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IV

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COURT OF JUSTICE OF THE EUROPEAN UNION

*(2013/C 284/01)***Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union***

OJ C 274, 21.9.2013

Past publications

OJ C 260, 7.9.2013

OJ C 252, 31.8.2013

OJ C 245, 24.8.2013

OJ C 233, 10.8.2013

OJ C 226, 3.8.2013

OJ C 215, 27.7.2013

These texts are available on:
EUR-Lex: <http://eur-lex.europa.eu>

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Vilniaus apygardos administracinis teismas lodged on 19 July 2013 — UAB ‘Baltlanta’ v Lietuvos valstybė, represented by the Ministry of Agriculture of the Republic of Lithuania

(Case C-410/13)

(2013/C 284/02)

*Language of the case: Lithuanian***Referring court**

Vilniaus apygardos administracinis teismas

Parties to the main proceedings*Applicant:* UAB ‘Baltlanta’*Defendant:* Lietuvos valstybė (State of Lithuania), represented by the Ministry of Agriculture of the Republic of Lithuania**Questions referred**

1. Are the provisions of Article 38 of Regulation No 1260/1999, ⁽¹⁾ laying down an obligation of the Member State to inform the European Commission of the progress of administrative and legal proceedings and to cooperate with the European Commission, to be interpreted as requiring the Member State to inform the European Commission about all legal disputes concerning the actions or inaction of the implementing, intermediate, managing or paying authorities connected with the assessment of an application, with selection, with adoption of the decision on the award of the assistance or with implementation of the project?
2. Is Article 19 of Regulation No 2792/1999 ⁽²⁾ to be interpreted as requiring a Member State to have aid schemes established and to provide funds, in agreement with the European Commission, for those cases in which the courts are examining legal disputes concerning the actions or inaction of the implementing, intermediate, managing or paying authorities connected with the assessment of an application, with selection, with adoption of the decision on the award of the assistance or with implementation of the project?

3. Are the provisions of sections 6 and 7 of Commission Decision COM(2006)3424 establishing Guidelines on closure of assistance (2000 to 2006) from the Structural Funds to be interpreted as requiring a Member State to inform the European Commission about all legal disputes concerning the actions or inaction of the implementing, intermediate, managing or paying authorities connected with the assessment of an application, with selection, with adoption of the decision on the award of the assistance or with implementation of the project, and to decide whether the operation should, wholly or partly, be withdrawn from the programme and/or replaced by another operation and so forth, or the operation should be retained in the programme, or to take other action to ensure the appropriate implementation of a decision on the award of assistance once the court proceedings have been concluded?
4. Is the fact that, in the case examined in the national court, no specific measures have been laid down providing for the functions of the relevant State authorities when there are legal disputes concerning the actions or inaction of the implementing, intermediate, managing or payment authorities connected with the assessment of the application, with selection, with adoption of the decision on the award of the assistance or with implementation of the project, that is to say, there is no provision that the relevant State authorities have an obligation to inform the European Commission about court proceedings that are taking place and to take measures so that funds that have been provided are reserved for the disputed assistance until the question of the award of the assistance has been finally decided, compatible with the Member State's obligation under Article 38 of Regulation No 1260/1999 to inform the European Commission about the progress of administrative and legal proceedings and to cooperate with the European Commission, with Article 19 of Regulation No 2792/1999, and with the requirements of sections 6 and 7 of Commission Decision COM(2006)3424 establishing Guidelines on the closure of assistance (2000 to 2006) from the Structural Funds?

⁽¹⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

⁽²⁾ Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ 1999 L 337, p. 10).

GENERAL COURT

Action brought on 12 July 2013 — Republic of Lithuania v European Commission

(Case T-365/13)

(2013/C 284/03)

*Language of the case: Lithuanian***Parties**

Applicant: Republic of Lithuania (represented by: D. Kriauciūnas and R. Krasuckaitė)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

1. declare European Commission Decision No C(2013) 2436 final of 2 May 2013 to be invalid in so far as it applies to the Republic of Lithuania and in so far as it refuses to finance specific EAFRD expenditure incurred by the Republic of Lithuania;
2. order the European Commission to pay the costs.

Pleas in law and main arguments

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

The applicant's first plea in law alleges that, in adopting the contested decision, the Commission breached Articles 10 and 15 of Regulation (EC) No 1975/2006 ⁽¹⁾ and Article 48 of Regulation (EC) No 1974/2006 ⁽²⁾ in that, in requiring that a superfluous check (on-the-spot verifications) be carried out in the event of the appropriateness of a criterion (*livestock density*) for the support measure relating to natural handicaps, it failed to have regard for the discretion of Member States, confirmed in those provisions, to choose for themselves the criteria and methods of conducting checks and failed to take account of the arguments of the Lithuanian authorities with regard to the effectiveness and efficacy of the checking method chosen.

The applicant's second plea in law alleges that the Commission breached Article 31(2) of Regulation (EC) No 1290/2005 ⁽³⁾ and the principle of proportionality inasmuch as, not proving that there was any significant risk to the Fund, it unjustifiably applied a 5 % financial correction on the ground of an ostensibly inappropriate check under the *livestock density* criterion. The Commission ought, pursuant to the requirements laid down in Article 31(2) of Regulation (EC) No 1290/2005, to have made any financial corrections proportionate to the infringements established and to the risk posed to the

European Union budget. The corrections laid down in the contested decision go beyond what is appropriate and necessary for the purpose of protecting the budgetary interests of the European Union.

