

EU Court of Justice Ends a Long Dispute Over Chemicals Policy

The EU Regulation on Registration, Evaluation, Authorization and Restriction of Chemicals, which entered into force in 2007, is — with its 849 pages — one of the most complex pieces of legislation in the union's history. REACH became immediately enforceable as the law in all Member States and aims to improve the protection of human health and the environment from risks that may be posed by chemicals, while at the same time enhancing the competitiveness of the EU chemicals industry.

The regulation is based on the principle that manufacturers, importers, and suppliers are responsible for their chemicals and imposes certain obligations upon them. Among these obligations, REACH provides that, *inter alia*, where a chemical Substance of Very High Concern for human health or the environment, in particular because of its carcinogenic, mutagenic, or toxic properties, is present in a concentration above 0.1 percent of the mass of an article, the producer or importer must notify the European Chemicals Agency. The supplier also has the obligation to inform the recipient if the article contains a chemical substance with a concentration above that percentage of its mass as well as, on request, the consumer of the article.

As far as those obligations are concerned, in the last few years, a dispute between the European Commission, ECHA, and the Member States arose over the concept of an "article" under REACH, when a product is composed of one or more articles. The European Commission, ECHA, and most of the Member States were of the opinion that objects which meet the definition of an article under REACH at one point cease to be individual articles and become components once they are as-

sembled into another article. As a consequence, the requirements to notify and to provide information contained in REACH apply only if the SVHC exceeds 0.1 percent of the assembled article's weight. However, France, Germany, Belgium, Denmark, and Sweden argued that components retain their character as articles after they are incorporated into an assembled product.

The different interpretations of an article in a complex product has a great impact on duties to notify and provide information, as the definition of Member States such as France and Germany would require those obligations to a far larger extent. A bicycle, for instance, whose handlebar tape contains plasticizers that fall under an SVHC, reaches the threshold of 0.1 percent for the handlebars as such, but not for the bicycle as a whole. An obligation to notify ECHA and to provide information to downstream users would exist only according to the definition provided by France, Germany, etc. The European Commission or ECHA would not require such duties.

Last September, the EU Court of Justice ruled on the dispute and finally provided legal certainty for the industry. The Court found that each of the articles incorporated as a component into a complex product is covered by the relevant duties to notify and provide information when they contain an SVHC above 0.1 percent.

Moreover, the Court concluded that a producer of an assembled product has to notify ECHA only if the product has an SVHC not already registered that exceeds 0.1 percent of the entire product. The duty to notify is not applicable to an article which, although used by that producer as input, was made by a third party. In that case, the third party is obliged to notify.

The importer must determine

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Gabrielle H. Williamson is a partner in Luther in the Brussels and Dusseldorf offices. She can be reached at gabrielle.williamson@luther-lawfirm.com.

whether any of the components incorporated in the assembled product and imported as such into the EU's Internal Market contains an SVHC. The fact that importers might have difficulties to obtain the required information from their suppliers located outside the EU does not affect their duty to notify. In addition, the Court held that all suppliers in the supply chain of an assembled product have to provide to the recipient and the consumer of this article information about, at a minimum, the name of the SVHC.

The ruling of the Court has far-reaching consequences for a wide range of companies across many industry sectors, especially for the automotive and aerospace industries. The Court's rejection of the position of the European Commission and of ECHA has a great impact on the duty of EU producers and importers to notify ECHA, and of suppliers to provide information to their downstream users.

Importers and suppliers of an assembled product will have to examine each component for SVHC separately in order to determine whether it exceeds the threshold to comply with their duties under REACH. The examination is often a costly, time-consuming, and difficult process and, thus, very burdensome for companies. While the ruling seeks to ensure a high level of protection of human health and the environment, it will be a thorn in the side of industry, as it increases the heavy administrative burden which REACH already imposes on companies.