



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 100/15

Luxembourg, 10 September 2015

Judgment in Case C-106/14

Fédération des entreprises du commerce et de la distribution (FCD) and
Fédération des magasins de bricolage et de l'aménagement de la maison
(FMB) v Ministre de l'Écologie, du Développement durable et de l'Énergie

Articles incorporated as components of a complex product must be notified to the European Chemicals Agency when they contain a substance of very high concern in a concentration above 0.1%

The REACH Regulation¹ provides that, where a chemical substance 'of very high concern' for health or the environment because, in particular, of its carcinogenic, mutagenic or toxic properties is present in a concentration above 0.1% of the mass of an article, the producer or importer must, in principle, notify the European Chemicals Agency (ECHA). Similarly, the supplier must inform the recipient thereof and, on request, the consumer of the article.

In 2011, a note sent by the Commission to the Member States² and a guide published by ECHA³ specified how the regulation is to be applied as regards substances of very high concern included in articles. In essence, with regard to articles incorporated in goods, those documents provide that the duties to notify and provide information laid down in the regulation apply only if the substance of very high concern exceeds 0.1% in the entire article.

That interpretation was not shared by five Member States or Norway.

Not being convinced that the instructions in those documents ensure a high level of protection of human health and the environment, the French authorities issued an opinion on the manner in which they intended to apply the relevant provisions of the regulation. They are of the view that the concept of 'article' covers all objects meeting the definition of an article within the meaning of the regulation.

The Fédération des entreprises du commerce et de la distribution and Fédération des magasins de bricolage et de l'aménagement de la maison have brought proceedings before the Conseil d'État (Council of State, France) against that opinion, arguing that it was not in accordance with the regulation as interpreted by the Commission's note and the ECHA Guidance document. In that context, the Conseil d'État asks the Court of Justice whether, in the case of a product composed of several articles, the concentration threshold for a substance of very high concern must be established in relation to the whole product.

By its judgment delivered today, the Court recalls, firstly, that the regulation defines the concept of 'article' as 'an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition'. However, it does not contain any provisions specifically governing the situation of a complex product containing

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), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2011 L 396, p. 1), as amended by Commission Regulation (EU) No 366/2011 of 14 April 2011 (OJ 2007 L 101, p. 12).

² Document CA/26/2011 of the European Commission dated 4 February 2011, entitled 'Update of Commission opinion – Substances in articles'.

³ The 'Guidance on requirements for substances in articles', published by ECHA on 1 April 2011

several articles. Consequently, **there is no need to draw a distinction between the situation of articles incorporated as a component of a complex product and that of articles present in an isolated manner.**

In those circumstances, **the Court rules that each of the articles incorporated as a component of a complex product is covered by the relevant duties to notify and provide information when they contain a substance of very high concern in a concentration above 0.1% of their mass.**

The Court finds that the producer's duty to notify covers only those articles which the producer itself has made or assembled. That duty is therefore not applicable to an article which, although used by that producer as input, was made by a third party. None the less, that third party is also subject to the duty to notify in respect of the article which it makes or assembles.

Similarly, **the importer of a product the composition of which comprises one or more of the objects coming within the definition of the term 'article' must also be considered to be the importer of that article or those articles.** In that regard, the Court points out that the fact that it can be difficult for importers to obtain the required information from their suppliers established in non-EU countries does not alter their duty to notify.

The Court finds that the duty to provide information with regard to the recipients and consumers of the product is not restricted to the producers and importers but applies to all operators along the supply chain when that person supplies an article to a third party. It is therefore for the person supplying a product one or more constituent articles of which contain(s) a substance of very high concern in a concentration above 0.1% to fulfil his duty to provide information and provide the recipient and the consumer of the product, as a minimum, with the name of the substance in question.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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