



Reports of Cases

Case T-456/11

International Cadmium Association (ICdA) and Others
v
European Commission

(REACH — Transitional measures concerning restrictions on the manufacture, marketing and use of cadmium and its compounds — Annex XVII to Regulation (EC) No 1907/2006 — Restrictions on the use of cadmium pigments in plastic materials — Manifest error of assessment — Risk analysis)

Summary — Judgment of the General Court (Seventh Chamber), 14 November 2013

1. *Actions for annulment — Withdrawal of the substance from the contested measure during the proceedings — No repeal of the contested measure — Contested measure having been capable of producing legal effects — Action retaining its purpose — Basis of a possible action for compensation — Interest in bringing proceedings maintained*

(Art. 263 TFEU)

2. *Approximation of laws — Registration, evaluation, authorisation and restriction of chemicals — REACH Regulation — Restrictions applicable to certain substances — Establishment of new restrictions and modification of existing restrictions — Discretion of the EU authorities — Scope — Judicial review — Limits — Manifest error of assessment*

(European Parliament and Council Regulation No 1907/2006, Art. 68(1), and Annex XVII)

3. *Approximation of laws — Registration, evaluation, authorisation and restriction of chemicals — REACH Regulation — Restrictions applicable to certain substances — Establishment of new restrictions and modification of existing restrictions — Conditions — Evaluation of risks*

(European Parliament and Council Regulation No 1907/2006, Arts 68(1), and 137(1)(a), and Annex XVII; Council Regulation No 793/93, Art. 11)

1. The withdrawal by a regulation, with retroactive effect from the date of application of the contested regulation, of restrictions on the use of certain products introduced by that latter regulation does not render an annulment action devoid of purpose, since the contested regulation has not been formally repealed by the Commission.

Moreover, that withdrawal does not in itself oblige the European Union judicature to declare that there is no need to adjudicate for lack of purpose or for lack of interest in bringing proceedings at the date of the delivery of the judgment. The annulment of the contested regulation which has already been carried out is still capable of procuring an advantage for the applicant, even if the restrictions at issue, introduced by that regulation, were withdrawn in the meantime with retroactive effect from the date of application of that regulation. The contested regulation could have produced legal effects during the period when it governed the restrictions applicable to the products at issue, namely from the time of its application to the time of the entry into force of the regulation withdrawing the restrictions.

Finally, it must be noted that, during that period, the contested regulation prohibited certain uses of the products at issue. In that context, the applicant still has an interest in having the contested regulation declared to be partly unlawful because that finding will bind the European Union judicature in any action for damages and could constitute the basis for any extrajudicial negotiations between the Commission and the applicant aimed at reparation of the damage allegedly suffered by the latter.

(see paras 36-38)

2. In order to be able efficiently to pursue the objectives of Regulation No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), in an area of evolving and complex technology, the European Union authorities have a broad discretion, in particular as to the assessment of highly complex scientific and technical facts, in order to determine the nature and scope of the measures which they adopt, whereas review by the European Union judicature has to be limited to verifying whether the exercise of such powers has been vitiated by a manifest error of appraisal or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion. In such a context, the European Union judicature cannot substitute its assessment of scientific and technical facts for that of the institutions, the only bodies to which the TFEU has entrusted that task.

Nevertheless, the EU authorities' broad discretion, which implies limited judicial review of their exercise of that discretion, applies not only to the nature and scope of the measures to be taken but also applies, to some extent, to the finding of the basic facts. However, even though such judicial review is of limited scope, it requires that those authorities which have adopted the act in question must be able to show before the European Union judicature that in adopting the act they actually exercised their discretion, which presupposes the taking into consideration of all the relevant factors and circumstances of the situation the act was intended to regulate.

Where experts carry out a scientific evaluation of the risks, the Commission must be given sufficiently reliable and cogent information to allow it to understand the ramifications of the scientific question raised and decide upon a policy in full knowledge of the facts. Consequently, if it is not to adopt arbitrary measures, which cannot in any circumstances be rendered legitimate by the precautionary principle, the Commission must ensure that any measures that it takes, even preventive measures, are based on as thorough a scientific evaluation of the risks as possible, account being taken of the particular circumstances of the case at issue.

Where the file does not show that the Commission evaluated all the relevant factors and circumstances of the situation which the contested regulation was intended to govern, by concluding, on the basis of the insufficient scientific evidence that there was a risk to human health or the environment which needed to be addressed on a European Union-wide basis, the Commission commits a manifest error of assessment.

(see paras 45, 46, 52, 71)

3. Although the contested regulation was adopted by recourse to the transitional measures referred to in Article 137(1)(a) of Regulation No 1907/2006, on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), the fact remains that, in order to amend Annex XVII to that regulation, the conditions set out in Article 68 of that regulation must be satisfied.

The establishment by the contested regulation of new restrictions on certain substances presupposed that the conditions set out in Article 68(1) of Regulation No 1907/2006 were satisfied. Consequently, the adoption of the contested regulation required that the Commission had to be entitled to take the

view that the use of the substances at issue in plastic materials, other than those in respect of which that use was restricted before the adoption of the contested regulation, involved an unacceptable risk to human health or the environment which needed to be addressed on a European Union-wide basis.

Even if the measures adopted under Article 137(1)(a) of Regulation No 1907/2006 are required to satisfy, not the substantive conditions set out in Article 68 of that regulation, but the rules in force before that regulation, namely Article 11 of Regulation No 793/93 on the evaluation and control of the risks of existing substances, it must be noted that that latter provision also provided that restrictions could only be adopted on the basis of an evaluation of the risks.

(see paras 47-50)