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Advocate General's Opinion in Case C-122/22 P | Dyson and Others v Commission

Advocate General Ćapeta: The Commission's breach of the Energy Labelling Directive by adopting the empty bag test for vacuum cleaners is sufficiently serious

The General Court's judgment dismissing Dyson's action should therefore be set aside

In 2013, the Commission adopted a delegated regulation [1] by which it introduced the empty bag test to measure energy efficiency levels of vacuum cleaners. Dyson had successfully contested the legality of that regulation, and in a judgment of 2018, the General Court had annulled that regulation [2] on the ground that the testing method carried out with an empty bag did not reflect conditions as close as possible to actual conditions of use. Dyson introduced an action for non-contractual liability of the European Union, claiming damages valued at € 176.1 million. In the 2021 judgment under appeal, [3] the General Court had dismissed Dyson's claim for damages because it found that the breach committed by the Commission was not sufficiently serious.

In her Opinion delivered today, Advocate General Tamara Ćapeta proposes that the Court of Justice set aside the 2021 judgment and find that the Commission's breach of the Energy Labelling Directive, [4] which the contested regulation supplemented with regard to vacuum cleaners, is sufficiently serious. She also proposes that the case be referred back to the General Court for a decision as to whether other conditions for liability in damages have been fulfilled.

The Advocate General first examines whether the General Court had mischaracterised Dyson's pleas. She considers that, while Dyson's claim was that the Commission committed a sufficiently serious breach by choosing the empty bag test, the General Court considered whether the Commission was entitled to reject one possible dust-loaded test method. The Advocate General notes that this distinction is important in order to determine the level of discretion enjoyed by the Commission. She finds that the Commission should not have adopted the empty bag test. This leads the Advocate General to conclude that the General Court had mischaracterised Dyson's plea.

Advocate General Ćapeta then analyses existing case law and finds that discretion has a role in determining whether a breach of EU law can be characterised as sufficiently serious, but that that role is not decisive. She therefore finds that the General Court has not erred in law when it concluded that, whether or not an institution has a discretion, it is still necessary to verify whether there might be factors which can excuse the breach.

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[1] Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners (OJ 2013 L 192, p. 1).

[2] Judgment of 8 November 2018, *Dyson* v *Commission*, T-544/13 RENV (see Press Release N° 168/18).

[3] Judgment of 8 December 2021, *Dyson and Others v Commission*, T-127/19 (see Press Release N° 218/21)

[4] Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast) (OJ 2010 L 153, p. 1).

However, according to the Advocate General, the General Court did err in law in assessing those factors and finding that the interpretative difficulties and regulatory complexity could have excused the Commission at the time when it adopted the delegated regulation. In her view, it cannot be accepted in the circumstances of the present case that the Commission, as a 'good' administrator exercising ordinary care and diligence, could consider that it was justified in adopting a testing method that misleads consumers about the energy efficiency of vacuum cleaners simply because that was the only testing method available at the time.

The Advocate General finds that the Commission was aware, at the relevant time, that the empty bag test could not achieve the objective of Directive 2010/30 to inform consumers about the energy efficiency of vacuum cleaners and enable them to buy more energy efficient ones. Quite the contrary, the Commission could not have been unaware that such a test is misleading for consumers. **Neither interpretative difficulties nor regulatory complexity could excuse the Commission for adopting the empty bag test.** Therefore, the Advocate General concludes that the Commission committed a sufficiently serious breach of Directive 2010/30.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

The full text of the Opinion is published on the CURIA website on the day of delivery.

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