The decision contains an error in law because the EMA finds that SO1a is not of public interest, despite the fact that the applicant has established to the requisite degree the relationship between the legal nature of SO1a and access to documents under Regulation (EC) No 1049/2001.

(1) Commission Implementing Decision C(2020) 9598 of 21 December 2020 granting a conditional marketing authorisation under Regulation (EC) No 726/2004 of the European Parliament and of the Council for 'Comirnaty — COVID-19 mRNA Vaccine (nucleoside modified)', a medicinal product for human use.

(2) 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 October 2022 — Austria v Commission

(Case T-625/22)

(2023/C 24/59)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: A. Posch, M. Klamert, F. Koppensteiner, S. Lünenbürger, K. Reiter and M. Kottmannn, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul 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 disclosure requirements for those economic activities, published in the Official Journal of the European Union of 15 July 2022, L 188, p. 1-45;

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant relies on 16 pleas in law. The first eight pleas in law relate to nuclear energy, the other eight to fossil gas.

Pleas in law relating to nuclear energy:

1. First plea in law, alleging that, in adopting the contested regulation, the Commission infringed the principles and procedural rules deriving from Regulation (EU) 2020/852 (1) and the Interinstitutional Agreement on better law-making. The impact assessment and public consultation were wrongly omitted. The expert group of the Member States and the Platform were insufficiently involved. Moreover, the assessment of the compatibility of the contested regulation with the objectives of the European Climate Change Act, as required by Article 6(4) of that Act, was lacking.

2. Second plea in law, alleging that the contested regulation infringes Article 10(2) of Regulation (EU) 2020/852, stating that the provision applies from the outset only to CO2-intensive transitional activities and therefore does not cover low-CO2 nuclear energy. In any event, nuclear energy does not meet the specific requirements of Article 10(2) of Regulation (EU) 2020/852. At the very least, the contested regulation is vitiated by an investigation deficit and a lack of reasoning in this respect. In that regard, it also infringes Article 19(1)(f) and (g) of Regulation (EU) 2020/852 and the precautionary principle under primary law.

3. Third plea in law, alleging that the classification of nuclear energy as environmentally sustainable infringes the DNSH criterion in Article 17 and Article 19(1)(f) and (g) of Regulation (EU) 2020/852 and the precautionary principle under primary law. The Commission falls short of the level of protection required by Regulation (EU) 2020/852 and the

requirements of proof. It fails to recognise the risks of a significant impairment of several of the protected environmental objectives due to severe reactor accidents and high-level radioactive waste. A significant impairment of the environmental objective of adaptation to climate change is also not ruled out with sufficient certainty. In addition, the requirement of a life cycle analysis is violated. At the very least, the contested regulation suffers from deficiencies in the investigation and in the statement of reasons with regard to the aforementioned points.

4. Fourth plea in law, alleging that the technical assessment criteria laid down in the contested regulation are not capable of excluding significant adverse effects on the environmental objectives. The technical assessment criteria infringe the DNSH criterion in Article 17 and Article 19(1)(f) of Regulation (EU) 2020/852 and the precautionary principle under primary law. In this respect, too, the level of protection and the verification requirements are misunderstood, not only with regard to severe reactor accidents and high-level radioactive waste, but also with regard to normal operation. A significant impairment of the environmental objective of adaptation to climate change is not ruled out with sufficient certainty. Moreover, the technical assessment criteria provided for in Annex II of the contested regulation fall short of those in Annex I, without there being any justification for this. With regard to the technical assessment criteria, the contested regulation is, at the very least, vitiated by deficiencies in the examination and justification.

5. Fifth plea in law, alleging that, in so far as the contested regulation classifies nuclear energy as an essential contribution to adaptation to climate change, it infringes Article 11 and Article 19(1)(f) of Regulation (EU) 2020/852 and the precautionary principle.

6. Sixth plea in law, alleging that the contested regulation infringes Article 19(1)(k) of Regulation (EU) 2020/852 and that the technical assessment criteria do not meet the requirement of simple applicability and reviewability.

7. Seventh plea in law, alleging that the contested regulation infringes the telos of Regulation (EU) 2020/852 and the requirement to preserve its practical effectiveness due to the market fragmentation inherent in the classification of nuclear energy as environmentally sustainable.

