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Judgments of the General Court in Cases T-163/23 | Fritz Egger and Others v ECHA (Melamine)
and T-167/23 | LAT Nitrogen Piesteritz and Cornerstone v ECHA (Melamine)

The decision of the European Chemicals Agency identifying melamine as a substance with probable serious effects on human health and the environment is upheld

On 26 August 2022, the competent German authority submitted a dossier to the European Chemicals Agency (ECHA) in favour of the identification of melamine as substance of very high concern, namely a chemical substance with probable serious effects on human health and the environment under the REACH Regulation.¹ After receiving the comments of the interested parties and following the unanimous vote of the Member State Committee (MSC), ECHA adopted, on 16 December 2022, a decision identifying melamine as substances of very high concern on the ground that it had probable serious effects on human health and the environment.

A number of undertakings that produce or use melamine, established in Germany, Austria, Belgium, Switzerland and in the United States – including LAT Nitrogen Piesteritz GmbH, Cornerstone Chemical Co. and Fritz Egger GmbH & Co. OG – brought an action before the **General Court of the European Union** seeking the annulment of that decision. In its two judgments, the General Court **rejects all of their arguments and therefore dismisses their actions.**

The General Court rules (i) on the concept of ‘intrinsic properties’ of a chemical substance and (ii) on the arguments relating to the right of interested parties to submit comments in the context of the procedure for the identification of substances of very high concern.

First, it states that, in order for a substance to be identified as being of very high concern, it must be established, *inter alia*, on the basis of scientific evidence, that the substance has probable serious effects on human health or the environment, which requires an analysis of the hazards arising from the **intrinsic properties of the substance.**

The concept of ‘hazard’ describes any product or procedure capable of having an adverse effect on human health or the environment. In that regard, the General Court finds that the identification of a substance as being of very high concern does not require that an intrinsic property is, as such and in isolation, capable of having a serious effect. It is, however, necessary that it has an effect which, in combination with other effects resulting from other intrinsic properties, is capable of having a serious effect on human health or the environment.

In those circumstances, the effects associated with the environmental fate properties of a substance, such as its persistence, mobility and potential for long-range transport, may be taken into consideration in order to determine whether a substance may have serious effects on human health or the environment. Consequently, the General Court finds that ECHA did not make a manifest error in its assessment.

Second, the General Court also rejects the undertakings’ argument that their **right to be heard** during the procedure for the adoption of ECHA’s decision was not respected.

The General Court also states that the REACH Regulation does not guarantee interested parties a right to be heard during the procedure. That regulation merely provides for a public consultation which does not confer on those parties any specific procedural right other than the right to submit comments. Similarly, the interested parties participating in the MSC meeting as observers can only submit comments on specific points that may be determined in advance.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, depending on the case, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The full text and, as the case may be, the abstracts of the judgments ([T-163/23](#) and [T-167/23](#)) are published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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¹ [Regulation \(EC\) No 1907/2006](#) of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).