



Reports of Cases

ORDER OF THE GENERAL COURT (Fifth Chamber)

13 March 2015*

(Action for annulment — REACH — Application for registration of the chemical substance triphenyl phosphate — Intervener before the Board of Appeal of ECHA — Applicant not affected directly — Concept of regulatory act — Inadmissibility)

In Case T-673/13,

European Coalition to End Animal Experiments, established in London (United Kingdom), represented by D. Thomas, Solicitor,

applicant,

v

European Chemicals Agency (ECHA), represented by M. Heikkilä, C. Jacquet and W. Broere, acting as Agents, and by J. Stuyck and A.-M. Vandromme, lawyers,

defendant,

APPLICATION for partial annulment of the decision of the Board of Appeal of ECHA of 10 October 2013, in Case A-004-2012, in so far as it asks a third party to carry out a second species pre-natal developmental toxicity study on a chemical substance,

THE GENERAL COURT (Fifth Chamber),

composed of A. Dittrich (Rapporteur), President, J. Schwarcz and V. Tomljenović, Judges,

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

- 1 The applicant, the European Coalition to End Animal Experiments, is a European animal welfare group. It is a company limited by guarantee established in London (United Kingdom) which has member organisations in 22 Member States. It is recognised by the European Chemicals Agency (ECHA) as an accredited stakeholder allowed to attend meetings of the Member State Committee and the Risk Assessment Committee of ECHA as an observer.

* Language of the case: English.

- 2 On 28 February 2011, ECHA initiated a compliance check of the registration dossier for the chemical substance triphenyl phosphate submitted by Lanxess Deutschland GmbH ('Lanxess').
- 3 By decision of 5 April 2012 ('the decision of 5 April 2012') concerning the compliance check of registrations pursuant to Article 41(3) of 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), ECHA asked Lanxess, in particular, to carry out a second species pre-natal developmental toxicity study on the chemical substance triphenyl phosphate, the species in question being the rabbit, allowing it a period of 24 months within which to supply the additional information.
- 4 On 5 July 2012, Lanxess appealed pursuant to Article 91(1) of Regulation No 1907/2006 before the Board of Appeal of ECHA against this decision. That article states that an appeal may be brought before the Board of Appeal of ECHA against decisions of ECHA taken pursuant to Articles 9, 20, 27(6), 30(2) and (3) and 51 of that regulation.
- 5 By decision of 26 September 2012, the Board of Appeal of ECHA granted the applicant leave to intervene in support of the form of order sought by Lanxess, under Article 8(1) of Commission Regulation (EC) No 771/2008 of 1 August 2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ 2008 L 206, p. 5).
- 6 By decision of 10 October 2013 ('the contested decision'), the Board of Appeal of ECHA dismissed the appeal by Lanxess, decided that the appeal fee would not be refunded, rejected the claim for reimbursement of costs lodged by Lanxess and decided that the latter must submit the required additional information within 24 months from the date of notification of the contested decision.
- 7 The fact that Lanxess has not lodged any application pursuant to the fourth paragraph of Article 263 TFEU seeking the annulment of the contested decision is not disputed.

Procedure and forms of order sought

- 8 By application lodged at the Court Registry on 9 December 2013, the applicant brought this action. By letter lodged with the Court Registry on 19 December 2013, the applicant supplied a corrected version of the application.
- 9 Acting on a report from the Judge-Rapporteur, the Court (Fifth Chamber), by way of measures of organisation of procedure under Article 64 of its Rules of Procedure, put a written question to the applicant. The applicant replied within the prescribed period.
- 10 On 23 May 2014, the European Commission applied for leave to intervene in support of the form of order sought by ECHA.
- 11 By separate document lodged at the Court Registry on 5 June 2014 ECHA raised an objection of inadmissibility under Article 114 of the Rules of Procedure against this action.
- 12 On 12 August 2014, the applicant lodged at the Court Registry observations on the objection of inadmissibility raised by ECHA.

- 13 The applicant claims that the Court should:
- annul the contested decision in so far as it relates to a second species pre-natal developmental toxicity study;
 - refer the case back to ECHA with a direction that it consider whether there is a need to conduct a pre-natal developmental study on the registrant's substance, based on the outcome of the first study and all other relevant available data.
- 14 ECHA contends in the objection of inadmissibility that the Court should:
- declare the action inadmissible;
 - order the applicant to pay the costs.

