

Appeal brought on 17 December 2015 by European Commission against the judgment of the General Court (Fifth Chamber) delivered on 7 October 2015 in Case T-689/13: Bilbaína de Alquitranes e.a. v Commission

(Case C-691/15 P)

(2016/C 106/21)

Language of the case: English

Parties

Appellant: European Commission (represented by: P.J. Loewenthal, K. Talabér-Ritz, agents)

Other parties to the proceedings: Bilbaína de Alquitranes, SA, Deza, a.s., Industrial Química del Nalón, SA, Koppers Denmark A/S, Koppers UK Ltd, Koppers Netherlands BV, Rütgers basic aromatics GmbH, Rütgers Belgium NV, Rütgers Poland Sp. z o. o., Bawtry Carbon International Ltd, Grupo Ferroatlántica, SA, SGL Carbon GmbH, SGL Carbon GmbH, SGL Carbon, SGL Carbon, SA, SGL Carbon Polska S.A., ThyssenKrupp Steel Europe AG, Tokai erftcarbon GmbH, European Chemicals Agency (ECHA), GrafTech Iberica, SL

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court (Fifth Chamber) of 7 October 2015 in Case T-689/13 Bilbaína de Alquitranes e.a. v Commission EU:T:2015:767;
- refer the case back to the General Court for consideration; and
- reserve the costs of the present proceedings.

Pleas in law and main arguments

In the contested judgment, the General Court partially annulled Commission Regulation (EU) No 944/2013 ⁽¹⁾ of 2 October 2013 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 Commission puts forward three grounds in support of its appeal of the contested judgment.

First, the Commission alleges the General Court to have failed to fulfil its duty to state reasons under Article 36 and 53, paragraph 1, of the Statute of the Court of Justice. In the contested judgment, the General Court considers the Commission to have committed a manifest error of assessment in that, by classifying the substance pitch, coal tar, high-temp (CTPHT) on the basis of its constituents for hazard classification purposes using the summation method, it failed to comply with its obligation to take into consideration all the relevant factors and circumstances so as to take due account of the proportion in which those constituents are present in CTPHT and their chemical effects, in particular the low solubility of CTPHT as a whole. It is not clear from the contested judgment, however, whether the General Court partially annulled the regulation at issue for this reason because the Commission was wrong to apply the summation method for classification purposes, and should have applied another classification method, or because the Commission wrongly applied the summation method.

Second, the Commission alleges the General Court to have infringed the CLP Regulation in concluding that the Commission had committed a manifest error of assessment by adopting the contested classification without considering the solubility of the substance as a whole. The first branch of this ground of appeal is based on the assumption that the General Court partially annulled the regulation at issue because it considered that the Commission was wrong to apply the summation method to classify CTPHT as hazardous to the aquatic environment, in which case the General Court infringed the CLP Regulation since the test data available on CTPHT was deemed inappropriate to classify the substance directly under the CLP Regulation. This, followed by the fact that bridging principles could not be applied, bound the Commission to use the summation method in the present case. The second branch of this ground of appeal is based on the assumption that the General Court partially annulled the regulation at issue because it considered the Commission to have misapplied the summation method, in which case the General Court infringed the CLP Regulation since that regulation does not require the solubility of the substance as a whole to be considered when applying that method.

Third, the Commission considers the General Court to have infringed Union law by exceeding the limits of its review of the legality of the contested regulation and to have distorted the evidence upon which the regulation at issue was adopted.

⁽¹⁾ OJ L 261, p. 5