Ευρωπαίος Διαμεσολαβητής

Απόφαση στην υπόθεση 1944/2020/TE σχετικά με τον τρόπο με τον οποίο η Ευρωπαϊκή Επιτροπή και ο Ευρωπαϊκός Οργανισμός Χημικών Προϊόντων δημιούργησαν τη βάση δεδομένων της ΕΕ για πληροφορίες σχετικά με ουσίες που προκαλούν ανησυχία και περιέχονται σε προϊόντα (βάση δεδομένων SCIP)

Απόφαση
Υπόθεση 1944/2020/TE - **Εκκίνηση έρευνας στις** 03/12/2020 - **Απόφαση στις** 03/12/2020 - **Εμπλεκόμενο θεσμικό όργανο** Ευρωπαϊκός Οργανισμός Χημικών Προϊόντων (Μη διαπίστωση κακοδιοίκησης) |

Η υπόθεση αφορούσε τη δημιουργία μιας νέας βάσης δεδομένων της ΕΕ για πληροφορίες σχετικά με ουσίες που προκαλούν ανησυχία και περιέχονται σε προϊόντα (βάση δεδομένων SCIP) βάσει της νομοθεσίας της ΕΕ περί αποβλήτων. Ο καταγγέλλων, μια ευρωπαϊκή εμπορική ένωση, θεώρησε ότι το σύνολο των υποχρεωτικών πληροφοριών που πρέπει να παρέχονται από προμηθευτές προϊόντων στον Ευρωπαϊκό Οργανισμό Χημικών Προϊόντων (ECHA) υπερβαίνει αυτό που απαιτείται από τη νομοθεσία της ΕΕ για τις χημικές ουσίες.

Η καταγγελία αφορά την ερμηνεία διαφόρων διατάξεων της νομοθεσίας της ΕΕ για τα απόβλητα και τις χημικές ουσίες. Κατά την άποψη της Ευρωπαίας Διαμεσολαβήτριας, η Επιτροπή και ο ECHA έχουν υιοθετήσει μια εύλογη ερμηνεία των σχετικών διατάξεων. Μολονότι η ερμηνεία του καταγγέλλοντος είναι διαφορετική, αυτό δεν αρκεί για να υποδηλώσει ότι η ερμηνεία της Επιτροπής και του ECHA είναι εσφαλμένη. Εναπόκειται στο Δικαστήριο να καθορίσει την ορθή ερμηνεία σε περίπτωση διαφοράς. Συνεπώς, η Ευρωπαία Διαμεσολαβήτρια έκρινε ότι δεν συνέτρεχε περίπτωση κακοδιοίκησης και περάτωσε την εξέταση της υπόθεσης.

The complaint to the European Commission and the European Chemicals Agency

1. In 2018, the European Parliament and the Council amended [1] the EU Waste Framework Directive [2] so as to require suppliers of articles to provide information on substances of concern to the European Chemicals Agency (ECHA), as from 5 January 2021. [3] The amended

EU Waste Framework Directive foresees that ECHA collates this information in the EU Database for Information on Substances of Concern In Articles (SCIP database) and makes it accessible to waste treatment operators, as well as to consumers upon request. [4]

2. The law amending the Waste Framework Directive further explains that, in order to develop non-toxic material cycles, it is must be ensured that " *sufficient information about the presence of hazardous substances and especially substances of very high concern is communicated throughout the whole life cycle of products and materials".* To this end, *"it is necessary to improve the coherence among the law of the Union on waste, on chemicals and on products and to provide a role for the European Chemicals Agency to ensure that the information about the presence of substances of very high concern is available throughout the whole life cycle of products and materials, including at the waste stage* ". [5]

3. The amended Waste Framework Directive specifies that the requirement imposed on suppliers of articles concerns information pursuant to Article 33(1) of the EU chemicals legislation (REACH). [6] The relevant article in REACH requires suppliers of articles, which contain Substances of Very High Concern (SVHC), to provide recipients of such articles with " *sufficient information, available to the supplier, to allow safe use of the article including, as a minimum, the name of that substance* ".

4. Between January 2018 and July 2020, the complainant had various exchanges and meetings with ECHA and/or the Commission and participated in workshops organised by the institutions on the future SCIP database.

