



Date of acceptance : 20/09/2014



ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
 TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
 TRIBUNÁL EVROPSKÉ UNIE
 DEN EUROPÆISKE UNIONS RET
 GERICHT DER EUROPÄISCHEN UNION
 EUROOPA LIIDU ÜLDKOHUS
 ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
 GENERAL COURT OF THE EUROPEAN UNION
 TRIBUNAL DE L'UNION EUROPÉENNE
 CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
 OPĆI SUD EUROPSKE UNIJE
 TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
 EUROPOS SAJUNGOS BENDRASIS TEISMAS
 AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
 IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
 GERECHT VAN DE EUROPESE UNIE
 SAÐ UNII EUROPEJSKIEJ
 TRIBUNAL GERAL DA UNIÃO EUROPEIA
 TRIBUNALUL UNIUNII EUROPENE
 VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
 SPLOŠNO SODIŠČE EVROPSKE UNIJE
 EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
 EUROPEISKA UNIONENS TRIBUNAL

ORDER OF THE GENERAL COURT (Eighth Chamber)

638454

16 September 2014 *

(Approximation of laws — Deliberate release into the environment of GMOs — Marketing authorisation procedure — Request for internal review — Annulment of the contested decisions or the decisions concerned — Action devoid of purpose — No need to adjudicate)

In Case T-405/10,

Justice & Environment, established in Amsterdam (Netherlands), represented by P. Černý, lawyer,

applicant,

v

European Commission, represented initially by P. Oliver and D. Bianchi, and subsequently by D. Bianchi alone, acting as Agents,

defendant,

APPLICATION for annulment of Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (*Solanum tuberosum* L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch (OJ 2010 L 53, p. 11) and of Commission Decision 2010/136/EU of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 53, p. 15), and of the decision allegedly contained in the Commission's letter of 6 July 2010 rejecting the request for an internal review of those decisions,

* Language of the case: English.

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva (Rapporteur) and C. Wetter, Judges,

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

- 1 The applicant — Justice & Environment — is a non-governmental organisation consisting of a network of public-interest organisations established in various Member States of the European Union which operate in the field of environmental law.
- 2 On 2 March 2010, the European Commission adopted Decision 2010/135/EU concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (*Solanum tuberosum* L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch (OJ 2010 L 53, p. 11) and Decision 2010/136/EU authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 53, p. 15). That genetically modified potato is usually called the Amflora potato.
- 3 By letter of 14 April 2010, the applicant submitted a request for internal review to the Commission, pursuant to Article 10 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13). In the request for internal review, the applicant asked the Commission to ‘consider the legality’ of Decisions 2010/135 and 2010/136 authorising the placing on the market of the Amflora potato for the purposes of use in, respectively, industry and animal feed, and to ‘remedy the unlawfulness of the two ... Decisions if found [to be] in breach of ... European Union environmental law’.
- 4 By letter of 6 July 2010 in response to the request for internal review (‘the letter in response’), the Commission held that Decisions 2010/135 and 2010/136 were in line with the law and, accordingly, refused that request.

Procedure and forms of order sought

- 5 By application lodged at the Court Registry on 10 September 2010, the applicant brought the present action, in which it claims that the Court should:
 - declare Decisions 2010/135 and 2010/136, and the decision contained in the letter in response, to be null and void;
 - order the Commission to pay the costs.

- 6 In its defence, lodged at the Court Registry on 28 January 2011, the Commission contends that the Court should:
 - dismiss the action as manifestly inadmissible in part and as unfounded in its entirety;
 - order the applicant to pay the costs.

- 7 By measure of organisation of procedure of 26 November 2012, the Court requested the parties to submit their observations as to whether it was appropriate to stay the proceedings in the present case pending a ruling by the Court of Justice or the General Court terminating the proceedings in Case T-240/10 *Hungary v Commission*, in which annulment of Decisions 2010/135 and 2010/136 was also sought.

- 8 By letter received at the Court Registry on 3 December 2012, the Commission declared that, since the present action concerns the legality of the same measures as are at issue in Case T-240/10, it is clearly in the interests of the proper administration of justice to stay the proceedings. For its part, the applicant informed the Court that it had no observations to submit in that regard.

- 9 By order of 13 December 2012, on the basis of Article 77(d) of the Rules of Procedure of the General Court and in accordance with the principle of the proper administration of justice, the President of the First Chamber of the General Court ordered that proceedings be stayed in the present case pending a ruling by the Court of Justice or the General Court terminating the proceedings in Case T-240/10.

