

Fifth plea in law, alleging errors in law and misinterpretation of Annex XIII REACH by determining that the respondent was not required to take into account the hybrid nature of D4 and D5 when concluding the substances fulfil the very Persistent ('vP') and very Bioaccumulative ('vB') criteria of Annex XIII REACH.

- (¹) Commission Regulation (EU) 2018/35 of 10 January 2018 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards octamethylcyclotetrasiloxane ('D4') and decamethylcyclopentasiloxane ('D5') (OJ 2018 L 6, p. 45).
- (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).

Appeal brought on 8 September 2021 by Global Silicones Council, Dow Silicones UK Ltd, Elkem Silicones France SAS, Evonik Operations GmbH, Momentive Performance Materials GmbH, Shin-Etsu Silicones Europe BV, Wacker Chemie AG against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 30 June 2021 in Case T-519/18, Global Silicones Council e.a. v ECHA

(Case C-559/21 P)

(2021/C 462/34)

Language of the case: English

Parties

Appellants: Global Silicones Council, Dow Silicones UK Ltd, Elkem Silicones France SAS, Evonik Operations GmbH, Momentive Performance Materials GmbH, Shin-Etsu Silicones Europe BV, Wacker Chemie AG (represented by: R. Cana, avocat, E. Mullier, avocate, Z. Romata, Solicitor)

Other parties to the proceedings: American Chemistry Council, Inc. (ACC), European Chemicals Agency, Federal Republic of Germany, European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment of the General Court in Case T-519/18;
- annul the contested decision (¹);
- alternatively, refer the case back to the General Court to rule on the appellants' application for annulment;
- order the respondent to pay the costs of these proceedings, including the costs of the proceedings before the General Court, and those of the interveners.

Pleas in law and main arguments

In support of the appeal, the appellants rely on the following pleas in law:

First, the General Court erred in law and misinterpreted Annex XIII to the REACH Regulation (²) and Commission Regulation 253/2011 (³) in ruling that BCF data has 'priority' or 'greater weight' than other data for the assessment of B/vB properties and that the respondent did not make a manifest error of assessment in considering that the BCF values had greater weight.

Second, the General Court erred in law and misinterpreted Annex XIII to the REACH Regulation in ruling that the respondent did not manifestly err by failing to take into account the relevance of the hybrid nature of D4, D5 and D6, and distorted the appellants' pleas and the evidence put forward in this context, breaching the appellants' right to be heard.

Third, the General Court erred in law and misinterpreted Annex XIII to the REACH Regulation in ruling that the respondent did not manifestly err by failing to take into account data obtained under relevant conditions and distorted the appellants' pleas and the evidence put forward in this context, breaching the appellants' right to be heard.

Fourth, the General Court erred in law in the assessment of the evidence and distorted the evidence before it.

- (¹) Decision of ECHA of 27 June 2018 including octamethylcyclotetrasiloxane (D4), decamethylcyclopentasiloxane (D5) and dodecamethylcyclohexasiloxane (D6) in the Candidate List for eventual inclusion in Annex XIV to 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).
- (²) Commission Regulation (EU) 2018/35 of 10 January 2018 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards octamethylcyclotetrasiloxane ('D4') and decamethylcyclopentasiloxane ('D5') (OJ 2018 L 6, p. 45).
- (³) Commission Regulation (EU) No 253/2011 of 15 March 2011 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XIII (OJ 2011 L 69, p. 7).

Appeal brought on 17 September 2021 by Irish Wind Farmers' Association Clg, Carrons Windfarm Ltd, Foyle Windfarm Ltd, Greenoge Windfarm Ltd against the judgment of the General Court (First Chamber) delivered on 7 July 2021 in Case T-680/19, Irish Wind Farmers' Association and Others v Commission

(Case C-578/21 P)

(2021/C 462/35)

Language of the case: English

Parties

Appellants: Irish Wind Farmers' Association Clg, Carrons Windfarm Ltd, Foyle Windfarm Ltd, Greenoge Windfarm Ltd (represented by: M. Segura Catalán, abogado, and M. Clayton, advocate)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- order the Commission to pay the costs of the proceedings at first instance and the proceedings of appeal.

Pleas in law and main arguments

The appeal is based on two grounds.

By their first ground, the appellants consider that the General Court misinterpreted Article 108 TFEU and Article 4 of Regulation 2015/1589 (¹) by holding that the assessment of the concerned aid measure did not require the Commission to open the formal investigation procedure given the absence of serious difficulties as regards its classification as state aid and its compatibility with the internal market.

The first ground is divided into six branches.

First branch: the General Court erred in law as regards the scope of the Commission's duty to examine facts and points of law in case of unlawful aid.

Second branch: The General Court erred in law in setting a differentiated treatment of the information submitted by Member States and by complainants.