



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 81/15
Luxembourg, 9 July 2015

Judgment in Case C-360/14 P
Germany v Commission

The Court, in line with the General Court, confirms the Commission's ban against Germany retaining its limit values for arsenic, antimony and mercury in toys

The Court dismisses the appeal brought by Germany against the judgment of the General Court, taking the view that the General Court did not err in law in dismissing the action of that Member State

In 2009 the EU adopted a new 'toys' directive¹ under which it set new limit values for certain chemical substances found in toys. Germany takes the view that the limit values applicable in that country for lead, barium, antimony, arsenic and mercury, which correspond with the former EU standard,² offer better protection. Germany, therefore, asked the Commission for permission to maintain those old values. By decision of 1 March 2012, the Commission rejected that request in relation to antimony, arsenic and mercury and authorised the retention of the German limit values for lead and barium only until 21 July 2013 at the latest.

Germany brought proceedings before the General Court, which in a 2014 judgment³ confirmed the Commission's decision, holding that Germany had not proved in relation to antimony, arsenic and mercury that the German limit values guaranteed a higher level of protection than the new European limit values. On the other hand, the General Court annulled the Commission decision in respect of lead holding that the decision was, in that respect, contradictory. As to barium, it held that there was no need to adjudicate as the Commission had in the meantime altered the limit values for that heavy metal (the appeal had, therefore, become devoid of purpose).

Germany brought an appeal against the judgment of the General Court before the Court of Justice.

In today's judgment, **the Court rejects Germany's appeal in its entirety.**

The Court recalls that a Member State can, in order to justify the retention of pre-existing national provisions, rely on the fact that it evaluates the risk to public health differently to the EU legislature in the harmonisation measure. Divergent evaluations of those risks can legitimately be made without necessarily being based on different or new scientific information. However, it is incumbent upon the Member State to show that those national provisions ensure a higher level of protection for public health than the EU's harmonisation measure.⁴

According to the Court, the General Court did not err in law in holding that Germany had not provided such evidence in relation to arsenic, antimony and mercury.

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.

¹ Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170 p.1).

² Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys (OJ 1988 L 187, p.1).

³ Case [T-198/12](#) Germany v Commission, see also Press release [No. 72/14](#).

⁴ Case [C-3/00](#) Denmark v Commission, see also Press release [No. 20/03](#).

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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