Law

- 15 By Article 114 of the Rules of Procedure, where a party applies to the Court for a decision on inadmissibility not going to the substance of the case, the remainder of the proceedings concerning the objection of inadmissibility must be oral, unless the Court otherwise decides. In the present case, the Court considers that the information in the documents before it is sufficient for there to be no need to proceed to the oral stage of the proceedings.
- 16 Under Article 94(1) of Regulation No 1907/2006, an action may be brought before the General Court or the Court of Justice, in accordance with Article 263 TFEU, contesting a decision taken by the Board of Appeal of ECHA or, in cases where no right of appeal lies before the Board, by the Agency.
- 17 The fourth paragraph of Article 263 TFEU sets out three circumstances in which any natural or legal person bring an action for annulment. Under the conditions laid down in the first and second paragraphs of that article, they may institute proceedings, first, against an act addressed to them, secondly, against an act which is of direct and individual concern to them, and, thirdly, against a regulatory act which is of direct concern to them and does not entail implementing measures.
- 18 The applicant claims to be an addressee of the contested decision. In the alternative, it maintains that it has standing via the second and third limbs of the fourth paragraph of Article 263 TFEU. Moreover, in its observations on the objection of inadmissibility, it states that it is bringing the action in its own right, not as an agent for Lanxess.
- 19 ECHA does not consider the applicant to be an addressee of the contested decision and contends that the decision does not affect the applicant either directly or individually. Furthermore, the contested decision is not a regulatory act.

The first condition laid down in the fourth paragraph of Article 263 TFEU

- 20 In the present case, the parties disagree primarily on whether the applicant, as a party given leave to intervene in the proceedings before the Board of Appeal of ECHA, is an addressee of the contested decision, namely a decision on an application brought under Article 91(1) of Regulation No 1907/2006.
- 21 It is apparent from settled case-law, developed in annulment proceedings brought by Member States or institutions, that any measures adopted by the institutions, whatever their form, which are intended to have binding legal effects are regarded as acts open to challenge within the meaning of Article 263

TFEU (judgments of 31 March 1971 in *Commission v Council*, 22/70, ECR, EU:C:1971:32, paragraph 42, and of 13 October 2011 in *Deutsche Post and Germany v Commission*, C-463/10 P and C-475/10 P, ECR, EU:C:2011:656, paragraph 36).

- 22 Where a natural or legal person brings an action for annulment of an act adopted by an institution, the Court has repeatedly held that such an action is available only if the binding legal effects of the act are capable of affecting the interests of the applicant by bringing about a distinct change in his legal position (judgments of 11 November 1981 in *IBM v Commission*, 60/81, ECR, EU:C:1981:264, paragraph 9, and of 17 July 2008 in *Athinaiki Techniki v Commission*, C-521/06 P, ECR, EU:C:2008:422, paragraph 29). This case-law has been developed in the context of actions brought before the Courts of the European Union by natural or legal persons against acts addressed to them (judgment in *Deutsche Post and Germany v Commission*, cited in paragraph 21 above, EU:C:2011:656, paragraph 38).
- 23 In other words, a decision which indicates its addressees represents the material manifestation of the will of an authority which seeks to obtain a legal result in relation to those addressees (see, to that effect, judgment of 6 April 1995 in *BASF and Others v Commission*, T-80/89, T-81/89, T-83/89, T-87/89, T-88/89, T-90/89, T-93/89, T-95/89, T-97/89, T-99/89 to T-101/89, T-103/89, T-105/89, T-107/89 and T-112/89, ECR, EU:T:1995:61, paragraphs 73 and 74, and Opinion of Advocate General Roemer in Joined Cases *Lemmerz-Werke and Others v High Authority*, 53/63 and 54/63, EU:C:1963:29, p. 252). Such a decision must show that it is intended to produce legal effects in relation to its addressees (see, to that effect, judgment of 5 December 1963 in *Lemmerz-Werke and Others v High Authority*, 53/63 and 54/63, EU:C:1963:54, p. 248). This interpretation also follows from the fourth paragraph of Article 288 TFEU, under which a decision which specifies those to whom it is addressed is binding only on them.
- 24 According to the case-law, the term ‘addressee’ refers to a person whose identity is sufficiently determined in the decision in question and to whom the decision is to be communicated (see, to that effect, judgment of 14 December 2006 in *Raiffeisen Zentralbank Österreich and Others v Commission*, T-259/02 to T-264/02 and T-271/02, ECR, EU:T:2006:396, paragraph 72). As regards the distinction between decisions and acts of general application, it has been held that the essential characteristics of a decision arise from the limitation of the persons to whom it is addressed, who are indicated or identifiable (see, to that effect, judgment of 14 December 1962 in *Confédération nationale des producteurs de fruits et légumes and Others v Council*, 16/62 and 17/62, EU:C:1962:47, p. 478).
- 25 In this context, it has been held that, for the purposes of the sixth paragraph of Article 263 TFEU, notification is the operation by which the author of a decision of individual relevance communicates the latter to the addressees and thus puts them in a position to take cognisance of it. This interpretation also follows from the third subparagraph of Article 297(2) TFEU, under which decisions are to be notified to those to whom they are addressed and to take effect upon such notification (see, to that effect, judgment of 19 June 2009 in *Qualcomm v Commission*, T-48/04, ECR, EU:T:2009:212, paragraph 46 and the case-law cited).
- 26 It follows from the provisions and case-law cited in paragraphs 21 to 25 above that the applicant may be regarded as an addressee of the contested decision only (1) on the formal condition that it is expressly indicated as an addressee or (2) on the substantive condition that the provisions of the decision make it clear that the applicant is identified in it as an addressee on the basis that the decision, expressing the will of its author, aims to produce binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in its legal position.
- 27 In the present case, the applicant claims to be an addressee of the contested decision. The applicant argues that that decision is addressed both to it as intervener and to the main parties to the proceedings on the grounds that it took part in Lanxess’s appeal and that the Board of Appeal of ECHA rejected some of its arguments.

