽³⁾ The applicant points out, inter alia, that the concept of file is not narrowly defined by Article 22(2), second sentence, SSMR, as consisting solely of the documents that the ECB compiles for purposes of a specific decision which it currently contemplates and that the definition of file pursuant to Article 32(2) SSMFR comprises all documents pertaining to the supervision of the relevant supervised entity by the ECB. The applicant claims that in any case Article 32(1) SSMFR cannot be interpreted as limiting the scope of the right pursuant to Article 22(2) SSMR and that Article 22(2) SSMR and Article 32(1) SSMFR cannot be interpreted as limiting the scope of the right pursuant to Article 41(2)(b) of the Charter. The applicant pleads as a precaution that both provisions would be illegal because they would be irreconcilable with higher-ranking law if they had to be so interpreted.
3. Third plea in law, alleging that the contested decision is illegal even on the basis of the ECB's erroneous narrow view of the right of access to the file because the ECB failed to consider that the ECB's decision on transparency grounds, namely on the basis of the ECB's Decision of 4 March 2004 on public access to the ECB documents (ECB/2004/258/EC), ⁽⁴⁾ which was contemplated at the time of the contested decision, is a reviewable decision within the meaning of Article 263 TFEU.

⁽¹⁾ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

⁽²⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

⁽³⁾ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1).

⁽⁴⁾ 2004/258/EC: Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (OJ 2004 L 80, p. 42).

Action brought on 13 October 2022 — ClientEarth v Council**(Case T-648/22)****(2022/C 482/34)***Language of the case: English***Parties**

Applicant: ClientEarth AISBL (Brussels, Belgium) (represented by: C. Ziegler, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul the decision dated 3 August 2022 (SGS 22/3264) in relation to the request for internal review under Title IV of the Aarhus Regulation in relation to Council Regulation (EU) 2022/515 of 31 March 2022 amending Regulation (EU) 2022/109 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non- Union waters (OJ 2022, L 104, p. 1); and,
- order the Council to bear its own costs and pay those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of law and of assessment as regards the scope of the applicant's access to review rights under the Aarhus Regulation, due to the Council having found that the applicant's pleas that the Council lacked competence and misused its powers in adopting the Amending TAC Regulation were inadmissible for falling outside the scope of Article 10 of the Aarhus Regulation.
2. Second plea in law, alleging manifest errors of law and of assessment as regards essential elements of secondary law and the scope of the Council's competence to set TACs under Article 43(3) TFEU, due to the Council having committed:
 - a manifest error of law as regards the alleged impact of the Trade and Cooperation Agreement on the Council's competence to set TACs in contradiction to the EU's fisheries legislation;
 - manifest errors of law as regards the margin of discretion it has to set fishing opportunities, as limited by the overarching MSY Objective of Article 2(2) of the CFP Basic Regulation; and
 - manifest errors of law and of assessment regarding the limits of its competence under Article 43(3) TFEU.
3. Third plea in law, alleging manifest errors of assessment regarding the Council's obligations to:
 - implement the precautionary approach, as commanded by the 1st and 2nd subparagraphs of Articles 2(2), as well as by Articles 4(1)(8) and 9(2) of the CFP Basic Regulation, and strictly limited by the MSY Objective;
 - implement the ecosystem-based approach as required by Article 2(3) of the CFP Basic Regulation.
4. Fourth plea in law, alleging a manifest error of assessment regarding the misuse of powers committed by the Council when adopting the Council Regulation (EU) 2022/515 of 31 March 2022 amending Regulation (EU) 2022/109 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non- Union waters (OJ 2022, L 104, p. 1).

Action brought on 18 October 2022 — Shamalov v Council

(Case T-651/22)

(2022/C 482/35)

Language of the case: French

Parties

Applicant: Kirill Shamalov (Saint Petersburg, Russia) (represented by: A. Genko, lawyer)