

Judgment of the General Court of 23 November 2022 — CWS Powder Coatings and Others v Commission

(Joined Cases T-279/20 and T-288/20 and Case T-283/20) ⁽¹⁾

(Environment and protection of human health — Regulation (EC) No 1272/2008 — Classification, labelling and packaging of substances and mixtures — Delegated Regulation (EU) 2020/217 — Classification of titanium dioxide in powder form containing 1 % or more of particles of a diameter equal to or below 10 µm — Criteria for classification of a substance as carcinogenic — Reliability and acceptability of studies — Substance that has the intrinsic property to cause cancer — Calculation of lung overload in particles — Manifest errors of assessment)

(2023/C 24/47)

Languages of the cases: German and English

Parties

Applicant in Case T-279/20: CWS Powder Coatings GmbH (Düren, Germany) (represented by: R. van der Hout, C. Wagner and V. Lemonnier, lawyers)

Applicants in Case T-283/20: Billions Europe Ltd (Stockton-on-Tees, United Kingdom) and the seven other applicants whose names are listed in the annex to the judgment (represented by: J.-P. Montfort, T. Delille and P. Chopova-Leprêtre, lawyers)

Applicants in Case T-288/20: Brillux GmbH & Co. KG (Münster, Germany), Daw SE (Ober-Ramstadt, Germany) (represented by: R. van der Hout, C. Wagner and V. Lemonnier, lawyers)

Defendant: European Commission (represented in Joined Cases T-279/20 and T-288/20 by: S. Delaude, R. Lindenthal and M. Noll-Ehlers and, in Case T-283/20, by: A. Dawes, S. Delaude and R. Lindenthal, acting as Agents)

Interveners in support of the applicant in Case T-279/20: Billions Europe Ltd (Stockton-on-Tees) and the seven other interveners whose names are listed in the annex to the judgment (represented by: J.-P. Montfort, T. Delille and P. Chopova-Leprêtre, lawyers), Ettengruber GmbH Abbruch und Tiefbau (Dachau, Germany), Ettengruber GmbH Recycling und Verwertung (Dachau) (represented by: R. van der Hout, C. Wagner and V. Lemonnier, lawyers), TIGER Coatings GmbH & Co. KG (Wels, Austria) (represented by: R. van der Hout, C. Wagner and V. Lemonnier, lawyers)

Interveners in support of the applicants in Case T-283/20: Conseil européen de l'industrie chimique — European Chemical Industry Council (Cefic) (Brussels, Belgium) (represented by: D. Abrahams, Z. Romata and H. Widemann, lawyers), Conseil européen de l'industrie des peintures, des encres d'imprimerie et des couleurs d'art (CEPE) (Brussels), British Coatings Federation Ltd (BCF) (Coventry, United Kingdom), American Coatings Association, Inc. (ACA) (Washington, DC, United States) (represented by: D. Waelbroeck and I. Antypas, lawyers), Mytilineos SA (Maroussi, Greece), Delfi-Distomon Anonymos Metalliftiki Etaireia (Maroussi) (represented by: J.-P. Montfort, T. Delille and P. Chopova-Leprêtre, lawyers)

Interveners in support of the applicants in Case T-288/20: Billions Europe Ltd (Stockton-on-Tees) and the seven other interveners whose names are listed in the annex to the judgment (represented by: J.-P. Montfort, T. Delille and P. Chopova-Leprêtre, lawyers), Sto SE & Co. KGaA (Stühlingen, Germany) (represented by: R. van der Hout, C. Wagner and V. Lemonnier, lawyers), Rembrandtin Coatings GmbH (Vienna, Austria) (represented by: R. van der Hout, C. Wagner and V. Lemonnier, lawyers)

