

**Request for a preliminary ruling from the Nederlandstalige rechtbank van eerste aanleg Brussel (Belgium) lodged on 6 February 2020 — NV Vogel Import Export v Belgische Staat**

**(Case C-62/20)**

(2020/C 201/14)

*Language of the case: Dutch*

**Referring court**

Nederlandstalige rechtbank van eerste aanleg Brussel

**Parties to the main proceedings**

*Applicant:* NV Vogel Import Export

*Defendant:* Belgische Staat

**Questions referred**

1. Should the [Combined Nomenclature] <sup>(1)</sup>— in the light also of the various language versions of tariff heading 4409 and the HS Explanatory Notes to tariff headings 4407 and 4409 — be interpreted as meaning that the goods which are the subject of the main proceedings, namely, planed wooden boards the four corners of which have been rounded over the entire length of the board, are to be regarded as being ‘continuously shaped’ and accordingly should be classified under tariff heading 4409 or can the rounding of the corners not be regarded as being ‘continuously shaped’ and should the goods therefore be classified under tariff heading 4407?
2. Is the size of the rounding determinative for classification under tariff heading 4407 or tariff heading 4409?

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<sup>(1)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)

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**Appeal brought on 5 February 2020 by Ms Sigrid Dickmanns in respect of the Order of the General Court (Sixth Chamber) of 18 November 2019 in Case T-181/19 Sigrid Dickmanns v European Union Intellectual Property Office (EUIPO)**

**(Case C-63/20 P)**

(2020/C 201/15)

*Language of the case: German*

**Parties**

*Appellant:* Sigrid Dickmanns (represented by: H. Tettenborn, Rechtsanwalt)

*Other party to the proceedings:* European Union Intellectual Property Office (EUIPO)

**Form of order sought by the appellant**

The appellant claims that the Court of Justice of the European Union should:

1. set aside in full the order of the General Court of the European Union (Sixth Chamber) of 18 November 2019 in Case T-181/19 and then refer the case back to the General Court;
2. order the European Union Intellectual Property Office (EUIPO) to pay the costs of the appeal proceedings before the Court of Justice.

### Grounds of appeal and main arguments

In support of her appeal, the applicant relies on a single ground of appeal, namely an erroneous interpretation and application of Article 90 and 91, in particular, of the Staff Regulations; concomitantly, the appellant's fundamental rights to a fair trial and to sound administration have been seriously breached.

The appellant claims that the General Court erred in regarding her complaint as having been lodged out of time under Article 90(2) of the Staff Regulations. Her complaint was raised within 3 months of a reasoned decision of the EUIPO, not — under the third indent of Article 90(2) of the Staff Regulations — within 3 months of an earlier implied decision rejecting a request made by her.

In that connection, the appellant claims that the General Court's interpretation of Article 90(2) of the Staff Regulations does not follow the wording of that provision. She maintains that her complaint was not made pursuant to an implied decision under the third indent of Article 90(2) of the Staff Regulations, but pursuant to the second indent of Article 90(2) of the Staff Regulations following a decision notified to her, and is therefore admissible according to the wording of that provision. It does not follow from the wording of the third sentence of Article 90(1), the second indent of Article 90(2) or from the third indent of Article 90(2) of the Staff Regulations that, in the case of an implied decision rejecting a request, the second indent of Article 90(2) is inapplicable or that application of the third indent should be given priority. The express decision of the EUIPO was not a mere confirmation of the implied decision, since the EUIPO did not refer to the implied decision. Moreover, certain elements inconsistent with a mere confirmatory decision suggest that there was a fresh decision.

The appellant then claims that the General Court's interpretation runs counter to the spirit of the second and third sentences of Article 90(1) of the Staff Regulations and legal certainty. The purpose of those rules is, above all, to protect the applicant and not for the authority with which the request is lodged — which is the consequence of the General Court's interpretation — to gain procedurally from the breach of an obligation. The objective of legal certainty would be greater served by the applicant's interpretation. First, that interpretation is consistent with the wording of Article 90(2) of the Staff Regulations and does not run counter to it — as does the General Court's interpretation. Second, the deadline would, according to the General Court's interpretation, be longer or shorter in respect of an authority's express reasoned decision, depending on whether or not that express decision was preceded by an implied decision.

In addition, the appellant relies on a serious breach of her fundamental rights to a fair trial and to sound administration. The breach of the right to a fair trial consists, in particular, in the fact that the authority can intentionally use a breach of an obligation (namely its obligation to adopt a decision on a request within 4 months under Article 90(1) of the Staff Regulations) so as to shorten the time which an applicant has to respond to the grounds for the decision rejecting a request given by the authority. Furthermore, the General Court's interpretation to the contrary of second sentence and third indent of Article 90(2) of the Staff Regulations entails a significantly higher risk that an action brought by an applicant will be lost on account of being out of time. An interpretation of Article 90(2) of the Staff Regulations in conformity with fundamental rights can lead only to the result advocated by the appellant.

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**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 12 February 2020 — YL v Altenrhein Luftfahrt GmbH**

**(Case C-70/20)**

(2020/C 201/16)

*Language of the case: German*

### Referring court

Oberster Gerichtshof