ORDER OF THE COURT (Eighth Chamber)

4 September 2014 (*)

(Appeals — Article 181 of the Rules of Procedure of the Court — Regulation (EC) No 1907/2006 (REACH Regulation) — Article 59 and Annex XIII — Identification of anthracene oil, anthracene low as a substance of very high concern, to be made subject to the authorisation procedure — Equal treatment)

In Case C‑289/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 May 2013,

Cindu Chemicals BV, established in Uithoorn (Netherlands),

Deza a.s., established in Valašske Meziříčí (Czech Republic),

Koppers Denmark A/S, established in Nyborg (Denmark),

Koppers UK Ltd, established in Scunthorpe (United Kingdom),

represented by K. Van Maldegem, avocat,

applicants,

the other parties to the proceedings being:

European Chemicals Agency (ECHA), represented by M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents, and by J. Stuyck and A.-M. Vandromme, advocaten,

defendant at first instance,

European Commission, represented by E. Manhaeve and P. Oliver, acting as Agents, with an address for service in Luxembourg,

intervener at first instance,

THE COURT (Eighth Chamber),

composed of C.G. Fernlund (Rapporteur), President of the Chamber, A. Ó Caoimh and E. Jarašiūnas, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give its decision by reasoned order, pursuant to Article 181 of the Rules of Procedure of the Court,

makes the following

Order

1 By their appeal, Cindu Chemicals BV, Deza as, Koppers Denmark A/S and Koppers UK Ltd seek the annulment of the judgment of the General Court of the European Union in *Cindu Chemicals and Others v ECHA* (T‑95/10, EU:T:2013:108; 'the judgment under appeal') by which that court dismissed their application for the partial annulment of Decision ED/68/2009 of the European Chemicals Agency (ECHA), published on 13 January 2010, identifying anthracene oil, anthracene low as a substance to be added to the candidate list pursuant to Article 59 of Regulation (EC) No 1907/2006 (REACH) ('the contested decision').

Background to the dispute and the contested decision

2 The appellants are suppliers of anthracene oil, anthracene low ('anthracene oil (low)') (EC No 292-604-8) in the European Union.

3 According to paragraph 2 of the judgment under appeal, anthracene oil (low) 'is the oil remaining after the removal, by a crystallisation process, of an anthracene‑rich solid (anthracene paste) from anthracene oil, composed primarily of two, three and four membered aromatic compounds. This substance is among the substances of unknown or variable composition, complex reaction products or biological materials ("UVCB substances"), because it cannot be fully identified by its chemical composition. Anthracene oil (low) is used mainly as an intermediate for the production of carbon black, a pigment and a reinforcing filler in rubber products, especially tyres. It is also used as an intermediate for the production of pure anthracene.'

4 On 28 August 2009, the Federal Republic of Germany submitted to the ECHA a dossier on the identification of anthracene oil (low), because of its persistent, bioaccumulative and toxic properties ('PBT properties') and its very persistent and very bioaccumulative properties ('vPvB properties'), as a substance meeting the criteria set out in Article 57(d) and (e) of

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), establishing a European Chemicals Agency, 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 (OJ 2006 L 396, p. 1 and corrigendum OJ 2007 L 136, p. 3), subsequently amended, inter alia, by Regulation No 1272/2008 of the European Parliament and of the Council of 16 December 2008 (OJ 2008 L 353, p. 1; 'the REACH Regulation').

5 During the proceedings the ECHA stated, in that regard, that anthracene oil (low) was classified as a carcinogenic substance and therefore met the criteria set out in Article 57(a) of the REACH Regulation.

6 On 4 December 2009 the Member State Committee referred to in Article 76(1)(e) of the REACH Regulation agreed on the identification of anthracene oil (low) as a substance of very high concern which met the criteria set out in Article 57(a), (b), (d) and (e) of that regulation.

7 By the contested decision, the ECHA identified anthracene oil (low) as a substance meeting the criteria set out in Article 57(a), (b), (d) and (e) of the REACH Regulation, with a view to its eventual inclusion in Annex XIV to that regulation.

The action before the General Court and the judgment under appeal

8 By application lodged at the Registry of the General Court on 17 February 2010, the appellants brought an action for the annulment of the contested decision.