- 28 In that regard, it should be noted that ECHA does not deny that the contested decision was notified to the applicant. It follows from Article 22(1) of Regulation No 771/2008 that its Registrar is required to notify decisions of, and communications from, the Board of Appeal of ECHA to the parties and interveners.
- 29 Moreover, it is true that the introductory section of the contested decision mentions by name the applicant in the proceedings before the Board of Appeal of ECHA and the intervener, as well as their representatives.
- 30 However, it does not follow from these points that the applicant is an addressee of the contested decision.

The formal concept of the addressee

- 31 As regards the formal concept of the addressee, the contested decision nowhere explicitly indicates its addressee(s). The mere fact that it mentions the applicant as an intervener or that the applicant took part in the proceedings initiated by Lanxess before the Board of Appeal of ECHA does not automatically imply that the applicant is an addressee of the contested decision. It follows that the first of the conditions referred to in paragraph 26 above is not met.

The substantive concept of the addressee

- 32 As regards the substantive condition identified in paragraph 26 above, it is necessary to consider whether the specific provisions of Regulation No 771/2008 conferred on the applicant the capacity of an addressee of the contested decision and whether such a capacity did not follow from the content itself of the contested decision.
- 33 First, as regards the specific provisions of Regulation No 771/2008, it should be noted that the intervener in proceedings before the Board of Appeal of ECHA has no rights other than those conferred on him by Regulation No 771/2008. It follows from a consideration of the system established by that regulation that intervention does not confer on the intervener the same procedural rights as those that are conferred on the main parties.
- 34 More specifically, Regulation No 771/2008 distinguishes between ‘parties’ and ‘interveners’ as participants in the proceedings before the Board of Appeal of ECHA. Such a distinction is to be found in Article 21(1) of that regulation. A party for the purpose of Regulation No 771/2008 is the person who has initiated the proceedings in question. In accordance with Article 21(1)(d) of that regulation, the introductory section of the contested decision mentions Lanxess and the applicant as the applicant and the intervener in the proceedings before the Board of Appeal of ECHA and the names of their representatives. However, that provision, which requires certain particulars, including the names of the main parties and interveners, to be mentioned in a decision, is not intended to imply that all these participants in the proceedings before the Board of Appeal of ECHA are addressees of each decision adopted by the latter.
- 35 Moreover, Article 8(3) of Regulation No 771/2008 provides that intervention is to be limited to supporting or opposing the remedy sought by one of the parties. Intervention is therefore incidental to the main proceedings before the Board of Appeal of ECHA. In that regard, it should be noted that Lanxess did not lodge any application under the fourth paragraph of Article 263 TFEU for annulment of the contested decision and, therefore, that the decision has become final in relation to Lanxess.

