

- According to the findings of the European Environment Agency (EEA), approximately 12 800 people die each year in Germany alone from air pollution caused by nitrogen oxide.
- 3. Third plea in law, alleging lack of a specific examination of partial access pursuant to Article 4(2) of Regulation (EC) No 1049/2001
  - The Commission did not examine in a sufficiently specific manner whether, in the alternative, partial access to the files should be granted pursuant to Article 4(2) of Regulation (EC) No 1049/2001.
  - No examination as to whether it might be possible to adopt a less restrictive measure concerning the applicant's right of access took place.

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(<sup>1</sup>) 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).

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**Action brought on 21 February 2022 — OG and Others v Commission**

**(Case T-101/22)**

(2022/C 165/47)

*Language of the case: Spanish*

**Parties**

*Applicants:* OG, OH, OI and OJ (represented by: D. Gómez Fernández, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- annul Article 1 of Commission Delegated Regulation (EU) 2021/2288 (<sup>1</sup>) of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 (<sup>2</sup>) of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicants rely on seven pleas in law.

1. First plea in law, alleging infringement of the rules of jurisdiction and Article 290(1) TFEU.

- In that respect, the applicants claim that the Commission has acted in excess of its authority as regards the delegation mandate given by the European Parliament in Articles 12 and 5(2) of Regulation 2021/953 and those articles themselves in so far as the contested act does not comply with the essential elements of the enabling act and does not, in any case, fall within the regulatory framework defined in the basic legislative act since the changes are not necessary in the event of scientific progress in containing the COVID-19 pandemic.

2. Second plea in law, alleging infringement of the rules of jurisdiction and Article 290(1) TFEU.

- In that respect, the applicants claim that the Commission has acted in excess of its authority as regards the delegation mandate given by the European Parliament in Articles 32 and 5(4) of Regulation 2021/953 and those articles themselves. Infringement of essential procedural requirements in so far as the urgency procedure was followed in the absence of the specific scenario required for use of that procedure, namely the availability of new scientific evidence and the existence of imperative grounds of urgency.

3. Third plea in law, alleging infringement of the fundamental right of free movement enshrined in Article 21 TFEU, Article 45 of the Charter of Fundamental Rights of the European Union, Article 2 of Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 27 of Directive 2004/38/EC of 29 April and the principle of proportionality.

- In that respect, the applicants note that the limitations introduced do not respond to public health reasons and their effectiveness and necessity have not been established.
4. Fourth plea in law, alleging infringement of the fundamental rights of the Charter of equality before the law (Article 20) and non-discrimination (Article 21) and concordant rights under the European Convention on Human Rights (ECHR) by introducing, without any scientific basis for doing so, a difference in treatment between persons who are fully vaccinated and those receiving the booster dose.
5. Fifth plea in law, alleging lack of jurisdiction *ratione materiae*.
- In that respect, the applicants claim that the principle of conferral and Articles 5 and 168 TFEU have been infringed in so far as neither the Commission nor the EU has the power to take measures making vaccination compulsory, even indirectly, by the vaccination certificate being automatically lost 270 days after completion of the vaccination schedule.
6. Sixth plea in law, alleging infringement of the fundamental rights of the Charter of the right to liberty (Article 6), respect for private and family life (Article 7), human dignity (Article 1) and right to the integrity of the person (Article 3) and concordant rights under the ECHR by indirectly imposing the booster vaccination in order not to lose the vaccination certificate.
7. Seventh plea in law, alleging misuse of powers.
- In that respect, the applicants claim that Article 18 of the ECHR has been infringed in so far as the delegated regulation pursues a purpose other than that intended, an indirect booster vaccination obligation so as not to automatically lose the vaccination certificate.

- (<sup>1</sup>) Commission Delegated Regulation (EU) 2021/2288 of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series (OJ 2021 L 458, p. 459).
- (<sup>2</sup>) Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ 2021, L 211, p. 1).

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**Action brought on 22 February 2022 — Transgourmet Ibérica v EUIPO — Aldi (Gourmet)**

**(Case T-102/22)**

(2022/C 165/48)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Transgourmet Ibérica, SAU (Gerona, Spain) (represented by: C. Duch Fonoll and I. Osinaga Lozano, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany)

**Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* European Union figurative mark Gourmet — European Union trade mark No 8 143 653

*Procedure before EUIPO:* Cancellation proceedings

*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 14 December 2021 in Case R 862/2021-2

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision in its entirety;
- remit the case back to the Board of Appeal to give final judgment and