9 In support of their action, the appellants put forward five pleas in law.

10 By their first plea, the appellants submitted that, in its dossier on anthracene oil (low), the Federal Republic of Germany, in breach of Article 59(3) of and point II 2 of Annex XV to the REACH Regulation, failed to give information on alternative substances. They maintained that, if such information had been included in the dossier, the contested decision might not have been adopted given that the alternatives have PBT constituents.

11 The General Court rejected that first plea on the grounds set out in paragraphs 77 to 86 of the judgment under appeal

12 By their second plea, the appellants complained that the ECHA amended the proposal of the Federal Republic of Germany without having any authority to do so. They alleged that the dossier prepared by that Member State contained only the proposal to identify anthracene oil (low) as a substance fulfilling the criteria set out in Article 57(d) and (e) of the REACH Regulation, that is to say, as a substance with PBT and vPvB properties. However the contested decision identified that substance as a substance of very high concern on the basis also of its carcinogenic and mutagenic properties.

13 The General Court rejected that second plea on the grounds set out in paragraph 88 to 96 of the judgment under appeal.

14 By their third plea the appellants submitted that the ECHA had breached the principle of equal treatment. It had identified anthracene oil (low) as a substance of very high concern without objective justification and despite the fact that there were other comparable UVCB substances containing anthracene on the market.

15 The General Court rejected that third plea on the grounds set out in paragraphs 98 to 102 of the judgment under appeal.

16 By their fourth plea the appellants claimed that the ECHA made an error of assessment in identifying anthracene oil (low) as a substance with PBT or vPvB properties on the basis of an assessment of some of its constituents present in a concentration of over 0.1%. They submitted, first, that the REACH Regulation did not make provision for such a possibility and, second, that those constituents had not been formally identified by the ECHA as having such properties.

17 The General Court rejected that fourth plea on the grounds set out in paragraphs 105 to 137 of the judgment under appeal.

18 By their fifth plea the appellants alleged that the contested decision was contrary to the principle of proportionality. First, that decision was not suitable for the attainment of the objective of the REACH Regulation, which is to ensure a high level of protection of human health and the environment. Secondly, that objective could have been achieved by less onerous measures.

19 The General Court rejected that fifth plea on the grounds set out in paragraphs 139 to 158 of the judgment under appeal.

Forms of order sought

20 The appellants claim that the Court should:

– as a principal claim, set aside the judgment under appeal and annul the contested decision;

– in the alternative, refer the case back to the General Court; and

– order the ECHA to pay the costs.

21 The ECHA claims that the Court should dismiss the appeal and order the appellants to pay the costs.

The appeal

22 Under Article 181 of its Rules of Procedure, where the appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal in whole or in part.

23 In support of their appeal, the appellants raise, in essence, four grounds of appeal, which it is appropriate to reformulate and examine in turn as follows.

The first ground of appeal, relating to the scope of judicial review

24 By their first ground of appeal, the appellants criticise the General Court for having, in paragraph 105 of the judgment under appeal, limited the scope of its review on the sole ground that the action concerned ‘highly complex scientific and technical facts’. The General Court thus erred in law because the action concerned the application of clear provisions of the REACH Regulation. The General Court could, they submit, draw such conclusions when dealing with matters concerning the REACH Regulation, which raises a question of access to justice.

25 In this regard, it should be noted that, as the General Court has observed as a preliminary point in paragraph 105 of the judgment under appeal, where European Union authorities have a broad discretion, in particular as to the assessment of highly complex scientific and technical facts in order to determine the nature and scope of the measures which they adopt, review by the European Union Courts must be limited to verifying whether there has been a manifest error of appraisal or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion. In such a context, the European Union Courts cannot substitute their assessment of scientific and technical facts for that of the institutions on which alone the FEU Treaty has conferred that task (Enviro Tech (Europe), C‑425/08, EU:C:2009:635, paragraph 47, and Etimine, C‑15/10, EU:C:2011:504, paragraph 60).

