



Reports of Cases

Case T-745/20

**Symphony Environmental Technologies plc
and
Symphony Environmental Ltd
v
European Parliament and Others**

Judgment of the General Court (First Chamber, Extended Composition) of 31 January 2024

(Non-contractual liability – Environment – Directive (EU) 2019/904 – Prohibition on the placing on the market of products made from oxo-degradable plastic – Sufficiently serious breach of a rule of law intended to confer rights on individuals – No distinction between products made from oxo-degradable plastic and products made from oxo-biodegradable plastic – Impact assessment – Equal treatment – Proportionality)

1. *Judicial proceedings – Publication of decisions – Duty of the EU Courts to ensure a fair balance between the need to make judicial decisions public and the right to protection of personal data and of business secrets – Application for omission of data which is in the public domain – Rejection*
(Art. 15 TFEU)

(see paragraphs 20, 22, 23)

2. *Actions for damages – Autonomy in relation to action for annulment and action for failure to act – Scope*
(Arts 263, fourth para., 268 and 340, second para., TFEU)

(see paragraph 31)

3. *Actions for damages – Subject matter – Compensation for damage claimed to have been suffered on account of a provision in a directive adopted by the Parliament and the Council – Action also brought against the Commission – Objection of inadmissibility raised by the Commission having regard to its role in the legislative process – No relevance to the assessment of whether the action brought against the Commission is admissible*
(Arts 268 and 294 TFEU; European Parliament and Council Directive 2019/904, Art. 5)

(see paragraphs 32-38)

4. *Non-contractual liability – Conditions – Unlawfulness – Sufficiently serious breach of EU law – Infringement by the EU legislature in the field of the environment – Requirement of a manifest and grave disregard for the limits on the broad discretion of that legislature in that field – Judicial review – Scope*
(Arts 191, 192 and 340, second para., TFEU)

(see paragraphs 39-43, 114, 115, 250)

5. *Environment – Reduction of the impact of certain plastic products on the environment – Directive 2019/904 – Prohibition on the placing on the market of products made from oxo-degradable plastic – Obligation on the EU institutions to adopt that prohibition in accordance with the restriction procedure laid down in the REACH Regulation – None – Obligation to wait for the outcome of an ongoing restriction procedure before the European Chemicals Agency (ECHA) – None*
(Arts 14(1), 16(1) and 17(2) TEU; Art. 289 TFEU; European Parliament and Council Regulation No 1907/2006, Arts 68 to 73; European Parliament and Council Directive 2019/904, Art. 5)

(see paragraphs 50-55, 59-65)

6. *Non-contractual liability – Conditions – Unlawfulness – Assessment of the legality of an EU act in the light of another act of the same status in the hierarchy of legal rules – Act not adopted pursuant to the latter act – No provision stating that one act takes precedence over the other – Assessment not permissible*
(Arts 289(1) and (3), 294 and 340, second para., TFEU; European Parliament and Council Regulation No 1907/2006; European Parliament and Council Directive 2019/904)

(see paragraphs 66-70)

7. *Non-contractual liability – Conditions – Unlawfulness – Sufficiently serious breach of a rule of law intended to confer rights on individuals – Rule of law intended to confer rights on individuals – Concept – Provisions providing for a public consultation on the establishment of new restrictions on the manufacture, use or placing on the market of a chemical substance – Precluded*
(European Parliament and Council Regulation No 1907/2006, Arts 69(6)(a) and 71(1))

(see paragraphs 73-77)

8. *Acts of the institutions – Preparation procedure – Impact assessment laid down by an interinstitutional agreement between the Parliament, the Council and the Commission – Obligation to update that assessment for the legislative process – None*
(Art. 192(1) TFEU; European Parliament and Council Directive 2019/904)

(see paragraphs 87-92)

9. *Non-contractual liability – Conditions – Unlawfulness – Sufficiently serious breach of EU law – Requirement that the institutions manifestly and seriously disregard the limits of their discretion – Prohibition on the placing on the market of products made from oxo-degradable plastic – Prohibition applicable to products made from plastic containing a pro-oxidant additive – Prohibition based on a thorough scientific assessment of the risks posed by that type of plastic – No sufficiently serious breach*
(European Parliament and Council Directive 2019/904, recital 15 and Art. 5)

(see paragraphs 116-120, 127-151, 201-209, 217-226, 234-241, 249)

10. *Environment – Reduction of the impact of certain plastic products on the environment – Directive 2019/904 – Prohibition on the placing on the market of products made from oxo-degradable plastic – Prohibition applicable to products made from plastic containing a pro-oxidant additive – Breach of principle of proportionality – None*
(Art. 5(4) TFEU; European Parliament and Council Directive 2019/904, Art. 5)

(see paragraphs 254, 255, 258, 259, 262-269, 273, 274, 276, 278, 279)