- 36 Moreover, the subject of the intervention also depends on the admissibility of the appeal by the main party. The application may be ruled inadmissible pursuant to Article 11(1)(d) of Regulation No 771/2008 if the appellant is neither an addressee of the decision of ECHA challenged in the appeal nor able to establish direct and individual concern. It follows that the intervener must accept the proceedings before the Board of Appeal of ECHA as he finds them at the time of his intervention.
- 37 It follows from the considerations set forth in paragraphs 32 to 36 above that none of the specific provisions of Regulation No 771/2008 confers on the applicant the capacity of addressee of the contested decision.
- 38 In that context, the applicant states that it would be strange if a person could bring an action before the EU Courts against a rejection of an application to intervene before the Board of Appeal of ECHA, but could not challenge the well foundedness of the contested decision where he had been allowed to intervene.
- 39 A person who seeks leave to intervene is the addressee of a decision rejecting such an application. In that case, it follows directly from Article 8(5) of Regulation No 771/2008 that the person in question has the status of addressee. That provision is consistent with the general rule that, with the exception of appeals against decisions rejecting an application for leave to intervene, the right of an intervener to appeal is limited to cases where the intervener is directly affected by the act in question. As regards proceedings before the EU Courts, this principle is stated in Article 56(2) of the Statute of the Court of Justice of the European Union, which provides that the right of interveners other than the Member States and the institutions of the Union to bring an appeal against a decision of the General Court is restricted to cases where the decision directly affects them.
- 40 Secondly, consideration should be given to whether it follows from the content of the contested decision that the applicant has the status of a substantive addressee in the light of the second of the conditions set out in paragraph 26 above.
- 41 By the contested decision, the Board of Appeal of ECHA rejected the appeal by Lanxess against the decision of 5 April 2012 and decided that Lanxess must supply the information at issue within 24 months from the date of notification of the contested decision.
- 42 It is clear that the contested decision was adopted in response to an appeal by Lanxess contesting its obligation to carry out a second species pre-natal developmental toxicity study of the chemical substance triphenyl phosphate, as part of a compliance check of registrations.
- 43 Accordingly it must be concluded that the contested decision aims to produce binding legal effects such as to affect the interests only of Lanxess by bringing about a distinct change in its legal position. As the applicant before the Board of Appeal of ECHA, Lanxess is the addressee of the contested decision.
- 44 However, the contested decision, in so far as the present application is directed at it, does not seek to create or change any legal right or obligation of the applicant. Neither its operative part, nor the grounds which lend it the requisite support, nor the introductory section indicate any intention on the part of the Board of Appeal of ECHA to change the legal position of the applicant. While the applicant argues that, in the grounds for that decision, the Board of Appeal of ECHA rejected the arguments that it had raised during the proceedings, the applicant does not explain how that rejection was intended to change its legal position.
- 45 It follows that, by the contested decision, the Board of Appeal of ECHA expressed its intention to change the legal position only of Lanxess. Accordingly, in relation to the applicant, the second of the conditions set forth in paragraph 26 above is not met.

46 Thirdly, as the applicant cannot rely on its status as a substantive addressee of the contested decision either on the grounds of any specific provision of Regulation No 771/2008 conferring such a right on it, or by virtue of the intention of the Board of Appeal of ECHA as expressed in the content of that decision, its arguments that only an organisation such as itself can protect the interests of the laboratory animals in question, that the Board of Appeal of ECHA recognised its interest in intervening in the proceedings before the Board or that the rules on the standing of non-governmental organisations are far more extensive in other judicial systems are ineffective in this context.

47 It therefore follows from all of the above that the applicant is not an addressee of the contested decision.

The second condition laid down in the fourth paragraph of Article 263 TFEU

48 Since the applicant is not an addressee of the contested decision, it can bring an action for annulment of the act in question based on the second condition laid down in the fourth paragraph of Article 263 TFEU only if it is, in particular, directly affected by it.

49 As regards direct concern, it is settled case-law that that condition requires the contested measure, first, to affect the individual's legal situation directly and, secondly, to leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (judgments of 5 May 1998 in *Dreyfus v Commission*, C-386/96 P, ECR, EU:C:1998:193, paragraph 43; of 29 June 2004 in *Front national v Parliament*, C-486/01 P, ECR, EU:C:2004:394, paragraph 34; and of 10 September 2009 in *Commission v Ente per le Ville vesuviane and Ente per le Ville vesuviane v Commission*, C-445/07 P and C-455/07 P, ECR, EU:C:2009:529, paragraph 45).

