

Defendant: European Chemicals Agency (ECHA)

In addition, by adopting the contested act, ECHA infringed the EU law principle of proportionality.

Form of order sought

- Declare the application admissible and well-founded;

- Annul the contested act as it relates to Boric Acid and Disodium Tetraborates;

- Declare the illegality of Commission Regulation (EC) No 790/2009⁽¹⁾ of 10 August 2009 insofar as it relates to Boric Acid and Disodium Tetraborates; and

- Order ECHA to pay all the costs and the expenses of these proceedings.

Finally, the contested act is based on Commission Regulation (EC) No 790/2009 which is in itself unlawful.

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- ⁽¹⁾ Commission Regulation (EC) No 790/2009 of 10 August 2009 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 2009 L 235, p. 1).
 - ⁽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).
 - ⁽³⁾ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1967 196, p. 1)

Pleas in law and main arguments

The applicants seek, pursuant to Article 263 TFEU, the annulment of the decision of European Chemicals Agency to include Boric Acid and Disodium Tetraborates in the candidate list of substances established under Article 59 of Regulation (EC) No 1907/2006⁽²⁾. In addition, the applicants seek, pursuant to Article 277 TFEU, a declaration as to the illegality of Commission Regulation (EC) No 790/2009 of 10 August 2009 insofar as it relates to Boric Acid and Disodium Tetraborates.

In support of their application, the applicants put forward the following pleas in law:

Firstly, the contested act was adopted in breach of essential procedural requirements and as an error of law because it failed to fulfil the requirements of Article 59 and Annex XV of Regulation (EC) No 1907/2006.

Secondly, the contested act is based on a manifest error of assessment and is in breach of Regulation (EC) No 1907/2006 because ECHA failed to produce evidence and demonstrate that the Borate Substances 'meet the criteria' for classification as toxic to reproduction category 2 under Directive 67/548⁽³⁾.

Action brought on 20 August 2010 — UPS Europe and United Parcel Service Deutschland v Commission

(Case T-344/10)

(2010/C 288/94)

Language of the case: English

Parties

Applicants: UPS Europe NV/SA (Brussels, Belgium) and United Parcel Service Deutschland Inc. & Co. OHG (Neuss, Germany), (represented by: T.R. Ottervanger and E.V.A. Henny, lawyers)

Defendant: European Commission

Form of order sought

- Declare, in accordance with Article 265 TFEU, that the Commission has failed to act by not having defined its position in case C 36/07 (ex NN 25/07) — Germany/ Deutsche Post; and

- Order the defendant to pay the costs incurred by the applicants in the proceedings.

Pleas in law and main arguments

By means of the present application, the applicants seek, pursuant to Article 265 TFEU, a declaration that the Commission has failed to act by not having defined its position in case C 36/07 (ex NN 25/07) — Germany/Deutsche Post ((OJ 2007 C 245, p. 21).

In support of their action, the applicants submit that since the Commission has not defined its position in the above mentioned investigation procedure within a reasonable time period, it has breached Articles 7 and 13 of Regulation (EC) No 659/1999 ⁽¹⁾.

In addition, by failing to define its position within a reasonable time period, the Commission has also breached the principles of good administration and legal certainty. According to the applicants, the principle of sound administration should have been respected since it is one of the general principles common to the constitutional traditions of the Member States. Moreover, this principle is clearly reflected in Article 41(1) of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389).

⁽¹⁾ 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).

Action brought on 18 August 2010 — Borax Europe v ECHA

(Case T-346/10)

(2010/C 288/95)

Language of the case: English

Parties

Applicant: Borax Europe Ltd (London, United Kingdom) (represented by: K. Nordlander, lawyer and H. Pearson, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application for annulment admissible;

— annul the decision by ECHA to identify certain borate substances as ‘substances of very high concern’ meeting the criteria set out in Article 57(c) of Regulation (EC) No 1907/2006 (‘REACH’) ⁽¹⁾ and to add them to the Candidate List of Substances of Very High Concern for Authorisation (‘candidate list’) on 18 June 2010 (the ‘contested act’);

— order ECHA to pay the Applicant’s costs for these proceedings.

Pleas in law and main arguments

The Applicant seeks the annulment of the decision by ECHA to identify certain borate substances as ‘substances of very high concern’ meeting the criteria set out in Article 57(c) REACH and to add them to the candidate list on 18 June 2010. The contested act was brought to the applicant’s attention by means of an ECHA press release of 18 June 2010.

The borate substances whose inclusion in the candidate list via the contested act the applicant challenges are: boric acid, CAS No 10043-35-3, EC No 233-139-2; disodium tetraborate, anhydrous; disodium tetraborate decahydrate; disodium tetraborate pentahydrate (CAS Nos 1330-43-4, 1303-96-4, 12179-04-3, EC No 215-540-4) (‘borates’).

In support of the application, the applicant puts forward three pleas in law.

First ground: the contested act should be annulled as it was based on Annex XV dossiers which contain manifest errors, leading to a breach of an essential procedural requirement in Article 59 of REACH. Those dossiers indicate, as the justification for ECHA action, that borates are currently classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008, which is factually incorrect.

Second ground: ECHA adopted the contested act without discharging its function of performing an ‘on the merits’ assessment of whether borates meet the criteria referred to in Article 57(c) of REACH. Thus, in adopting the contested act, ECHA committed manifest errors of assessment, exceeded its powers and infringed the principle of good administration.