11. *Environment – Reduction of the impact of certain plastic products on the environment – Directive 2019/904 – Prohibition on the placing on the market of products made from oxo-degradable plastic – Prohibition applicable to products made from plastic containing a pro-oxidant additive – Prohibition not applicable to products made from conventional plastic or marketed as compostable – Non-comparable situations – Breach of the principle of equal treatment – None*
(European Parliament and Council Directive 2019/904, Art. 5)

(see paragraphs 287-294, 300-304, 306-308)

12. *Environment – Reduction of the impact of certain plastic products on the environment – Directive 2019/904 – Prohibition on the placing on the market of products made from oxo-degradable plastic – Prohibition applicable to products made from plastic containing a pro-oxidant additive – Limitation on the freedom to conduct a business and of the intellectual property rights of companies involved in the manufacture and marketing of such an additive – Whether permissible – Conditions*
(Charter of Fundamental Rights of the European Union, Arts 16, 17(2) and 52(1); European Parliament and Council Directive 2019/904, Art. 5)

(see paragraphs 315-320, 325)

13. *Environment – Reduction of the impact of certain plastic products on the environment – Directive 2019/904 – Prohibition on the placing on the market of products made from oxo-degradable plastic – Prohibition applicable to products made from plastic containing a pro-oxidant additive – Infringement of the right to property of companies involved in the placing on the market of such an additive – None*
(Charter of Fundamental Rights of the European Union, Art. 17)

(see paragraphs 322, 323)

14. *Fundamental rights – Charter of Fundamental Rights – Right to sound administration – Not applicable to the process of enacting a legislative act (Charter of Fundamental Rights of the European Union, Art. 41)*

(see paragraph 332)

Résumé

Hearing an action for non-contractual liability, the First Chamber (Extended Composition) of the General Court finds that the prohibition on the placing on the market of products made from oxo-degradable plastic, laid down in Article 5 of Directive 2019/904,¹ is consistent with (i) Article 191 TFEU, which lays down a series of objectives, principles and criteria which the EU legislature must observe in implementing environmental policy and (ii) the principles of proportionality and of equal treatment.

The applicants, Symphony Environmental Technologies plc and Symphony Environmental Ltd, established in the United Kingdom, are active in the development, production and marketing of certain specialised plastic products together with the additives and masterbatches² used for making such products.

One of the masterbatches produced by the applicants contains a pro-oxidant additive which they maintain enables plastic into which it has been incorporated to biodegrade much more quickly than oxo-degradable plastic.³ Plastic containing such an additive, which they classify as oxo-biodegradable, is therefore to be distinguished from oxo-degradable plastic.

By their action, the applicants accordingly seek compensation for the damage which they believe they have suffered as a result of the prohibition on the placing on the market of products made from oxo-degradable plastic laid down in Article 5 of Directive 2019/904, in so far as that prohibition applies to oxo-biodegradable plastic.

Findings of the Court

As a preliminary point, the Court recalls that the European Union may incur non-contractual liability where three cumulative conditions are fulfilled, namely a sufficiently serious breach of a rule of law intended to confer rights on individuals, the fact of damage and the existence of a causal link between the alleged breach and the damage sustained by the injured parties.

As regards the first of those conditions, the Court clarifies that, in the context of the present case, any sufficiently serious breach of the rules of law at issue must be based on a manifest and serious failure to have regard to the limits of the broad discretion enjoyed by the EU legislature when exercising its powers in environmental matters under Articles 191 and 192 TFEU. The exercise of that discretionary power implies, first, the need for the EU legislature to anticipate and evaluate

¹ Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (OJ 2019 L 155, p. 1).

² A masterbatch is a compound of several chemicals in a polymer carrier which is supplied in pellet form to the manufacturers of plastic products for them to incorporate it into the polymer used by them to make their plastic products.

³ Article 3(3) of Directive 2019/904 defines 'oxo-degradable plastic' as plastic materials that include additives which, through oxidation, lead to the fragmentation of the plastic material into micro-fragments or to chemical decomposition.

ecological, scientific, technical and economic changes of a complex and uncertain nature and, second, the weighing up and arbitration by that legislature of the various objectives, principles and interests set out in Article 191 TFEU.

In the present case, in the context of Article 191 TFEU, the Court considers, first of all, that the European Parliament, the Council of the European Union and the European Commission ('the three institutions concerned') did not commit a manifest error of assessment in adopting the prohibition on the placing on the market of products made from plastic containing a pro-oxidant additive,⁴ since they had at their disposal a scientific assessment of the risks to the environment and to human health posed by that type of plastic which was as thorough as possible. According to Directive 2019/904,⁵ that prohibition is justified by the fact that that plastic does not biodegrade properly, is not compostable, has a negative impact on the recycling of conventional plastics and fails to deliver a proven environmental benefit.

