

7. Seventh plea in law, alleging that the SRB failed to follow the resolution plan without providing any plausible explanation for this.

(¹) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

Action brought on 21 July 2022 — BASF and Others v Commission

(Case T-453/22)

(2022/C 389/15)

Language of the case: English

Parties

Applicants: BASF SE (Ludwigshafen am Rhein, Germany), Dow Europe GmbH (Horgen, Switzerland), Nouryon Functional Chemicals BV (Arnhem, Netherlands) (represented by: J.P. Montfort and P. Chopova-Leprêtre, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Commission Delegated Regulation (EU) 2022/692 of 16 February 2022 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 ('the contested Regulation'), (¹) insofar as it introduces a harmonised classification and labelling for three substances, namely N-carboxymethyliminobis (ethylenenitrilo)tetra(acetic acid) and its pentasodium and pentapotassium salts (together referred to as 'DTPA' or 'the substance'), i.e. Recitals 2 and 3, Articles 1 and 2 and the Annex to the contested Regulation, insofar as they concern DTPA and, in particular, the entries introduced by the Annex to the contested Regulation in Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation (EC) No 1907/2006 ('the CLP Regulation'), (²) for the individual substances:

- N-carboxymethyliminobis(ethylenenitrilo)tetra(acetic acid);

- Pentasodium(carboxylatemethyl)iminobis(ethylenenitrilo)tetraacetate;

- Pentapotassium 2,2',2'',2'''-(ethane-1,2-diylnitrilo) pentaacetate.

- order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on six pleas in law.

1. First plea in law, alleging that the contested Regulation was adopted in breach of the classification criteria established in Article 36(1) and Section 3.7.2.2.1 of Annex I to the CLP Regulation, in that DTPA does not have the 'intrinsic, specific property to produce an adverse effect on reproduction'. If some developmental effects were observed in animals exposed to very high doses of DTPA, such effects are 'non-specific secondary developmental effects' that do not justify a classification as toxic for reproduction.

2. Second plea in law, alleging that the contested Regulation was adopted in breach of Section 3.7.2.2.2 of Annex I to the CLP Regulation, as the EU authorities failed to properly evaluate and take into account the possible influence of maternal toxicity” when classifying DTPA. DTPA produces zinc deficiency, disrupting the maternal homeostasis in rats, and it is that maternal toxicity which triggers the observed nonspecific secondary developmental effects. This cannot support the classification of DTPA as toxic for reproduction in line with the requirements of the CLP Regulation.
3. Third plea in law, alleging that the contested Regulation was adopted in breach of Section 3.7.2.1.1 and Table 3.7.1(a) of Annex I to the CLP Regulation, since the available evidence does not constitute the ‘strong presumption’ that DTPA can produce reproductive effects in humans, nor was there ‘clear evidence’ that DTPA can produce developmental effects in the absence of other toxic effects (i.e., maternal toxicity). Again, without such elements, the classification of DTPA as toxic for reproduction, category 1B, is not justified.
4. Fourth plea in law, alleging that the contested Regulation was adopted in breach of the Commission’s duty pursuant to Article 37(5) of the CLP Regulation to establish that the proposed harmonised classification is ‘appropriate’. The Commission endorsed the Committee for Risk Assessment (‘RAC’) opinions without verifying whether they are consistent, reliable and capable of sustaining the proposed classification. If the Commission had taken into account all the relevant information on the properties of DTPA, as it was repeatedly invited to do by the dossier submitter (‘DS’) between 2018 and 2022, it would not have classified DTPA as toxic for reproduction, category 1B.
5. Fifth plea in law, alleging that the contested Regulation was adopted in breach of the procedural requirement of Article 37(4) of the CLP Regulation to consult on the RAC opinions themselves, instead of only on the proposal for a harmonised classification and labelling made by the DS.
6. Sixth plea in law, alleging that, in adopting the contested Regulation without the prior conduct and documentation of an impact assessment, the Commission breached its commitments under the Interinstitutional Agreement on better law-making and the principle of sound administration.

(¹) OJ 2022 L 129, p. 1.

(²) OJ 2008 L 353, p. 1.

Action brought on 18 August 2022 — Austria v Commission

(Case T-501/22)

(2022/C 389/16)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: J. Schmoll and A. Kögl, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul European Commission Implementing Decision (EU) 2022/908 of 8 June 2022 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2022) 3543 final and published in the *Official Journal of the European Union* on 10 June 2022, L 157, p. 15, in so far as it excludes from Union financing the expenditure incurred by the Republic of Austria and declared under the EAGF set out in the annex to that decision under budget item 6200, lines 1 to 8, less the amounts listed under budget item 08020601, thus totalling EUR 68 146 449,98;
- order the defendant to pay the costs of the proceedings.