50 It is therefore necessary to consider the applicant's argument that the contested decision affects it directly.

51 According to ECHA, the fact that the applicant was given leave to intervene in the proceedings before the Board of Appeal of ECHA does not confer on it the right to bring the present application. The contested decision does not directly affect its legal position.

52 As a preliminary observation, it should be recalled that, by the contested decision, the Board of Appeal of ECHA dismissed Lanxess's appeal against the decision of 5 April 2012 and decided that Lanxess must supply the required information within 24 months of the date of notification of the contested decision. By the present application, the applicant seeks only the partial annulment of the contested decision, in so far as it requires Lanxess to carry out a second species pre-natal developmental toxicity study of the chemical substance triphenyl phosphate, as part of a compliance check of registrations.

53 It follows that the contested decision, in so far as the present application applies to it, directly affects the legal position only of Lanxess.

54 First, in support of its contention that the contested decision affects it directly, the applicant argues that it believes itself to have standing because the Board of Appeal of ECHA recognised its interest in intervening, and the applicant stresses its interest in securing acceptance of its arguments.

55 Under Article 8(1) of Regulation No 771/2008, any person establishing an interest in the result of a case submitted to the Board of Appeal of ECHA may intervene in the proceedings before it.

- 56 Unlike the Board of Appeal of ECHA when considering the interest in the result of the dispute in question, the Court is required, when considering how parties are directly affected, to assess (1) whether the contested measure directly affects the legal position of the individual and (2) whether that measure does not allow any discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Union rules alone without the application of other intermediate rules. That assessment therefore concerns not the applicant's interest in bringing the present application but above all the issue of whether the contested decision in the case at issue does indeed directly affect the applicant's legal position.
- 57 The decision of the Board of Appeal to grant the applicant leave to intervene in no way binds the Court in its assessment of the latter's standing in the case at issue. Accordingly, the fact that the Board of Appeal recognised its interest in intervening for the purposes of Article 8(1) of Regulation No 771/2008 does not imply that it is directly affected by the contested decision.
- 58 Moreover, the mere fact that not all of the applicant's arguments in support of the form of order sought by a third party were accepted does not mean that the contested decision directly affects its legal position.
- 59 Secondly, the applicant argues that only an organisation such as itself can protect the interests of the laboratory animals in question. The applicant considers that, if it cannot challenge the contested decision, there will be no effective legal protection of the interests of the animals at issue.
- 60 The contested decision, in so far as the present application is directed at it, concerns the obligation for Lanxess to carry out a second species pre-natal developmental toxicity study of the chemical substance triphenyl phosphate, as part of a compliance check of registrations. In putting forward its argument that only an organisation such as itself is capable of protecting the interests of the laboratory animals in question, the applicant has not adduced any argument which could demonstrate that the contested decision has directly affected its legal position.
- 61 In that context, it should also be noted that the Board of Appeal of ECHA is obliged, when taking decisions such as the contested decision, to comply with the provisions of Regulation No 1907/2006 and of the FEU Treaty. Under Article 25(1) of Regulation No 1907/2006, testing on vertebrate animals for the purposes of the regulation is to be undertaken only as a last resort. Recital 47 in the preamble to the regulation states that ECHA should ensure that reduction of animal testing is a key consideration in the development and maintenance of guidance for stakeholders and in its own procedures. Article 13 TFEU provides that, since animals are sentient beings, the Union is to pay full regard to their welfare requirements, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.
- 62 The applicant was granted leave to intervene before the Board of Appeal of ECHA and had the opportunity to provide all the relevant details to enable the latter to take an informed decision. However, the applicant cannot rely on the provisions referred to in paragraph 61 above to show that it was directly affected by the contested decision in the case at issue.
- 63 In so far as the applicant relies on the fact that the judicial protection of the interests of the laboratory animals in question justifies considering that it is directly affected by the contested decision, the fact is that, even though it is settled case-law that individuals are entitled to effective judicial protection of the rights they derive from the EU legal order, supposing them to be established, the right to such protection cannot call into question the conditions laid down in the fourth paragraph of Article 263 TFEU (see order of 24 September 2009 in *Município de Gondomar v Commission*, C-501/08 P, EU:C:2009:580, paragraph 38 and the case-law cited).

