

Form of order sought

The applicant claims that the Court should:

- annul and declare to be invalid the decision of the European Chemicals Agency of 7 July 2016, according to which the applicant is to continue to be considered a large enterprise and as a result of which the applicant is not entitled to the fee reduction for a medium-sized enterprise, and allow the implementation of that decision to be deferred.

Pleas in law and main arguments

According to the applicant, the defendant by the abovementioned decision and its actions misused its power and infringed the principles of legality and legal certainty.

The applicant claims that in verifying the status of a small or medium-sized enterprise (SME), the defendant incorrectly assessed the independence of the applicant's enterprise and incorrectly included in the calculation a number of employees and an amount of the applicant's enterprise's annual turnover plus allegedly linked or partner enterprises, which are not linked with the applicant's enterprise or its partner enterprises under Commission Regulation (EC) No 340/2008 or Commission Recommendation 2003/361/EC.

The applicant submits that its declaration as to the incorrect size of the enterprise, which it made at the defendant's request dated 2 June 2016, was essentially made with confidence in the defendant's assessment and with the promise of a lower fee.

The applicant points out that its registration had been suspended and it had expressly informed the defendant that it has not produced the relevant products (substances subject to registration) since 2011.

The applicant claims that it follows from Article 13(4) of Commission Regulation (EC) No 340/2008 that the right to a fee reduction on registration arises where it is possible to demonstrate such an entitlement and that it is thus appropriate, contrary to what is contended by the defendant, to allow the applicant to establish that entitlement.

Action brought on 9 September 2016 — ClientEarth v Commission

(Case T-644/16)

(2016/C 402/64)

Language of the case: English

Parties

Applicant: ClientEarth (London, United Kingdom) (represented by: O. Brouwer, lawyer, and N. Frey, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision to refuse access to the requested documents pursuant to 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, ⁽¹⁾ as communicated to the applicant on 1 July 2016 in a letter with the reference C(2016) 4286 final;
- order the Commission to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

Pleas in law and main arguments

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

1. First plea in law, alleging errors of law and manifest error of assessment resulting in a misapplication of the *international relations exception* (third indent of Article 4(1)(a) Regulation No 1049/2001) and failure to state reasons:
 - The Commission has not established the applicability of the international relations exception. It has notably not established how disclosure of purely legal documents that contain reflections on EU law is in itself capable of revealing strategic objectives pursued by the European Union during negotiations or weakens the Commission's negotiating position. The Commission is bound by the rule of law and cannot negotiate international agreements that violate EU law. The Applicant further submits that Article 4(1)(a) of Regulation No 1049/2001 (and other exceptions) cannot be invoked 'in perpetuum', i.e. as long as the Commission conducts anywhere negotiations regarding other international agreements. The Commission has moreover failed to state reasons as to how disclosure of the requested documents could specifically and actually undermine the public interest as regards international relations.
2. Second plea in law, alleging errors of law and manifest error of assessment resulting in a misapplication of the protection of legal advice exception (second indent of Article 4(2) Regulation No 1049/2001) and failure to state reasons:
 - The Commission has failed to establish whether there is a reasonably foreseeable and not purely hypothetical risk that disclosure of the requested documents would undermine its interest in receiving frank, objective and comprehensive legal advice.
3. Third plea in law, alleging errors of law and manifest error of assessment resulting in the misapplication of the protection of the *decision-making process exception* (first subparagraph of Article 4(3) Regulation No 1049/2001) and failure to state reasons:
 - The Commission has failed to explain how access to the requested documents could specifically and actually undermine the decision-making process.
4. Fourth plea in law, alleging error of law and manifest error of assessment resulting in the misapplication of the overriding public interest test and failure to state reasons:
 - There is an overriding public interest, because disclosure would make it possible to have a debate on access to justice, notably access to (and the role of) domestic courts, and the need to preserve the unity and autonomy of EU law. These topics are of direct interest to EU citizens and NGOs like the applicant.
5. Fifth plea in law, alleging breach of Article 4(6) Regulation No 1049/2001 (Partial access) and request of a measure of inquiry
 - The applicant submits that the Commission did not, or in any event not to the requisite legal standard, examine and grant partial access to the requested documents.

⁽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).

Action brought on 7 September 2016 — Vorarlberger Landes- und Hypothekbank v SRB

(Case T-645/16)

(2016/C 402/65)

Language of the case: German

Parties

Applicant: Vorarlberger Landes- und Hypothekbank AG (Bregenz, Austria) (represented by: G. Eisenberger, lawyer)