Interveners in support of the defendant in Joined Cases T-279/20 and T-288/20 and in Case T-283/20: Kingdom of Denmark (represented by: M. Søndahl Wolff, acting as Agent), French Republic (represented in Joined Cases T-279/20 and T-288/20 by: T. Stéhelin, W. Zemamta, G. Bain and J.-L. Carré and, in Case T-283/20, by: E. de Moustier and W. Zemamta, acting as Agents), Kingdom of the Netherlands (represented in Case T-279/20 by: M. Bulterman and C. Schillemans, in Case T-283/20 by: M. Bulterman and J. Langer, and in Case T-288/20 by: M. Bulterman, J. Langer and C. Schillemans, acting as Agents), Kingdom of Sweden (represented in Joined Cases T-279/20 and T-288/20 by: C. Meyer-Seitz and, in Case T-283/20, by: O. Simonsson, C. Meyer-Seitz, A. Runeskjöld, M. Salborn Hodgson, H. Shev, H. Eklinder and R. Shahsavan Eriksson, acting as Agents), European Chemicals Agency (ECHA) (represented by: A. Hautamäki and J.-P. Trnka, acting as Agents)

Intervener in support of the defendant in Case T-283/20: Republic of Slovenia (represented by: V. Klemenc, acting as Agent)

Interveners in support of the defendant in Joined Cases T-279/20 and T-288/20: European Parliament (represented by: C. Ionescu Dima, W. Kuzmienko and B. Schäfer, acting as Agents), Council of the European Union (represented by A.-L. Meyer and T. Haas, acting as Agents)

Re:

By their actions based on Article 263 TFEU, the applicants seek annulment of Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 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 and correcting that Regulation (OJ 2020 L 44, p. 1), as regards the harmonised classification and labelling of titanium dioxide in powder form containing 1 % or more of particles of a diameter equal to or below 10 µm.

Operative part of the judgment

The Court:

1. Joins Joined Cases T-279/20 and T-288/20 and Case T-283/20 for the purposes of the judgment;
2. Annuls Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 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 and correcting that Regulation, as regards the harmonised classification and labelling of titanium dioxide in powder form containing 1 % or more of particles with a diameter equal to or below 10 µm;
3. Orders the European Commission to bear its own costs and to pay the costs incurred, in Case T-279/20, by CWS Powder Coatings GmbH, Billions Europe Ltd and the other interveners whose names are listed in the annex, Ettengruber GmbH Abbruch und Tiefbau, Ettengruber GmbH Recycling und Verwertung and TIGER Coatings GmbH & Co. KG, in Case T-283/20, by Billions Europe and the other applicants whose names are listed in the annex, the Conseil européen de l'industrie chimique — European Chemical Industry Council (Cefic), the Conseil européen de l'industrie des peintures, des encres d'imprimerie et des couleurs d'art (CEPE), British Coatings Federation Ltd (BCF), American Coatings Association, Inc. (ACA), Mytilineos SA and Delfi-Distomon Anonymos Metalliftiki Etaireia and, in Case T-288/20, by Brillux GmbH & Co. KG, Daw SE, Billions Europe and the other interveners whose names are listed in the annex, Sto SE & Co. KGaA and by Rembrandtin Coatings GmbH;
4. Orders the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden, the Republic of Slovenia, the European Parliament, the Council of the European Union and the European Chemicals Agency (ECHA) each to bear their own costs.

(¹) OJ C 222, 6.7.2020.

Judgment of the General Court of 16 November 2022 — Netherlands v Commission

(Case T-469/20) (¹)

(State aid — Netherlands law prohibiting the use of coal for the production of electricity — Anticipated closure of a coal-powered power plant — Grant of compensation — Decision not to raise objections — Decision declaring the compensation compatible with the internal market — No express classification as 'State aid' — Action for annulment — Act open to challenge — Admissibility — Article 4(3) of Regulation (EU) 2015/1589 — Legal certainty)

(2023/C 24/48)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M. Bulterman, M. de Ree and J. Langer, acting as Agents)

Defendant: European Commission (represented by: H. van Vliet, B. Stromsky and D. Recchia, acting as Agents)