

C/2025/1438

10.3.2025

**Action brought on 27 December 2024 – Imerys PCC France v Commission****(Case T-673/24)**

(C/2025/1438)

*Language of the case: English***Parties***Applicant:* Imerys PCC France (Arles, France) (represented by: H. Estreicher, A. Bartl and A. Martínez Perea, lawyers)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- Annul Commission Delegated Regulation (EU) 2024/2620 of 30 July 2024 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the requirements for considering that greenhouse gases have become permanently chemically bound in a product; <sup>(1)</sup>
- Order the defendant to pay the costs of the proceedings.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Commission acted *ultra vires* by exceeding its delegated powers under Article 290 TFEU.
  - The applicant submits that, in adopting the contested act, the Commission extended the scope of Article 12(3b) of Directive 2003/87/EC as amended ('the ETS Directive'), <sup>(2)</sup> under Article 3(1)(b) of the contested act, by requiring allowances for CO<sub>2</sub> permanently bound in products that may be combusted after their lifecycle. This approach presumes emissions for all waste treatment practices without considering actual CO<sub>2</sub> release, contrary to the Directive's intent. Moreover, the applicant contends that, through Articles 3(2), 4, and the Annex, the Commission improperly introduced a positive list of exempted products, which restricts the scope of Article 12(3b) by rendering its criteria redundant and altering its purpose. This amendment constitutes a modification of an essential element of the ETS Directive without a legislative mandate, thereby warranting the annulment of the contested act in its entirety.
2. Second plea in law, alleging a manifest error of assessment by the Commission.
  - The applicant submits that the Commission failed to examine all relevant facts carefully and impartially, as required under EU case-law, when limiting the positive list in the Annex to four applications and mineral carbonates. The Commission, it is argued, ignored substantial evidence demonstrating that numerous additional applications and materials meet the criteria under Article 12(3b) of the ETS Directive.
3. Third plea in law, alleging a breach of the principle of proportionality.
  - The applicant submits that the contested act imposes measures exceeding what is necessary to achieve the objectives of the ETS Directive, thereby violating the proportionality principle established in EU case-law. Specifically, Article 3(1)(b) imposes requirements impossible for operators to meet due to the inability to predict end-of-life product treatment, rendering Article 12(3b) inapplicable and undermining its purpose. Furthermore, the positive list in the Annex excludes sectors without a transparent inclusion process, placing undue financial burdens on operators. These measures are disproportionate and disregard available alternatives, such as carbon removal certifications and targeting incinerators for CO<sub>2</sub> allowances.

<sup>(1)</sup> OJ L 2024/2620.

<sup>(2)</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32). Note the consolidated version of this directive, following amendment: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0087-20240301>.

4. Fourth plea in law, alleging a breach of the principle of equal treatment.
    - The applicant contends that the contested act unjustifiably limits the Annex to a small selection of construction-related products, despite evidence that other products, such as paints and fillers, meet the same criteria of non-incineration and long-term CO<sub>2</sub> storage. The Commission has not provided an objective justification for this differential treatment, which violates the principle of equal treatment as established in EU case-law.
  5. Fifth plea in law, alleging a breach of the principles of legal certainty and legitimate expectations.
    - The applicant argues that the contested act violates these principles by introducing unclear and unforeseeable obligations, particularly through its restrictive positive list and reinterpretation of Article 12(3b) of the ETS Directive. These changes undermine the applicant's reliance on permanent CO<sub>2</sub> capture exemptions, disrupting business decisions and leading to potential financial and operational harm.
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