26 Accordingly, the General Court acted correctly in law in stating, in paragraph 106 of the judgment under appeal, on the basis of paragraphs 33 and 34 of the judgment in Afton Chemical, C‑343/09, EU:C:2010:419, that ‘the broad discretion of the authorities of the European Union, which implies limited judicial review of its exercise, applies not only to the nature and scope of the measures to be taken but also, to some extent, to the finding of the basic facts. However, even though such judicial review is of limited scope, it requires that the EU institutions which have adopted the act in question must be able to show before the Union judicature that in adopting the act they actually exercised their discretion, which presupposes the taking into consideration of all the relevant factors and circumstances of the situation the act was intended to regulate’.

27 In so ruling, in accordance with the settled case-law of the Court of Justice, the General Court clearly did not breach the appellants’ right to access to justice, as the appellants were patently in a position to challenge the contested decision for the purpose of defending their interests.

28 The first ground of appeal is thus manifestly unfounded.

The second ground of appeal, alleging misinterpretation of the REACH Regulation

29 By their second ground of appeal, the appellants submit that the General Court committed a variety of errors in its interpretation of the REACH Regulation when it ruled on the identification of anthracene oil (low) and its constituents. There are three parts to this ground. By the first part, the appellants challenge, primarily, the method by which anthracene oil (low) is identified on the basis of the properties of certain of its constituents. By the second, they argue, in the alternative, that each of those constituents ought to have been individually identified. By the third, they criticise the General Court for not ruling that the dossier prepared pursuant to Annex XV to the REACH Regulation must include information on alternative substances.

The first part of the second ground of appeal, relating to the identification of anthracene oil (low) on the basis of the properties of certain of its constituents

30 By the first part of the second ground, the appellants criticise the grounds on which, in paragraphs 107 to 129 of the judgment under appeal, the General Court rejected their arguments relating to the approach followed by the ECHA in identifying anthracene oil (low) as having PBT and vPvB properties. The appellants allege that the General Court interpreted the REACH Regulation as not precluding the ECHA from being able to identify a substance as having PBT and vPvB properties on the basis of the properties of constituents having a rate of concentration in excess of 0.1%.

31 First, the appellants argue that that interpretation, in the absence of explicit provisions, goes beyond the wording of the REACH Regulation and Annex XIII thereto, in disregard of the principle of legal certainty. In particular, the fact that Annex XIII does not lay down a maximum limit of 0.1% indicates clearly, in their view, that the legislature did not wish to introduce such a limit in the substance identification process. That interpretation is corroborated by the fact that, during the work leading to the adoption of Commission Regulation (EU) No 253/2011 of 15 March 2011 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XIII (OJ 2011 L 69, p. 7), the legislature did not adopt the proposed amendment to Annex XIII consisting in the application of a single concentration threshold of 0.1%.

32 Secondly, the appellants submit that the General Court based its reasoning on false analogies or comparisons. Thus, they disagree with the statement, at paragraphs 117 and 127 of the judgment under appeal, that ‘the classification of a substance on the basis of the properties of its constituents appears comparable to the classification of a preparation on the basis of the properties of its substances’. The procedure for the classification of mixtures introduced by Regulation No 1272/2008 is not, they argue, comparable to the procedure for identifying a PBT or vPvB substance, as is clear from recital 75 of the preamble to Regulation No 1272/2008.

33 Even assuming that the principles of Regulation No 1272/2008 are transferable to the situation in question, the appellants submit that those principles favour the method of evaluating the properties of a mixture rather than those of its constituents. In particular, resorting to a maximum limit of 0.1% for the classification of a mixture is possible only in the absence of information on the mixture itself. Consequently, the General Court’s reasoning is erroneous in so far as it would lead to systematic application of the limit of 0.1% without it being possible to submit scientific studies, even though Regulation No 1272/2008 does not provide for a single concentration threshold, but rather for different limits between 0.1% and 1%.

34 Thirdly, the appellants dispute the assessment made by the General Court in paragraph 114 of the judgment under appeal, according to which UVCB substances are multiple constituent substances. The REACH Regulation, they submit, makes a distinction between those two types of substances. The appellants refer in this regard to 'ECHA Guidance for identification and naming of substances under REACH and [Regulation No 1272/2008]'. Accordingly, the rules of classification for a preparation cannot be applied by analogy.