- 10 By judgment of 13 December 2013 in *Hungary v Commission* (T-240/10, ECR, EU:T:2013:645) ('the annulling judgment'), the Court declared Decisions 2010/135 and 2010/136 to be null and void.

- 11 On 24 February 2014, the Court found that, as no appeal had been lodged against the annulling judgment referred to in paragraph 10 above (EU:T:2013:645) within the prescribed period, that judgment had become definitive and had acquired the authority of *res judicata*. Since the proceedings in Case T-240/10 had ended, the stay of proceedings in the present case had also ended.

- 12 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Eighth Chamber, to which the present case was accordingly allocated.
- 13 By measure of organisation of procedure of 21 March 2014, the General Court (Eighth Chamber) requested the parties to submit their observations regarding the implications of the annulling judgment referred to in paragraph 10 above (EU:T:2013:645) for the purpose of the dispute and the need to adjudicate in the present case.
- 14 In its observations lodged at the Court Registry on 7 April 2014, the applicant maintained that the annulling judgment referred to in paragraph 10 above (EU:T:2013:645) had not deprived the present action of its relevance or purpose and that there was still a need to adjudicate. It argued that, while the General Court had, by that judgment, annulled Decisions 2010/135 and 2010/136, it had not given a ruling on all the pleas of illegality raised by the applicant in the present case and had not responded to the procedural question of whether a non-governmental organisation (NGO) had standing to bring an action before it for the annulment of decisions which had been the subject of a request for internal review.
- 15 In its observations lodged at the Court Registry on 7 April 2014, the Commission asked the Court to declare that the action had become devoid of purpose and to decide that each party was to bear its own costs.

Law

- 16 Under Article 113 of its Rules of Procedure, the General Court may, after hearing the parties, decide at any time of its own motion whether there exists any absolute bar to proceeding with an action or declare that the action has become devoid of purpose and that there is no need to adjudicate on it.
- 17 In the present case, the Court considers that it has sufficient information from the documents before it and decides to give its decision without taking further steps in the proceedings.
- 18 According to settled case-law, the subject-matter of the dispute, as determined by the application initiating proceedings, must, like the interest in bringing proceedings, continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it (see, to that effect, the order of 14 January 2014 in *Miettinen v Council*, T-303/13, EU:T:2014:48, paragraph 16 and the case-law cited).

- 19 Thus, it has been found that the annulment, in the course of proceedings, of a decision contested in those proceedings will result in the action in question becoming devoid of purpose as regards the claim for the annulment of that decision (see, to that effect, the judgment of the Court of Justice of 29 April 2004 in *Italy v Commission*, C-372/97, ECR, EU:C:2004:234, paragraph 37, and the judgment of the General Court of 19 October 2005 in *CDA Datenträger Albrechts v Commission*, T-324/00, ECR, EU:T:2005:364, paragraphs 116 and 117).
- 20 In the present case, it should first be noted that the annulment of Decisions 2010/135 and 2010/136 has given the applicant the result that it sought to obtain by the present action, namely, the elimination of those decisions from the legal order of the European Union (see, by analogy, the order of 12 January 2011 in *Terezakis v Commission*, T-411/09, ECR, EU:T:2011:4, paragraph 20).
- 21 Accordingly, there is no need to give a ruling on the pleas put forward by the applicant in order to establish the illegality of Decisions 2010/135 and 2010/136 (see, by analogy, *CDA Datenträger Albrechts v Commission*, paragraph 19 above, EU:T:2005:364, paragraphs 116 and 117).
- 22 Secondly, it should be noted that the annulment of Decisions 2010/135 and 2010/136 entails the lapse of the request for the internal review of those decisions and, consequently, the lapse of the request for the annulment of the decision allegedly contained in the letter in response refusing that request for internal review.
- 23 Accordingly, there is no need to give a ruling on the pleas put forward by the applicant in order to establish the illegality of the decision allegedly contained in the letter in response.
- 24 It follows from all of the foregoing that the present action has become devoid of purpose and that there is no need to adjudicate on it.

Costs

- 25 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be in the discretion of the Court.
- 26 The Court finds that it is an equitable assessment of the case to decide that the Commission is to bear its own costs and to pay the costs incurred by the applicant.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby orders:

1. **There is no need to adjudicate on the action.**
2. **The European Commission is to bear its own costs and to pay the costs incurred by Justice & Environment.**

Luxembourg, 16 September 2014.

E. Coulon

D. Gratsias



Registrar



President