



Press and Information

General Court of the European Union

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Judgment in Case T-185/17
PlasticsEurope v ECHA

Confirmation of the inclusion of Bisphenol A as a substance of very high concern on account of its properties as a substance toxic for reproduction

Bisphenol A is a substance which is mainly used as an intermediate in the manufacture of polymers. It is also used for non-intermediate purposes for the manufacture of thermal paper. On 19 July 2016, the Commission adopted a regulation¹ under which Bisphenol A is classified as toxic for reproduction.

In accordance with the relevant procedure, the French National Security Agency for Food, Environmental and Occupational Health and Safety presented the European Chemicals Agency (ECHA) with a dossier concerning Bisphenol A in which it is stated that that substance is used for non-intermediate purposes but that that is not that substance's sole use. ECHA's Member State Committee, after having met, unanimously decided to identify Bisphenol A as a substance of very high concern meeting the criteria set out in Article 57(c) of the REACH Regulation². On 4 January 2017, the Executive Director of ECHA adopted a decision whereby Bisphenol A was included in the list of substances identified for eventual inclusion in the list of substances subject to authorisation referred to in Article 59(1) of the REACH Regulation.

The association, PlasticsEurope, represents the interests of manufacturers and importers of plastic products in the European Union and, inter alia, four companies active in placing Bisphenol A on the market. According to that association, in adopting the contested decision of 4 January 2017 without explicitly excluding intermediate uses from the inclusion of Bisphenol A in the candidate list of substances, ECHA infringed the REACH Regulation. It complains that ECHA breached the principle of proportionality and committed a manifest error of assessment by failing to take into consideration information on the intermediate uses of Bisphenol A. It therefore brought an action for annulment before the General Court against the decision of the Executive Director of ECHA of 4 January 2017.

In today's judgment, the General Court notes that a substance used as on-site isolated intermediate or as a transported isolated intermediate is not automatically exempted from all the provisions of the REACH Regulation. Such a substance does not, therefore, escape the identification procedure provided for in that regulation. The exemption laid down in Article 2(8)(b) of the REACH Regulation concerns only the authorisation procedure. By contrast, the regulation does not preclude a substance from being capable of being identified as being of very high concern, even though it is used merely as an on-site or transported isolated intermediate.

¹ Commission Regulation (EU) 2016/1179 of 19 July 2016 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2016 L 195, p.11).

² 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 2006 L 396, p.1, corrigendum OJ 2007 L 136, p. 3).

The General Court notes, furthermore, that nothing obliged ECHA to insert, in the ‘candidate list of substances’, an explicit reference to the fact that intermediate uses were not covered by the inclusion of Bisphenol A in that list.

The General Court points out that one of the objectives of the candidate list of substances is the establishment of information sharing obligations in respect of substances of very high concern within the supply chain and with consumers. The identification of a substance as a substance of very high concern serves to improve information for the public and professionals as to the risks and dangers incurred. The General Court therefore considers that the contested decision is consistent with the objective of sharing information on substances of very high concern within the supply chain and with consumers. It finds that the legal effects of that decision do not go beyond what is appropriate and necessary to achieve that aim.

Lastly, the General Court considers that the use of a substance as an intermediate is not relevant, since the information relating to that use does not concern the intrinsic properties of that substance whereas the identification and inclusion of a substance in the candidate list of substances are carried out solely on account of the intrinsic properties of a substance and not on account of the uses of that substance.

The General Court therefore dismisses the action in its entirety

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 10 days of notification of the decision. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, 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.

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

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