35 Fourthly, the appellants challenge the validity of the ground on the basis of which the General Court, in paragraph 119 of the judgment under appeal, held that the identification of a UVCB substance based on the properties of its constituents was justified by the fact that 'once in the environment the individual constituents of such a substance will behave as independent substances'. The General Court thus relied on the risks arising from the use of a substance and not from its placement on the market. In so ruling, the General Court conflated the rules relating to the classification of a substance and those related to the risks posed by its use following its placement on the market.

36 Fifthly, the appellants submit that the General Court, in paragraph 117 of the judgment under appeal, misconstrued the REACH Regulation in stating that Article 57 of that regulation places substances having PBT and vPvB properties at the same level as substances which are carcinogenic, mutagenic or toxic to reproduction. Regulation No 1272/2008 sets out detailed rules for the classification of substances which are carcinogenic, mutagenic or toxic to reproduction, but contains no provisions for PBT and vPvB substances, which are governed exclusively by Annex XIII to the REACH Regulation.

37 It should be noted that, by the first part of the second ground, the appellants raise the question of whether the General Court erred in law in holding that the REACH Regulation does not preclude the ECHA from being able, at the conclusion of the procedure provided for in Article 59 of that regulation, to identify a substance as having PBT and vPvB properties on the basis of the examination of the intrinsic properties of its constituents.

38 In this regard, it should be noted that Article 59(2) and (3) of the REACH Regulation, in conjunction with Annex XV to that regulation, provides for the preparation of a dossier for a substance which meets the identification criteria as having PBT or vPvB properties, criteria which are set out in Annex XIII to that regulation. Accordingly, as was correctly pointed out by the General Court in paragraph 111 of the judgment under appeal, that substance must meet the criteria which allow it to be regarded as having PBT or vPvB properties.

39 The notion of a 'substance' is defined in Article 3(1) of the REACH Regulation as 'a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving

from the process used'. Thus defined, the notion of a 'substance' covers not only chemical elements with a unique molecular structure, but also those composed of several constituents, which are, as rightly noted by the General Court in paragraph 112 of the judgment under appeal, an integral part of that substance.

40 Admittedly, it is true that, in the version applicable on the date of adoption of the contested decision, Annex XIII to the REACH Regulation did not expressly provide that a substance may be identified by taking into account the PBT or vPvB properties of its relevant constituents. Contrary to the appellants' submissions, that does not, however, mean that Annex XIII to the REACH Regulation precluded any account from being taken of the PBT or vPvB properties of the relevant constituents of a substance.

41 As was correctly noted by the General Court in paragraph 112 of the judgment under appeal, such an interpretation fails to take account of the objective of the REACH Regulation, set out in Article 1(1) thereof, which is to ensure a high level of protection of human health and the environment, including the promotion of alternative methods for assessment of hazards of substances, as well as the free circulation of substances on the internal market while enhancing competitiveness and innovation. Those considerations, which are related to the purpose served by the REACH Regulation, must be observed all the more strictly when it comes to identifying UVCB substances. Annex XIII to the REACH Regulation does not provide for specific rules relating to the identification of the PBT or vPvB properties of those substances the composition of which is unknown or variable and which contain different constituents.

42 The General Court therefore acted correctly in law in holding, in paragraph 112 of the judgment under appeal, citing paragraph 17 of the judgment in Caldana, 187/84, EU:C:1985:374, that '[a]lthough the wording of Annex XIII to [the REACH Regulation], in the version applicable to this case, does not expressly indicate that the identification of substances with PBT and vPvB properties must also take account of the PBT and vPvB properties of the relevant constituents of a substance, it does not preclude such an approach. However, it cannot be held that, merely because a constituent of a substance has a certain number of properties, the substance itself also has them, but, rather, the proportion in which that constituent is present and the chemical effects of such presence must be considered'.

43 Consequently, the appellants' arguments — set out in paragraphs 32 and 33 of the present order and designed to show that the General Court erred in law in holding, in paragraph 127 of the judgment under appeal, that 'it cannot be concluded that the contested decision is vitiated by a manifest error in that the 0.1% threshold was applied as a factor entailing the identification of the substance at issue on the basis of its constituents' — must be rejected as being manifestly unfounded.