8. Eighth plea in law, alleging that the interpretation of Regulation (EU) 2020/852 on which the contested regulation is based, to the effect that the Union legislature left the question open and left it to the Commission, infringes the requirement of materiality under Article 290 TFEU. This required that the Union legislature itself take a decision on the inclusion of nuclear energy in the taxonomy. The Union legislature complied with this and excluded the classification of nuclear energy as environmentally sustainable.

Pleas in law relating to fossil gas:

9. First plea in law, alleging that, with regard to economic activities concerning fossil gas, the Commission, when adopting the contested regulation, infringed the principles and procedural rules deriving from Regulation (EU) 2020/852 and the Interinstitutional Agreement on better law-making. The comments on nuclear energy apply mutatis mutandis.

10. Second plea in law, alleging that the contested regulation infringes Article 10(2) and Article 19(1)(f) and (g) of Regulation (EU) 2020/852 and the precautionary principle under primary law, at least in so far as it provides for threshold values of 270 g CO2 eq per kWh and 550 kg CO2 eq per kW per year averaged over 20 years for activities relating to fossil gas. The contested regulation is based on an unlawful softening of the condition that there should be no technologically and economically feasible alternative to transitional activities within the meaning of Article 10(2) of Regulation (EU) 2020/852. Furthermore, the thresholds would not be in line with the 1,5 °C target of the Paris Climate Agreement and the Union's climate objectives. As the threshold values are only linked to direct GHG emissions, the life cycle analysis requirement is also violated. The thresholds also fall short of the best performance of the sector or industry, hinder the development of low-carbon alternatives and lead to impermissible lock-in effects. At the very least, the contested regulation is vitiated in this respect by deficiencies in the investigation and in the statement of reasons.

11. Third plea in law, alleging that the inclusion of the 270 g and 550 kg limits in the contested regulation infringes the requirement of technological neutrality laid down in Article 19(1)(a) and (j) of Regulation (EU) 2020/852 and the principle of non-discrimination.

12. Fourth plea in law, alleging that the contested regulation infringes the DNSH criterion in Article 17 and Article 19(1)(f) and (g) of Regulation (EU) 2020/852 and the precautionary principle under primary law. Due to the 270 g and 550 kg limit values, there is not only a lack of a significant contribution to climate protection, but this is also significantly impaired.

13. Fifth plea in law, alleging that, in so far as the contested regulation classifies fossil gas as an essential contribution to adaptation to climate change, it infringes Articles 11 and 19(1)(f) of Regulation (EU) 2020/852 and the precautionary principle.

14. Sixth plea in law, alleging that the contested regulation infringes Article 19(1)(i) of Regulation (EU) 2020/852. In view of the increasing economic pressure on fossil gas as an energy source, its inclusion in the taxonomy entails at least a significant risk of creating worthless assets.

15. Seventh plea in law, alleging that the contested regulation infringes Article 19(1)(k) of Regulation (EU) 2020/852. The technical assessment criteria do not meet the requirement of simple applicability and verifiability with regard to fossil gas.

16. Eighth plea in law, alleging that the contested regulation infringes the telos of Regulation (EU) 2020/852 and the requirement to preserve its practical effectiveness due to the market fragmentation that accompanies the classification of fossil gas as environmentally sustainable.

([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).

Action brought on 10 October 2022 — Repasi v Commission

(Case T-628/22)

(2023/C 24/60)

Language of the case: German

Parties

Applicant: René Repasi (Karlsruhe, Germany) (represented by: H.-G. Kamann and D. Fouquet, lawyers, and Prof. F. Kainer and Prof. M. Nettesheim)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul 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, published in the Official Journal of the European Union of 15 July 2022 L 188, p. 1;

— order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law.

The applicant alleges that the contested Delegated Regulation (EU) 2022/1214 infringes the second subparagraph of Article 290(1) TFEU, read in conjunction with Articles 2, 10(1), 13(1) and 14(1) TEU, which are given specific expression by the applicant's parliamentary participation rights under secondary law, in particular under the first sentence of Article 6(1) of the Elections Act, Article 2 et seq. of the Statute for Members and Rules 177 and 218(1) of the Rules of Procedure of the European Parliament.