**Form of order sought**

The applicants claim that the Court should:

— Declare the application admissible and well-founded;

— Partially annul Decision ED/169/2012 of the ECHA concerning the inclusion of Hexahydromethylphthalic anhydride, Hexahydro-4-methylphthalic anhydride, Hexahydro-1-methylphthalic anhydride and Hexahydro-3-methylphthalic anhydride (collectively referred to as 'MHHPA') as Substances meeting the criteria set out in Article 57(f) of Regulation (EC) No 1907/2006 [1] ('REACH'), in accordance with Article 59 of REACH, as it relates to MHHPA and its monomers; and

— Order the defendant to pay the costs of these proceedings.

**Pleas in law and main arguments**

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging manifest error of assessment/law: (i) respiratory sensitisers are not covered by Article 57(f) of REACH and (ii) the ECHA did not provide sufficient justification and evidence in order to demonstrate that MHHPA was of 'equivalent concern' to a carcinogen, mutagen or toxicant for reproduction ('CMR'), category 1, since:

   — CMR substances trigger irreversible effects whereas, in the case of MHHPA, the effects of respiratory sensitisation are not irreversible;

   — there is no consumer or worker exposure to MHHPA;

   — the assessment of MHHPA is based on data which is old and outdated;

   — the assessment did not take into account all relevant data; and

   — the assessment is mainly based on read across with another substance which is scientifically questionable and which demonstrates the poor and limited data used for the assessment of MHHPA.

2. Second plea in law, alleging breach of the rights of defence, as the applicants did not have the opportunity to fully defend their case because of the lack of objective criteria for considering whether a substance is of equivalent concern according to Article 57(f) REACH, especially in the case of a respiratory sensitiser such as MHHPA, and because ECHA did not take into account all information available or provided by the industry during the commenting period.

3. Third plea in law, alleging infringement of the principle of proportionality, as the ECHA had a choice of measures with respect to MHHPA and by identifying MHHPA as Substance of Very High Concern ('SVHC') caused the applicants disadvantages which are disproportionate in relation to the aims pursued.

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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), 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)

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## Action brought on 7 March 2013 — Saferoad RRS v OHIM (MEGARAIL)

**(Case T-137/13)**

(2013/C 129/52)

*Language of the case: German*

**Parties**

*Applicant:* Saferoad RRS GmbH (Weroth, Germany) (represented by C. Czychowski, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**Form of order sought**

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 January 2013 in Case R 2536/2011-4 and the Examiner's decision of 23 November 2011 in so far as the mark was rejected;

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* the word mark 'MEGARAIL' for goods and services in Classes 6, 19 and 37

*Decision of the Examiner:* the application was rejected

*Decision of the Board of Appeal:* the appeal was dismissed

*Pleas in law:*

— Infringement of Article 7(1)(c) of Regulation No 207/2009

— Infringement of Article 7(1)(b) of Regulation No 207/2009

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**Action brought on 15 March 2013 — Sea Handling v Commission**

**(Case T-152/13)**

(2013/C 129/53)

*Language of the case: Italian*

**Parties**

*Applicant:* Sea Handling SpA (Somma Lombardo, Italy) (represented by: B. Nascimbene, F. Rossi dal Pozzo, M. Merla and L. Cappelletti, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul the contested decision, by which the Commission declared that the measures adopted by SEA, in the form of capital injections in favour of SEA Handling, constituted State aid incompatible with the common market and ordered its recovery;

— in the alternative, annul Article 3 of the contested decision, by which the Commission ordered the recovery of the alleged State aid;

— order the Commission to pay the costs.

**Pleas in law and main arguments**

The decision contested in the present case is the same as that contested in Case T-125/13 *Italian Republic* v *Commission*.

In support of its action, the applicant relies on six pleas in law.

1. First plea in law: infringement of procedural rules.

   — It is submitted in that regard that Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1) has been infringed, that SEA Handling's procedural rights have been breached, and also that there has been a failure to undertake adequate preliminary inquiries in the light of the scope of the period under investigation, because of the lack of preliminary investigation and assessment in relation to the period 2006-2010.

   — It is further submitted that the principles of legal certainty and good administration have not been observed in relation to the duration of the procedure and, in particular, the unjustifiably lengthy preliminary investigation.

2. Second plea in law: infringement of Article 107(1) TFEU as regards the involvement of public resources.

   — On this point, it is submitted that there has been a failure to state the reasons and a failure to undertake adequate preliminary inquiries concerning the lack of a burden on the State finances; nor has it been shown that the resources were in fact available to the State.

3. Third plea in law: infringement of Article 107(1) TFEU as regards imputability.

   — The applicant submits that the contested decision is not based on an individual examination of the separate decisions to inject capital and the Commission has not provided an explanation as to why there was an overall scheme of State aid in favour of SEA Handling during the period 2002-2010.

   — In that connection, it is added that the evidence relied on by the Commission is not capable of showing that the measures may be imputed to the State and the Commission has failed to consider the evidence adduced by the parties to show that the measures cannot in fact be imputed to the State.

4. Fourth plea in law: infringement of Article 107(1) TFEU as regards the private investor principle.

   — In the applicant's submission, the Commission has not proved that in actual fact a private investor comparable to SEA would not have opted for the recapitalisation of its subsidiary, and the Commission has merely disputed in general terms the correctness of the parameters used by SEA for the purposes of its business choices.

   — It should also be found that there was a failure to place in context the measures within the SEA Group, that the facts were incorrectly evaluated in terms of the comparison between SEA Handling and the other market operators and that the private investor principle has been misapplied due to a failure to analyse the individual injections of capital.

5. Fifth plea in law: infringement of Article 107(3) TFEU.

   — The applicant submits on that point that the Commission erred in law with regard to the scope of the guidelines for the airport sector, inasmuch as those guidelines were not applicable to the present case.