44 In addition, all of the arguments set out in paragraphs 32 to 34 and 36 of the present order, according to which the General Court's reasoning is based on a false analogy with Regulation No 1272/2008 or on a false interpretation of that regulation, are directed against grounds which, since they are intended to support the interpretation of Annex XIII to the REACH Regulation set out in paragraph 112 of the judgment under appeal, are included merely for the sake of completeness. As those arguments cannot invalidate the judgment under appeal, they are ineffective.

45 Finally, it is clear from paragraphs 36 to 38 of the statement of appeal that the argument set out in paragraph 35 of the present order is directed against the ground set out in paragraph 119 of the judgment under appeal. However, that ground contains a summary of the arguments put forward by the ECHA, not an assessment by the General Court. Consequently, that argument must be rejected.

46 It follows from the foregoing that the first part of the second ground of appeal must be rejected as being manifestly unfounded.

The second part of the second ground of appeal, relating to the identification of the constituents of anthracene oil (low) as having PBT or vPvB properties

47 By the second part of the second ground, the appellants criticise the General Court for having held, in paragraph 132 of the judgment under appeal, that prior identification of the relevant constituents of anthracene oil (low) would have been of no added value compared with the methodology followed in this case. They argue that Article 57 of and Annex XIII to the REACH Regulation require an individual assessment of each substance. Among the relevant substances constituting anthracene oil (low), anthracene alone was subject to such an assessment. However, an individual and thorough evaluation of each of those constituents could have led to an outcome other than the identification of anthracene oil (low), while allowing interested parties to be consulted. Therefore, they submit, the General Court erred in stating that individual identification of those constituents would not have brought any added value.

48 By that part of the second ground, the appellants question, in essence, whether Article 57 of and Annex XIII to the REACH Regulation require, where the identification of a UVCB substance is based on the examination of the intrinsic properties of certain of its constituents, that each of those constituents be the subject of an identification procedure in accordance with Article 59 of the REACH Regulation.

49 As correctly noted by the General Court in paragraph 132 of the judgment under appeal, Articles 57(d) and (e) and 59 of the REACH Regulation require, for the purposes of

identifying a substance, that it should meet the criteria set out in Annex XIII to that regulation. No provision of the REACH Regulation requires, in the case of substances composed of multiple constituents, that each of its constituents should be subject, individually, to an identification procedure under Article 59 of that regulation. Consequently, the second part of the second ground has no legal basis. It must for that reason be rejected.

50 By the third part of their second ground of appeal the appellants criticise the assessment of the General Court, in paragraph 85 of the judgment under appeal, that information on alternative substances is not relevant for the identification of a substance as a substance of very high concern under Article 59 of the REACH Regulation. They criticise the General Court for concluding, in paragraph 79 of the judgment under appeal, that a Member State need give the information on alternative substances in the dossier prepared pursuant to Annex XV to that regulation only if it is available to it. They take the view that that reasoning is inconsistent and mistaken.

51 However, it must be observed that the General Court acted correctly in law in pointing out, in paragraph 79 of the judgment under appeal, that 'a Member State may only give the information which is available to it'. In that regard, the General Court ruled as follows in paragraph 80 of the judgment:

'In any event, the letter to the competent German authorities of 17 July 2009 from the Coal Chemicals Sector Group, of which the applicants are members, did not refer to any alternative substances. Asking the German authorities to adopt "a more balanced approach not penalizing a single industry sector", the group pointed out that "it is well known that many streams of petroleum conversion contain anthracene as well". That letter thus makes reference to substances which, according to the group, present a comparable level of danger to that of anthracene oil (low) and not to substances which can be used as alternatives because they are capable of being used instead of anthracene oil (low) to perform the same function. Finally, it must be observed that, in the light of Article 60(5) of [the REACH Regulation], point II 2 of Annex XV to the regulation must be interpreted as referring to appropriate alternative substances, which, because of their anthracene content, petroleum-based preparations are not.'

52 In so ruling, on grounds of law and of fact which were not contested by the appellants in their appeal, the General Court justified in law its decision to hold, in paragraph 81 of the judgment under appeal, that the procedural requirements set out in Article 59(3) of the REACH Regulation were respected.

53 It follows that the arguments relied on by the appellants in this third part of the second ground of appeal to criticise the grounds set out in paragraphs 79 and 85 of the judgment under appeal are directed against grounds included merely for the sake of completeness

which, as such, cannot invalidate the judgment. Those arguments must, therefore be rejected as ineffective.

