

McKenna Long & Aldridge LLP Lawyers Instruct UK Solicitors to Challenge REACH - "Polymer Rule" and "Preparations Rule" - before UK Court

On behalf of four chemical companies, Koen van Maldegem, Ruxandra Cana and Ursula Schliessner of McKenna Long & Aldridge LLP have instructed Jeremy Lederman of Cumberland Ellis LLP to bring proceedings before the English Courts in connection with the "REACH" Regulation. The action was filed in London against the UK Secretary of State for Environment, Food and Rural Affairs ('DEFRA') on Friday 25 May 2007.

While endorsing the overall aims of REACH to protect human health and the environment, the Claimants seek to obtain a clear interpretation of certain of its provisions relating to polymers and preparations. Depending on the interpretation applied to these provisions, the Claimants will seek their annulment before the Court of Justice of the European Communities ('ECJ') because they are manifestly irrational, discriminatory and/or disproportionate.

The thrust of the "polymer" case is that, while polymers are exempt from the registration provisions of REACH, Article 6(3), if interpreted in the way contended for by the Commission, renders that exemption meaningless within the context of the general purpose of REACH.

Polymers are exempt because they are generally deemed to be harmless. Article 6(3), however, appears to require reacted monomers contained within imported polymers to be registered under REACH even though these monomers no longer exist as individual substances and do not present themselves either to humans or to the environment independently of the polymers into which they have been incorporated. The Claimants therefore contend that the requirement that reacted monomers be registered, while polymers are exempt, is irrational.

Additionally, the requirement that reacted monomers be registered imposes an excessive administrative and scientific burden on importers of polymers, negating any relief the polymer exemption would otherwise have provided.

In addition, the Claimants seek clarification of the wording in Article 6(3) relating to "supply chain" (e.g. whether this refers to any supply chain or to separate supply chains).

The claims made with regard to the provisions on preparations will focus on the difficulties faced by importers of preparations in obtaining information relating to individual components in the preparation, without which they will not be able to meet their obligations under REACH.

The Claimants, therefore, will request that the UK Court make a preliminary reference to the ECJ, in order to seek an interpretation of the "Polymer Rule" laid down in Article 6 (3) of REACH (including clarification in respect of the words "supply chain" in Article 6(3)) and, if the interpretation described above is confirmed, to declare this provision invalid. The Claimants will also seek a reference to the ECJ so that the relevant "preparations" provisions are declared invalid.

According to MLA's legal team: "REACH is a Community measure of the greatest importance not only to the chemical industry but also in the context of the protection of human health and the environment. The Regulation entered into force on 1 June 2007, but its various provisions will become applicable over an extended period between now and 2018. It is of the utmost importance for all stakeholders, including industry and regulators, to have clarity and legal certainty about this critical piece of Community legislation. If the REACH text relevant to these proceedings is interpreted as we fear it might, then the text ought to be declared invalid by the ECJ. Unless this is done, many successful companies that are today importing polymers and preparations into the EU risk having to cease their business activities in Europe, which in turn would have major downstream economic, competition and social consequences."

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