



Reports of Cases

Case T-628/22

René Repasi

v

European Commission

Order of the General Court (Sixth Chamber), 21 June 2023

(Action for annulment – Environment – Commission Delegated Regulation (EU) 2022/1214 – Taxonomy – Economic activities relating to fossil gas and nuclear energy – Inclusion in sustainable economic activities – Member of the European Parliament – Lack of direct concern – Inadmissibility)

1. *Action for annulment – Natural or legal persons – Measures of direct and individual concern to them – Direct concern – Criteria – Commission Delegated Regulation (EU) 2022/1214 – Action brought by a Member of the European Parliament – Not directly concerned – Inadmissibility*
(Art. 263, fourth para., TFEU; European Parliament and Council Regulation 2020/852; Commission Delegated Regulation 2022/1214)

(see paragraphs 23, 24, 30-37)

2. *EU institutions – Exercise of powers – Power conferred on the Commission to adopt delegated acts – Scope*
(Art. 290 TFEU)

(see paragraphs 26-29)

Résumé

Taxonomy: The General Court dismisses as inadmissible an action brought by a Member of the European Parliament against the Commission Regulation on the sustainability of certain economic activities related to fossil gas and nuclear energy

Unlike the European Parliament, its individual members cannot challenge such an act

On 18 June 2020, the European Parliament and the Council of the European Union adopted Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment.¹ That regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable, in the light of different environmental objectives defined therein.

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13).

Climate change mitigation is one of those objectives.² Under that provision, transitional economic activities, namely those for which there are no technically and economically feasible low-carbon alternatives, contribute substantially to climate change mitigation when they lead to climate neutrality, subject to compliance with certain criteria.

It is in that context that the European Commission adopted Delegated Regulation 2022/1214,³ establishing the technical screening criteria for determining the conditions under which certain economic activities relating to fossil gas and nuclear energy form part of transitional activities that could contribute, inter alia, to the objective of climate change mitigation.

Taking the view that the Commission exceeded the power to adopt delegated acts conferred on it, Mr René Repasi, a Member of the European Parliament, brought an action for annulment of that regulation before the Court, claiming that that regulation had infringed the legislative competence of the Parliament and, therefore, his rights as a Member of the Parliament.

In its order, the Court is ruling for the first time on the standing of a Member of the Parliament to bring proceedings against a Commission Delegated Regulation before dismissing the action as inadmissible.

Findings of the Court

First, the Court notes that, under the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against an act which is not addressed to that person if the act in question is of direct and individual concern to that person or where it is a regulatory act which is of direct concern to them and does not entail implementing measures. For an individual to be directly concerned by the act being challenged, two cumulative criteria must be met. First, the measure challenged must directly affect the person's legal situation and, second, it must leave no discretion to the addressees who are responsible for its implementation.

As regards the applicant's legal standing to challenge Delegated Regulation 2022/1214, it is apparent from the case-law that an act of the Parliament which affects the conditions under which its Members perform their parliamentary duties is an act which directly affects their legal situation. However, the Court states that that case-law concerned measures of internal organisation of the Parliament which directly affect its Members and cannot be applicable to the present case in which the rights of those Members could be affected only indirectly by the alleged infringement of the Parliament's legislative competence. All the applicant's rights linked to the exercise of the Parliament's legislative competence, such as the right to participate in a proper legislative procedure, the right to respect for the provisions on competence and procedure, the right to defend the democratic powers of the Parliament and the rights to vote, to take initiative and to participate in order to exert political influence, are intended to be exercised only in the context of the Parliament's internal procedures and cannot therefore be regarded as directly affected by the adoption of Delegated Regulation 2022/1214.

² Articles 3 and 9 of Regulation 2020/852.

³ Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022, amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ 2022 L 188, p. 1).

In that regard, the Court adds that the principles of representative democracy and of the rule of law relied on by the applicant in support of recognition of his standing to bring proceedings, as well as the protection of the institutional balance and the right to legal protection of the minority, do not call that finding into question, since the Parliament has a right of action against acts of EU law capable of ensuring observance of those principles. The same is true of the applicant's arguments that Members of the Parliament should be directly concerned by acts affecting rules of competence, fundamental provisions of the legislative procedure or acts constituting a misuse of powers.

In the light of those considerations, the Court concludes that the applicant does not have standing to bring proceedings since he is not directly concerned by Delegated Regulation 2022/1214.