5. On 13 May 2019, the complainant and other trade associations wrote to ECHA, expressing their concerns about the future SCIP database. In particular, they insisted that the scope of the new database must be in line with Article 33(1) of REACH and only gather data in the form of " *copy-pastes* " coming from suppliers' existing notifications required under Article 33(1). They furthermore noted that Article 33(1) of REACH only addresses the immediate " *recipient of an article* " and not consumers and actors further down the supply chain, including waste treatment operators.

6. In September 2019, ECHA published a document entitled 'Detailed information requirements for the SCIP database'. [7]

7. On 16 January 2020, the complainant and other trade associations wrote to the Commission, arguing that the scope of the future SCIP database must be strictly in line with Article 33(1) of REACH and that the proposed database would fall short of meeting that requirement. In their view, ECHA was developing a database with information requirements going beyond the scope of Article 33(1) of REACH, without having any authority to do so.

The institutions' response to the complainant

8. On 17 July 2020, the Commission replied to the complainant's letter of 16 January, arguing

that the interpretation of the obligation to submit information, as provided for in Article 9(1)(i) of the amended Waste Framework Directive, must take into account not only the wording of the provision in question but also the objective of that provision and the context in which it occurs. In this regard, the Commission noted that the objective and context of Articles 9(1)(i) and 9(2) of the Waste Framework Directive are different from those of Article 33(1) of REACH. Article 33(1) of REACH aims to enable supply chain actors to manage the risks arising from the use of articles containing substances of concern. In order to give a useful effect to Article 9(2) of the Waste Framework Directive, the information given to waste operators via the database must be " *useful information* " for the treatment of the article once it becomes waste.

9. In October 2020, ECHA published its finalised guidance on 'Requirements for SCIP notifications'. [8]

10. Dissatisfied with the Commission's reply and ECHA's finalised guidance on 'Requirements for SCIP notifications', the complainant turned to the Ombudsman on 6 November 2020.

The European Ombudsman's findings

11. The complaint concerns the interpretation of Articles 9(1)(i) and (2) of the Waste Framework Directive, Recital 38 of the Directive amending the Waste Framework Directive, as well as Article 33(1) of REACH. The complainant interprets these provisions differently than the Commission and ECHA. While ECHA and the Commission consider that certain information in the SCIP database is necessary in order to make it useful for waste treatment operators (and thus to give full effect to Article 9(2) of the Waste Framework Directive), the complainant argues that such an interpretation is unlawful, as it would go beyond what is legally required by Article 33(1) of REACH.

12. The Ombudsman notes that it was the intention of the EU co-legislators, the Council and the European Parliament, to amend the EU Waste Framework Directive so as to set up a new database that contains information on substances of concern in articles, which must be made accessible to waste treatment operators. It fell to the Commission and to ECHA to give effect to this amendment and to set up the database in question. The Commission and ECHA have adopted a reasonable interpretation of the relevant provisions in the EU Waste Framework Directive and REACH. While the complainant's interpretation is different, this is not sufficient to suggest that the interpretation of the Commission and ECHA is wrong. It is for a Court to determine the correct interpretation in the event of a dispute.

13. While the Ombudsman appreciates the impact this interpretation has on the members of the complainant association, this is not sufficient to find maladministration. On this basis, the Ombudsman closes the case.

Strasbourg, 03/12/2020

[1] Directive (EU) 2018/851 amending Directive 2008/98/EC on waste, available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018L0851 [Σύνδεσμος]

[2] Directive 2008/98/EC on waste (EU Waste Framework Directive), available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0098-20180705 [Σύνδεσμος]

[3] Article 9(1)(i) of the EU Waste Framework Directive.

[4] Article 9(2) of the EU Waste Framework Directive.

[5] Recital 38 to the Directive amending the EU Waste Framework Directive.

[6] Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1907 [Σύνδεσμος]

[7] ECHA, 'Detailed information requirements for the SCIP database', September 2019, available here: https://echa.europa.eu/documents/10162/28213971/scip_information_requirements_en.pdf/9715c4b1-d5fb-b2de-bf [Σύνδεσμος]

[8] ECHA, 'Requirements for SCIP notifications', October 2020, available here: https://echa.europa.eu/documents/10162/28213971/Information_requirements_for_scip_notifications_en.pdf/db2cf8 [Σύνδεσμος]