In the first place, as regards the assertion that plastic containing a pro-oxidant additive does not biodegrade properly, the scientific studies available to the three institutions concerned when Directive 2019/904 was being drawn up and adopted state that the level of biodegradation achieved by that plastic is low to non-existent, whether in an open environment, in landfill or in a marine environment. According to those studies, satisfactory biodegradation was only obtained in laboratory experiments, but never in a real-world situation. Indeed, environmental conditions are variable and make it difficult to estimate the time and degree of fragmentation necessary for biodegradation of that type of plastic to occur.

In the second place, it follows from the scientific data available during the legislative procedure that plastic containing a pro-oxidant additive is not suitable for any form of composting.⁶ The plastic concerned does not meet any of the various standards for industrial or domestic composting nor those applicable to packaging recoverable through composting, since its biodegradation takes too long and plastic fragments generated by the process can adversely affect the quality of the compost or be spread in the environment. In addition, the fact that a certain rate of biodegradation was obtained in a laboratory does not establish that the same rate will be obtained, within the same period, in a real-world situation.

In the third place, as regards the assertion that plastic containing a pro-oxidant additive has a negative impact on the recycling of conventional plastics, it is apparent from the scientific studies on which the three institutions concerned state that they relied, when Directive 2019/904 was being adopted, that the fact that the technologies currently available do not enable reprocessors to identify and sort plastic containing a pro-oxidant additive from other types of plastic, with the result that it will necessarily be recycled with conventional plastic. However, the presence of pro-oxidant additives in the recycled material will accelerate its degradation and will accordingly negatively affect the marketability of recycled plastic, its quality and its price. In that regard, while the use of stabilising compounds makes it possible, in certain cases, to avoid a deterioration in the quality of recycled plastic, it is nevertheless difficult to determine the amount of stabilisers needed, which depends on the concentration and type of pro-oxidant additive used.

⁴ Since the parties use various terms to refer to plastic to which a pro-oxidant additive has been added, the General Court has chosen to use the most neutral term possible, namely 'plastic containing a pro-oxidant additive'.

⁵ Recital 15 of Directive 2019/904.

⁶ Composting is enhanced biodegradation, under managed conditions, predominantly characterised by forced aeration and natural heat production resulting from the biological activity taking place inside the material.

In the fourth place, the information available when Directive 2019/904 was adopted does not reveal any proven environmental benefit of plastic containing a pro-oxidant additive.

Next, after recalling the broad discretion enjoyed by the EU legislature in determining the nature and scope of the measures to be adopted in an area of evolving and complex technology, the Court finds that the prohibition on the placing on the market of products made from plastic containing a pro-oxidant additive does not breach the principle of proportionality. First, that prohibition is appropriate for attaining the objective of protecting the environment and human health pursued by Directive 2019/904, given the risks posed by plastic containing a pro-oxidant additive. Second, the prohibition at issue does not go beyond what is necessary to achieve that objective, since none of the alternatives proposed by the applicants is capable of ensuring that it is achieved. That prohibition also cannot be regarded as disproportionate because it is not accompanied by a transitional period, having regard in particular to the non-complex uses of the plastic in question. The Court also reiterates the importance of protecting human health and the environment, which may justify even substantial negative economic consequences for certain operators.

Finally, the three institutions concerned did not breach the principle of equal treatment by prohibiting the placing on the market of products made from plastic containing a pro-oxidant additive, but not the placing on the market of products made from conventional plastic, with limited exceptions, nor products made from plastic marketed as ‘compostable’.

In the first place, products made from plastic containing a pro-oxidant additive cannot be regarded as being in a situation comparable to that of products made from conventional plastic, in relation to which the placing on the market is not prohibited by Directive 2019/904, with the exception of nine single-use products. First, on the basis of the scientific risk assessment available before Directive 2019/904 was adopted, it cannot be ruled out that plastic containing a pro-oxidant additive may, at least in certain respects relating, in particular, to its recycling and its biodegradation in landfill, be more problematic than conventional plastic. In that regard, the faster fragmentation of plastic containing a pro-oxidant additive compared to conventional plastic could have an increased negative impact on the environment, as it is concentrated over a shorter period. Second, account must be taken of the objective of Directive 2019/904, which is, *inter alia*, to prevent and reduce the impact on the environment and human health of certain plastic products by focusing efforts where they are most necessary. In the light of that objective, those two types of plastic cannot be considered to be in a comparable situation. As regards single-use products manufactured from conventional plastic, the placing of which on the market is prohibited by Directive 2019/904,⁷ they cannot, having regard to the objective of the directive, be regarded as being in a situation comparable to that of products made from plastic containing a pro-oxidant additive.

In the second place, products made from plastic containing a pro-oxidant additive and those manufactured from plastic marketed as ‘compostable’ are also not in a comparable situation. First, the three institutions concerned were entitled to find, without making a manifest error of assessment, that there is a risk that plastic containing a pro-oxidant additive may not be compostable and, second, products made from plastic marketed as ‘compostable’ do not fall within either the subject matter or the purpose of Directive 2019/904.

⁷ Article 9 of Directive 2019/904.

In the light, in particular, of those considerations, the Court dismisses the applicants' action in its entirety.