



**In the opinion of Advocate General Juliane Kokott, the Commission's decision refusing to review the authorisation of the plasticiser DEHP (bis(2-ethylhexyl) phthalate) should be annulled**

*The Commission should not have disregarded the endocrine-disrupting risks posed by DEHP*

DEHP (bis(2-ethylhexyl) phthalate) is a plasticiser which is added to PVC (polyvinyl chloride) plastics. Due to its reproductive-toxicity properties and the associated serious risks to human health, it was classified in 2011 as a substance of very high concern pursuant to the REACH Regulation,<sup>1</sup> the use of which requires an authorisation by the Commission.<sup>2</sup> DEHP was later also classified as a substance of very high concern due to its endocrine-disrupting properties, that is to say, properties influencing hormone balance, and the associated risks to human health and the environment. Thus far, however, the authorisation requirement has been based solely on its reproductive-toxicity properties.<sup>3</sup>

In 2016, the Commission granted authorisation to three recycling companies to use recycled soft PVC containing DEHP, inter alia, in order to produce PVC articles. DEHP does not appear to have a specific functional role for that use. It is merely contained in recycled PVC waste. It may nevertheless be of some benefit in the further processing of the recycle.

Taking into account the opinions of the Committees for Risk Assessment and for Socio-economic Analysis of the European Chemicals Agency (ECHA), the Commission did not regard it as possible to authorise the use of DEHP, as applied for by the companies, on the basis that its reproductive-toxicity risks were adequately controlled. That had not been demonstrated. Rather, the authorisation was granted on the basis that the socio-economic benefits outweighed those risks.

ClientEarth, an environmental protection organisation, subsequently requested the Commission to carry out a review of that authorisation pursuant to the Aarhus Regulation.<sup>4</sup>

The Commission rejected the request on the ground that it was unfounded. The action brought by ClientEarth against that decision before the General Court of the European Union was also unsuccessful.<sup>5</sup> ClientEarth is maintaining its action by lodging an appeal before the Court of Justice.

**In her Opinion delivered today, Advocate General Kokott proposes that the Court of Justice should set aside the judgment of the General Court and annul the Commission's negative review decision on the ground that the General Court and the Commission accepted that the authorisation of DEHP was based on an incomplete balancing exercise.**

<sup>1</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2006 L 396, p. 1).

<sup>2</sup> In 2011, due to its reproductive-toxicity properties within the meaning of REACH Regulation No 1907/2006, the Commission included DEHP in the list of substances of very high concern for which authorisation is required.

<sup>3</sup> As regards its endocrine-disrupting properties, DEHP has thus far been classified only as a 'candidate' for inclusion in the list of substances of very high concern for which authorisation is required.

<sup>4</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

<sup>5</sup> In its judgment of 4 April 2019, *ClientEarth v Commission* (T-108/17), the General Court dismissed the action.

**The balancing exercise involving socio-economic benefits, on the one hand, and the remaining risk to human health or the environment, on the other, should not have been restricted to the reproductive-toxicity properties of DEHP. Rather, the endocrine-disrupting properties already known at that time should also have been taken into account.**

The socio-economic benefits of a use depend not only on the advantages of a use, but also on its risks to the environment and health. Those risks are likewise socio-economic factors. If they result in damage to the environment or to health, they represent a burden on society and give rise to economic costs. The risks therefore diminish the socio-economic benefits and, accordingly, must be taken into account in the assessment as to whether the benefits outweigh the risk justifying the authorisation requirement. Furthermore, it is consistent with the precautionary principle that the relevant risks of a use to health and the environment should be taken fully into account.

**As regards the authorisation of DEHP as such, the Advocate General points out that, although it is vitiated by the same deficiency, it would not be directly affected by the annulment of the review decision.** However, in its decision on the request for review, the Commission should take into consideration the fact that the authorisation is based on an incomplete balancing exercise.

Further, in the view of the Advocate General, the General Court's findings regarding the admissibility of complaints as to the application for authorisation, regarding the review of the content of the application, and also regarding the inadmissibility of new arguments, are likewise vitiated by errors in law. However, they cannot, for their part, ultimately lead to the judgment under appeal being set aside.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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