



## PRESS RELEASE No 99/25

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Judgment of the Court in Joined Cases C-71/23 P and C-82/23 P | France v CWS Powder Coatings and Others

### The Court of Justice upholds the annulment of the classification of titanium dioxide in certain powder forms as a carcinogenic substance

Titanium dioxide is used, inter alia, in the form of a white pigment, in various products, including paints, medicinal products, foodstuffs and toys.

In 2016, the Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (National Agency for Food, Environmental and Occupational Health and Safety (ANSES), France) submitted to the European Chemicals Agency (ECHA) a proposal for classification of titanium dioxide as a carcinogen by inhalation. <sup>1</sup> The following year, the ECHA Committee for Risk Assessment (RAC) adopted an opinion stating that the classification of that substance was justified. <sup>2</sup>

On the basis of that opinion, in 2019, the European Commission adopted a regulation, <sup>3</sup> proceeding with the classification and labelling of titanium dioxide. <sup>4</sup> More specifically, according to the Commission, that substance was suspected of being carcinogenic to humans, by inhalation, in powder form containing 1% or more of particles of a diameter equal to or below 10 µm.

Various manufacturers, importers, downstream users and suppliers of titanium dioxide challenged that classification and labelling before the General Court of the European Union.

By judgment of 23 November 2022, <sup>5</sup> the General Court annulled the contested classification and labelling.

It found, in particular, <sup>6</sup> that the Commission had committed a manifest error in its assessment of the acceptability and reliability of a scientific study on which the classification had been based.

France and the Commission appealed to the Court of Justice against that judgment of the General Court.

By today's judgment, **the Court of Justice dismisses those appeals and thus upholds the judgment of the General Court and the annulment of the contested classification of titanium dioxide as a carcinogen.**

According to the Court of Justice, even though the General Court exceeded the limits of its judicial review, <sup>7</sup> the annulment of the contested classification and labelling is nevertheless justified. The General Court was fully entitled to hold that the RAC had failed to take into account all the relevant factors for the purposes of assessing the scientific study in question.

**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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> Category 1B (Substances presumed to have carcinogenic potential for humans) by inhalation. That harmonised classification and labelling proposal was submitted in accordance with [Regulation \(EC\) No 1272/2008](#) of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures.

<sup>2</sup> Category 2 (Suspected human carcinogens), with the hazard statement 'H351 (inhalation)'.

<sup>3</sup> Commission [Delegated Regulation \(EU\) 2020/217](#) of 4 October 2019 amending, for the purposes of its adaptation to technical and scientific progress, Regulation No 1272/2008.

<sup>4</sup> Category 2 (Suspected human carcinogens), with the hazard statement 'H351 (inhalation)'.

<sup>5</sup> Judgment of the General Court, *CWS Powder Coatings and Others v Commission*, [T-279/20, T-288/20 and T-283/20](#) (see also Press Release [No 190/22](#)).

<sup>6</sup> Furthermore, 'in the interests of the sound administration of justice', the General Court continued its examination and concluded that the Commission had also failed to comply with the classification criterion according to which the substance must have the *intrinsic* property to cause cancer. According to the Court of Justice, this ground of the judgment of the General Court was included for the sake of completeness, so that it is not necessary to examine the arguments put forward in the present appeals in relation to it.

<sup>7</sup> It was not for the General Court itself to decide the question of the appropriateness of the value of the density of titanium dioxide particles adopted by the RAC in the light of the phenomenon of agglomeration of those particles. That question required that a scientific assessment be carried out.