

## Europe *EU*

# Appeals to the CJEU: new procedural rules introduced

The Court of Justice of the European Union (CJEU) recently introduced new rules on whether or not to allow appeals to proceed in cases that have already been considered twice – once by an independent board of appeal and once by the General Court. These amendments came into effect on 1 May 2019.

### Why change the existing rules?

The number of cases submitted to the CJEU has increased enormously in recent years. Statistics show that the Court dismisses many of these appeals for being “clearly unsubstantiated” or “obviously inadmissible”.<sup>7</sup>

To address this, on 9 April 2019, approval was granted for the introduction of a new filtering mechanism for appeals in special procedures. This followed negotiations between the CJEU, the European Commission, the European Parliament and the Council of the European Union (EU).

The aim of these new procedural rules is to make the work of the CJEU more efficient and to improve legal protection in the EU. The CJEU has now introduced a mechanism to decide whether or not to admit an appeal in cases that have already been considered twice – once by an independent board of appeal and once by the General Court. The Protocol on the Statute of the CJEU<sup>8</sup> and the Rules of Procedure of the CJEU<sup>9</sup> have been amended accordingly.<sup>10</sup>

The newly introduced filter mechanism enables the CJEU to decide whether or not to admit an appeal in such circumstances. Admittance will only be granted when the appeal raises an issue that has significance for the unity, consistency or development of EU law. The decision will be made by a chamber set up specifically for this purpose.

### Which procedures are affected?

Cases will only be subject to this additional procedural requirement where the appeal to the CJEU concerns decisions of the General Court relating to decisions of an independent board of appeal in the following offices/agencies:

- the European Chemicals Agency (“ECHA”) (Helsinki/Finland)
- the European Union Aviation Safety Agency (“EASA”) (Cologne/Germany)
- the Community Plant Variety Office (“CPVO”) (Angers/France) and
- the European Union Intellectual Property Office (“EUIPO”) (Alicante/Spain).

### Are there any significant changes for important proceedings?

Only specific procedures are concerned.<sup>11</sup> In particular, the competence and procedure relating to preliminary rulings according to Article 267 of the Treaty on the Functioning of the European Union (“TFEU”) will not change.<sup>12</sup>

### When will an appeal still be admissible?

An appellant will now have to attach to its appeal a request outlining why the appeal should be admitted.

Without this additional request, an appeal will be immediately declared inadmissible. If the CJEU considers that the request is admissible, it will rule on whether or not to allow the appeal to proceed.

<sup>7</sup> OJL 111, 25.4.2019, in particular reason 3 and 4 on page 1.

<sup>8</sup> In particular Art. 58a of the Statute of the CJEU.

<sup>9</sup> In particular Chapter 1A in Title V of the Rules of Procedure of the Court of Justice of 25 September 2012.

<sup>10</sup> Press Release No 53/19 of the Court of Justice of the European Union of 30 April 2019.

<sup>11</sup> New Art. 58a of the Statute of the Court of Justice of the European Union.

<sup>12</sup> OJL 111, 25.4.2019, reason 2 on page 1.

## What is the impact on specific cases?

These recent changes mean that gaining access to the CJEU could require enhanced effort. This is an important consequence. Admittance will only be granted when an appeal raises an issue of significance to the unity, consistency or development of EU law.<sup>13</sup>

## Understanding the procedural changes

To illustrate the impact of these changes, this is how an ECHA decision<sup>14</sup> could now be appealed:

### The situation

An appellant does not approve a decision of the ECHA. They appeal against it. In this situation, the General Court of the European Union deals with the appeal according to Article 56 of the Statute of the CJEU.

The task of the ECHA, as an EU authority, is to regulate the technical, scientific and administrative aspects of the registration, evaluation and authorisation of chemicals. In particular, it is responsible for ensuring the registration, evaluation, authorisation and restriction of chemical substances in a uniform procedure within the European Union.<sup>15</sup>

This means it is competent to interpret Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemical Agency.<sup>16</sup>

REACH was introduced as an integrated system for the control of chemicals, including their registration, evaluation, authorisation and, where appropriate, restrictions on their use. REACH lays down procedures for collecting and assessing information on the properties and harmful effects of substances.<sup>17</sup>

### a. Previously...

Under the old law,<sup>18</sup> it was possible for the appellants to lodge an appeal directly with the CJEU for annulment of the decision of the ECHA by the General Court of the European Union,<sup>19</sup> without a limitation on the approval.

In this specific case, however, the CJEU decided to dismiss the appeal. It upheld the legal opinions of the ECHA and of the General Court of the European Union because it shared their view that acrylamide is a substance of very high concern under Art 57 REACH and that intermediate products should also be included in the definition of “intermediate” provided by Art 3 No 15 REACH. The CJEU therefore confirmed that the inclusion of acrylamide in the list of substances of very high concern in ANNEX XIV REACH was correctly decided by ECHA.

### b. ...and under the new procedural rules

This procedure has changed. The fact that an appeal was brought against a decision of the General Court of the European Union concerning a decision of an independent board of appeal (the ECHA’s decision) would now mean that the appeal could not proceed unless the CJEU first decided that it should be allowed to do so.<sup>20</sup>

The appellants would first have to file a special application for an appeal to the CJEU, according to Art 58a of the Statute of the Court of Justice of the European Union.

A chamber at the CJEU set up specifically for applications like these would examine whether the formal requirements had been fulfilled.<sup>21</sup> This means that one of the three criteria (the appeal raises an issue of significance to the unity, consistency or development of EU law) would have to be proved for admission to be accepted.<sup>22</sup>

<sup>13</sup> OJL 111, 25.4.2019, page 3.

<sup>14</sup> Decision of 22 Dec. 2009.

<sup>15</sup> [https://europa.eu/european-union/about-eu/agencies/echa\\_en](https://europa.eu/european-union/about-eu/agencies/echa_en).

<sup>16</sup> Amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94, as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (“REACH”).

<sup>17</sup> <https://echa.europa.eu/en/regulations/reach/understanding-reach>

<sup>18</sup> Cf. Art. 58 of the Statute of the Court of Justice of the European Union.

<sup>19</sup> Judgment of 25 Sept 2015, PPG and SNF/ECHA - T-268/10 RENV.

<sup>20</sup> Cf. Art. 58a of the Statute of the Court of Justice of the European Union.

<sup>21</sup> Press Release No 53/19 of the Court of Justice of the European Union of 30 April 2019.

<sup>22</sup> OJL 111, 25.4.2019, page 3.

If the chamber concludes that none of the criteria were present, the General Court's decision would become final and binding on the appellants.

It's important to note that the scope of the new procedural rules remains limited when it comes to ECHA decisions because the procedures laid down in REACH apply only to specific substances. Medicines, in particular, are completely exempted from REACH requirements (Art 2 REACH).

### Comment

Because access to the CJEU is now no longer automatically granted in all cases, achieving access may well require extra effort.

To enhance the chances of admissibility, companies should take these specific procedural requirements into account from the start of any litigation.



**Dr Matthias M Schweiger**  
Partner, Munich  
T +49 89 290 12 0  
matthias.schweiger@hoganlovells.com



**Nicole Böck**  
Senior Associate, Munich  
T +49 89 290 12 0  
nicole.boeck@hoganlovells.com