Reports of Cases

Case C-389/19 P

European Commission
v
Kingdom of Sweden

Judgment of the Court (First Chamber), 25 February 2021

(Appeal – Regulation (EC) No 1907/2006 – Registration, evaluation, authorisation and restriction of chemicals – European Commission decision authorising certain uses of lead sulfochromate yellow and lead chromate molybdate sulfate red, substances listed in Annex XIV of that regulation – Substances of very high concern – Conditions of authorisation – Assessment of the lack of suitable alternatives)

1. *Approximation of laws – Registration, evaluation and authorisation of chemicals – REACH Regulation – Substances of very high concern – Authorisation decision – Conditions for grant of authorisation – Lack of availability of alternatives to the use of a substance of concern – Examination by the Commission – Presence of evidence to support a conclusion that the Commission has not carried out a proper examination of the lack of availability of alternatives*
(European Parliament and Council Regulation No 1907/2006, recitals 4, 12, 70 and 73 and Arts 55 and 60)

(see paragraphs 45, 53-57)

2. *Approximation of laws – Registration, evaluation and authorisation of chemicals – REACH Regulation – Substances of very high concern – Authorisation decision – Annulment – Transitional arrangements – Maintenance of the effects of the annulled decision until adoption of a new decision – Justified on grounds of protection of human health and the environment*
(Art. 264, 2d para, TFEU; European Parliament and Council Regulation No 1907/2006, Arts 56(1)(d) and 58(1)(c))

(see paragraphs 66-69, 72-74)

Résumé

On 19 November 2013, DCC Maastricht BV submitted an application for authorisation to place on the market lead sulfochromate yellow and lead chromate molybdate sulfate red, pigments included in the list of substances of very high concern, for six identical uses of those two substances.

The Commission authorised the uses referred to in the application, attaching restrictions and requirements to that authorisation [1] ('the decision at issue'). Authorisation was subject to the condition, in particular, that users downstream of the authorisation holder must provide the European Chemicals Agency (ECHA) with information on the suitability and availability of alternatives for the uses concerned, giving detailed proof of the need to use the substances in question.

The Kingdom of Sweden brought an action before the General Court seeking annulment of the decision at issue. The General Court annulled that decision, on the ground that the Commission had erred in law in its examination of the lack of availability of alternative substances. That institution brought an appeal before the Court of Justice.

Findings of the Court

As to the substance, the Court of Justice finds that the General Court was correct to hold that the Commission had failed to fulfil its obligation to verify the lack of availability of alternative substances. It notes that the Commission was not entitled to take the view that an alternative substance could be allowed only if substitution did not entail any loss of performance. Such a restriction on acceptance of the alternative substance runs counter to the very purpose of the REACH Regulation, which seeks to promote the substitution of substances of very high concern by other appropriate substances. [2] However, to decide, as a matter of principle, that replacement must not entail any reduction in performance amounts not only to adding a condition not provided for in that regulation, but is likely to prevent that replacement and, consequently, to deprive that regulation of much of its effectiveness.

By contrast, the Court of Justice criticises the judgment of the General Court in so far as it incorrectly assessed the effects of an immediate annulment of the decision at issue. The REACH Regulation allows the continued use of authorised uses after the expiry of their authorisation until a decision has been taken on the new application for authorisation. Consequently, the annulment of the contested decision with immediate effect recalled into force the previous authorisation for the substances at issue. However, the decision at issue restricted, in certain respects, the use of those substances of very high concern. That is why the General Court's rejection of the application to maintain the effects of the decision at issue increased the risk of serious and irreparable damage to human health and the environment. The Court of Justice therefore sets aside the judgment of the General Court on that point and orders the maintenance of the effects of that decision until the European Commission has adopted a fresh decision on the application for authorisation submitted by DCC Maastricht BV.

[1] Article 60(4) 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, and corrigendum OJ 2007 L 136, p. 3; 'the REACH Regulation'). Under that provision, the Commission may grant authorisation for a chemical substance only if it is shown that socio-economic benefits outweigh the risk to human health or the environment arising from the use of the substance and if there are no suitable alternative substances or technologies.

[2] Article 55 and recitals 4, 12, 70 and 73 of the REACH Regulation.