54 It follows that the second ground of appeal must be rejected as being manifestly unfounded.

The third ground of appeal, alleging failure to adjudicate and distortion of the pleadings at first instance

55 By their third ground of appeal, the appellants submit that the General Court did not respond to the arguments set out in paragraph 37 of their reply, by which they argued that the amendments made, following the publication of the contested decision, to Annex XIII to the REACH Regulation by Regulation No 253/2011 do not provide for a threshold of 0.1%. They take the view that those amendments rest on an approach based on the 'weight of evidence' or on an assessment based on expert judgment. That approach should, they submit, be followed in relation to PBT or vPvB substances in order for it to be possible to demonstrate that the classification is not warranted.

56 However, it should be noted that that argument is based on Regulation No 253/2011, which was not in force on the date of adoption of the contested decision. In interpreting Annex XIII to the REACH Regulation in its version applicable on that date, the General Court therefore did not err in law.

57 In addition, the appellants challenge the finding in paragraphs 124 and 127 of the judgment under appeal that they did not challenge 'the application of the 0.1% threshold in general'. They point out that they made it clear that, in order to be valid, such a threshold had to be expressly provided for. The General Court, they submit, also failed to respond to the arguments set out in paragraph 115 of the application concerning the evaluation and individual identification of each of the relevant constituents of anthracene oil (low).

58 That line of argument cannot, however, in any way succeed, since it relates to arguments which were relied on in the context of the second ground of appeal, which has been rejected in its entirety, as is apparent from paragraph 54 of the present order.

59 The third ground of appeal must therefore be rejected as being manifestly unfounded.

The fourth ground of appeal, alleging infringement of the principle of equal treatment

60 By their fourth ground of appeal, the appellants submit that the General Court, in paragraphs 97 to 102 of the judgment under appeal, erred in law in holding that, on the one hand, the ECHA had not infringed the principle of equal treatment on the ground that the Commission had complied with the procedure laid down in Article 59 of the REACH Regulation and, on the other, the ECHA has no power in the choice of substance to be identified. They submit that the fact that the Commission has a wide discretion to choose the substance to be identified as a substance of very high concern does not mean, however, that that institution can create, in relation to other similar substances, a situation of discrimination which is not objectively justified. The General Court, they argue, therefore misinterpreted the principle of equal treatment and failed to examine whether there was an objectively justified difference in treatment.

61 However, contrary to the appellants' submissions, it is clear from paragraphs 98 to 101 of the judgment under appeal that the General Court conducted a detailed analysis of their line of argument alleging infringement of the principle of equal treatment. In order to address the third plea in law in the action, the General Court rightly held that the ECHA has no power in relation to the choice of substance to be identified; that prerogative belongs exclusively to the Commission and the Member States pursuant to Article 59 of the REACH Regulation. From this the General Court inferred that, as the appellants had failed to challenge the legality of the procedure referred to in Article 59 of the REACH Regulation, the third plea in law of the action had to be rejected.

62 Furthermore, it should be noted that, as part of the third plea of their action, the appellants alleged that the ECHA had infringed the principle of equal treatment by identifying anthracene oil (low) as a substance of very high concern rather than other UVCB substances composed of constituents containing anthracene and other polycyclic aromatic hydrocarbons. However, in the context of their fourth ground, the appellants rely, in support of their appeal, on a breach of equal treatment attributable to the Commission, which is not a party to the dispute. This therefore constitutes a new plea in law, which is manifestly inadmissible at the appeal stage. Consequently, the fourth ground of appeal must be rejected.

63 In the light of all the foregoing considerations, it must be held that, as none of the grounds raised by the appellants in support of their appeal can be upheld, that appeal must be dismissed as being in part manifestly inadmissible and in part manifestly unfounded.

Costs

64 In accordance with Article 184(2) of its Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those Rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful

party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the ECHA and the Commission have applied for costs and the appellants have been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Eighth Chamber) hereby orders:

1. Dismisses the appeal.

2. Orders Cindu Chemicals BV, Deza a.s., Koppers Denmark A/S and Koppers UK Ltd to pay the costs.

[Signatures]

* Language of the case: English.