Regardless of the evidence of conformity, the defendant requires that all pyrotechnic articles within the meaning of Directive 2007/23/EC be indicated to a federal institute provided for by law, which assigns an identification number in proof of the identification. Where the procedure takes a significant length of time, that procedure may inter alia also involve the payment of an administrative charge and the delivery of test samples. The Commission considers the requirement of such a procedure to be an infringement of the free movement, guaranteed in Article 6 of Directive 2007/23/EC, for all pyrotechnic articles which conform to the requirements of the directive.

The adoption of Directive 2013/29/EU ([2]), with which Directive 2007/23/EC is repealed with effect from 1 July 2015, has also not changed that situation. That is because, first, the time period which is relevant for assessing whether a Member State has failed to fulfil its obligations is the expiry of the time period stated in the reasoned opinion (in the present case 27 March 2014). Secondly, in Article 4(1) thereof, Directive 2013/29/EU contains a provision which is identical to Article 6 (1) of Directive 2007/23/EC, for the purpose of guaranteeing free movement for all pyrotechnic articles which conform to the requirements of EU law.

The infringement, alleged in the present case, by the defendant therefore consists, essentially, in a procedural condition for the placing on the market of pyrotechnic articles which, in the Commission's view, is inadmissible and beyond the harmonised requirements of EU law. As a procedural requirement, the contested legislation might at first sight give the impression of merely causing, in a very few cases, a reasonable delay in the marketing of those products. However, the actual effects of that legislation are not to be underestimated. In this regard account should first of all be taken of the fact that the defendant is one of the biggest, if not the biggest, sales markets for pyrotechnic articles in the internal market. In addition, it should be noted that certain pyrotechnic articles within the territory of the defendant may be sold to consumers only once a year, and only for a short period of time, by which the temporal dimension of that market access is all the more important. In this respect, lastly, the fact that, under national law, the legislation contested in the present case is implemented by the same authority which is also authorised to conduct the conformity assessment as the notified body within the meaning of Directive 2007/23/EC also merits consideration. The requirement of an additional procedure in the national law of the defendant therefore gives that authority a competitive advantage over the notified bodies of other Member States. In view of those practical effects of the contested legislation, the present case by no means involves merely the legal assessment, on grounds of principle, of a hindrance to economic operators from marketing products which have already been assessed by a notified body other than the German notified body as in compliance with the requirements of EU law.

([1]) Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles, OJ 2007 L 154, p. 1.

([2]) Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles (recast), OJ 2013 L 178, p. 27.

Appeal brought on 15 May 2015 by Rose Vision, S.L. against the judgment of the General Court (Fifth Chamber) delivered on 5 March 2015 in Case T-45/13 Rose Vision and Seseña v Commission

(Case C-224/15 P)

(2015/C 228/10)

Language of the case: Spanish

Parties

Appellant: Rose Vision, S.L. (represented by: J.J. Marín López, abogado)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court (Fifth Chamber) delivered on 5 March 2015 in Case T-45/13 *Rose Vision and Seseña* v *Commission*, EU:T:2015:138;

— annul the decisions to suspend payments adopted by the Commission and by other European Union bodies (in particular, the Research Executive Agency) in the context of audits 11-INFS-025 and 11-BA119-016, with the consequences indicated in paragraph 51 of the appeal;

— declare that the Commission breached the contractual terms of the FutureNEM project grant agreement relating to the confidentiality obligation, and must therefore compensate Rose Vision in the terms set out in paragraph 93 of the appeal;

— declare that the Commission incurred tortious liability as regards Rose Vision by including it in alert level W2 of the Early Warning System (EWS) established by Decision 2008/969/EC [1], Euratom, on the Early Warning System for the use of authorising officers of the Commission and the executive agencies, and suspending the payments, and must therefore compensate it for the property or pecuniary damage and the non-pecuniary damage indicated in paragraph 122 of the appeal.

Pleas in law and main arguments

1. Error of law consisting in finding that there was an extension of the time limit laid down in paragraph 5 of point II.22 of general conditions FP7 for the presentation of the final versions of audit reports 11-INFS-025 and 11-BA119-016 (paragraphs 93 and 95 of the judgment under appeal) and that the Commission did not breach the grant agreement (paragraph 97 of the judgment under appeal).

2. Error of law consisting in the failure to state reasons for the assertion that the draft report of audit 11-INFS-025 'already showed the existence of certain ineligible personnel costs as well as the infringement of certain contractual provisions, which was confirmed in the final version of the audit report' (paragraph 99 of the judgment under appeal).

3. Error of law consisting in stating, as regard audit report 11-INFS-025, that Rose Vision 'had not put forward any evidence capable of calling into question the findings in that audit report' (paragraph 101 of the judgment under appeal) and that the Commission had not breached the grant agreement (paragraph 102 of the judgment under appeal).

4. Error of law consisting in denying the existence of a breach of the contractual provisions of the FutureNEM project grant agreement relating to the confidentiality obligation (paragraph 104 of the judgment under appeal).

5. Error of law consisting in rejecting the European Union's liability for the damage arising from Rose Vision's inclusion in alert level W2 of the Early Warning System (EWS) established by Decision 2008/969/EC, and the suspensions of payment to Rose Vision (paragraph 120 of the judgment under appeal).

[1] OJ 2008 L 344, p. 125.