The applicant's third plea in law is to the effect that the Commission, proceeding on the basis of a misinterpretation of Article 14(2) of Regulation (EC) No 1975/2006 and of Article 48(1) of Regulation (EC) No 1974/2006, and in breach of Article 29 of Regulation (EC) No 796/2004, ⁽⁴⁾ unjustifiably imposed a 2 % financial correction on the ground that, during an on-the-spot visit designed to monitor all obligations, 100 % of all parcels of land were not checked.

The applicant's fourth plea in law alleges that, in adopting the contested decision, the Commission breached Article 10(2) of Regulation (EC) No 1975/2006, as, in proposing that an ineffective check on the use of *fertilisers* (administrative check) be applied, the Commission failed to have regard for the discretion of Member States, confirmed in that provision, to choose for themselves the criteria and methods of conducting checks and failed to take account of the arguments of the Lithuanian authorities concerning the effectiveness and efficacy of the checking method chosen (the visual method).

The applicant's fifth plea in law is to the effect that the Commission breached Article 31(2) of Regulation (EC) No 1290/2005 and the principle of proportionality inasmuch as, not proving that there was any significant risk to the Fund, it unjustifiably applied a 5 % financial correction on the ground of an ostensibly unsuitable check in respect of the *fertiliser use* criterion. The Commission ought, pursuant to the requirements laid down in Article 31(2) of Regulation (EC) No 1290/2005, to have made any financial correction proportionate to the infringements established and to the risk posed to the European Union budget. The corrections laid down in the contested decision go beyond what is appropriate and necessary for the purpose of protecting the budgetary interests of the European Union.

⁽¹⁾ Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2006 L 368, p. 74).

⁽²⁾ Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006 L 368, p. 15).

⁽³⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

⁽⁴⁾ Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Appeal brought on 25 July 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal of 14 May 2013 in Case F-4/12, Marcuccio v Commission

(Case T-385/13 P)

(2013/C 284/04)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- Annul the order under appeal in its entirety and without exception;
- Refer the case back to the Civil Service Tribunal.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those relied on in Case T-203/13 P *Marcuccio v Commission*.

Action brought on 2 August 2013 — KO-Invest v OHIM — Kraft Foods Schweiz (Milkshake For Active People)

(Case T-399/13)

(2013/C 284/05)

Language in which the application was lodged: Polish

Parties

Applicant: KO-Invest Sp. z o.o. (Łódź, Poland) (represented by: R. Rumpel, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Kraft Foods Schweiz Holding GmbH (Zug, Switzerland)

Form of order sought

The applicant claims that the General Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade

Marks and Designs) of 27 May 2013 (Case R 720/2012-4) in so far as it refuses registration of 'Milkshake For Active People' as a Community trade mark for goods in Classes 5, 29, 30 and 32;

- amend the contested decision by registering the mark for all of the goods applied for;
- order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark containing the word element 'Milkshake For Active People' for goods in Classes 5, 29, 30 and 32

Proprietor of the mark or sign cited in the opposition proceedings: the other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade marks No 31 369 and No 31 344, international registration (IR) No 163 135 and the well-known trade mark 'MILKA' for goods in Classes 5, 29, 30 and 32

Decision of the Opposition Division: opposition upheld

Decision of the Board of Appeal: appeal dismissed

Pleas in law: breach of Article 8(1)(b) of Regulation No 207/2009 ⁽¹⁾

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ L 78 of 24.3.2009, p. 1).

Action brought on 8 August 2013 — Le Comptoir d'Épicerie v OHIM — A-Rosa Akademie (da rosa)

(Case T-405/13)

(2013/C 284/06)

Language in which the application was lodged: French

Parties

Applicant: Le Comptoir d'Épicerie (Paris, France) (represented by: S. Arnaud, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: A-Rosa Akademie GmbH (Rostock, Germany)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 May 2013 in case R 1195/2012-5; and
- order OHIM and A-Rosa Akademie GmbH to pay the costs

Pleas in law and main arguments

Applicant for a Community trade mark: Le Comptoir d'Épicerie

Community trade mark concerned: The international registration designating the European Union of the figurative mark with word elements 'da rosa' for goods and services in Classes 29, 30 and 43 — International registration No 1 047 095 designating the European Union

Proprietor of the mark or sign cited in the opposition proceedings: A-Rosa Akademie GmbH

Mark or sign cited in opposition: National, international and Community word marks 'aROSA' and national and international figurative marks with the word elements 'aROSA Lust auf Schiff'

Decision of the Opposition Division: The opposition is upheld in part

Decision of the Board of Appeal: The action is dismissed

Pleas in law:

- First plea, alleging a contradiction in the reasoning, if not an excess of authority;
 - Second plea, alleging infringement of Articles 5, 34(1) and 35 of Regulation No 207/2009;
 - Third plea, alleging infringement of Article 42(2) of Regulation No 207/2009, of Rule 22 of Regulation No 2868/95, and of Article 78(1) of Regulation No 207/2009;
 - Fourth plea, alleging infringement of general principles of law, of the hierarchy of legal rules and a manifest error of assessment;
 - Fifth plea, alleging infringement of Article 8(1)(b) of Regulation No 207/2009;
 - Sixth plea, alleging infringement of Article 6 of the European Convention on Human Rights, Article 75 of Regulation No 207/2009 and Rule 22(2) and (3) of Regulation No 2868/95;
 - Seventh plea, alleging a manifest error concerning the relevant public and the assessment of the signs;
 - Eighth plea: the distinctive character of the earlier mark in Classes 39, 43 and 44.
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