64 Thirdly, as regards the argument put forward by the applicant that the rules on the standing of non-governmental organisations are considerably broader in other judicial systems, it is sufficient to observe that the existence of different procedural rules in other legal systems cannot call into question the requirements of the fourth paragraph of Article 263 TFEU.

65 Fourthly, as regards the arguments of the applicant that (1) the contested decision made a ruling on a question of law which would affect other procedures before ECHA and which would therefore apply to all cases concerning substances manufactured or imported in quantities equal to or exceeding 1 000 tonnes referred to in Annex X to Regulation No 1907/2006, and (2) the applicant is concerned about the general principle raised by the contested decision, it must be held that in proceedings before the courts of the European Union there is no remedy whereby the courts can adopt a position by means of a general declaration or statement of principle (see judgment of 15 December 2005 in *Infront WM v Commission*, T-33/01, ECR, EU:T:2005:461, paragraph 171 and the case-law cited).

66 It follows that in the present action the applicant has not adduced any argument which can demonstrate that the contested decision directly affected its legal position. It follows that the applicant is not directly affected by the contested decision in so far as the present application for annulment relates to it.

The third condition laid down in the fourth paragraph of Article 263 TFEU

67 As the criterion of being directly affected is identical in the second and third conditions laid down in the fourth paragraph of Article 263 TFEU, and as, for the reasons stated in paragraphs 49 to 66 above, the applicant is not directly affected by the contested decision, in so far as the present application is directed at it, the third condition laid down in the fourth paragraph of Article 263 TFEU is likewise not met in the case at issue.

68 For the sake of completeness, it is appropriate to consider whether the contested decision constitutes a regulatory act for the purposes of the third condition laid down in the fourth paragraph of Article 263 TFEU.

69 ECHA considers that the contested decision is not an act of general application.

70 The concept of ‘regulatory act’, for the purposes of the third condition laid down in the fourth paragraph of Article 263 TFEU, must be interpreted as referring to all acts of general application apart from legislative acts (orders of 4 June 2012 in *Eurofer v Commission*, T-381/11, ECR, EU:T:2012:273, paragraph 42, and of 7 March 2014 in *FESI v Council*, T-134/10, EU:T:2014:143, paragraph 23).

71 In the present case, the contested decision does not constitute a legislative act, since it was not adopted either under the ordinary legislative procedure or under a special legislative procedure within the meaning of Article 289(1) to (3) TFEU (see, to that effect, judgment of 25 October 2011 in *Microban International and Microban (Europe) v Commission*, T-262/10, ECR, EU:T:2011:623, paragraph 21, and order in *FESI v Council*, cited in paragraph 70 above, EU:T:2014:143, paragraph 25).

72 In addition it should be observed that the contested decision is not of general application in that it does not apply to objectively determined situations and produce legal effects with respect to categories of persons envisaged in general and in the abstract (see, to that effect, orders of 21 January 2014 in *Bricmate v Council*, T-596/11, EU:T:2014:53, paragraph 65, and *FESI v Council*, cited in paragraph 70 above, EU:T:2014:143, paragraph 24). The contested decision, in so far as the present application is directed at it, concerns the obligation for Lanxess to carry out a second species pre-natal developmental toxicity study of the chemical substance triphenyl phosphate, as part of a compliance check of registrations.

- 73 The contested decision therefore does not constitute a regulatory act, which also precludes the possibility that the application might be admissible in accordance with the third condition laid down in the fourth paragraph of Article 263 TFEU.
- 74 In the light of all the above considerations, the objection of inadmissibility raised by ECHA must be upheld, and there is no need to consider whether other criteria relating to the second and third conditions laid down in the fourth paragraph of Article 263 TFEU are met. The present action must therefore be dismissed as inadmissible. There is thus no need to adjudicate on the application by the Commission for leave to intervene in this case.

Costs

- 75 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by ECHA.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby orders:

- 1. The action is dismissed as inadmissible.**
- 2. There is no need to rule on the application of the European Commission for leave to intervene.**
- 3. European Coalition to End Animal Experiments shall bear its own costs and pay those borne by the European Chemicals Agency (ECHA).**

Luxembourg, 13 March 2015.

E. Coulon
Registrar

A. Dittrich
President