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Press and Information

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Orders of the President of the Court of First Instance in Cases T-326/07 R, T-349/07 R, T-350/07 R and T-367/07 R

Cheminova and Others v Commission, FMC Chemical and Others v Commission and Dow AgroSciences and Others v Commission

THE PRESIDENT OF THE COURT OF FIRST INSTANCE DISMISSES THE APPLICATIONS FOR INTERIM MEASURES BROUGHT BY CHEMINOVA, FMC CHEMICAL, DOWAGROSCIENCES AND OTHERS

The applicants failed to establish to the required legal standard that they would be liable to suffer serious and irreparable damage as a result of the decision not to include certain chemical substances in the list of substances authorised to be placed on the market

A Community directive¹ establishes the system for the granting and withdrawal of authorisation to place plant protection products on the Community market. This system is intended to ensure a high standard of protection, in order to prevent authorisation of the marketing of plant protection products whose risks to health, groundwater and the environment have not been the subject of appropriate research. Annex I to the directive contains the list of authorised active substances.

In 2000 Cheminova, FMC Chemical and Dow AgroSciences notified the Commission of their wish that the substances malathion, carbosulfan, carbofuran and haloxyfop-R (products used as insecticides and/or herbicides) which are manufactured by them should be included in Annex I to Directive 91/414/EEC. For this purpose, they submitted scientific dossiers in their capacity as 'notifiers'. Following examination of those dossiers, the Commission adopted decisions in the course of June 2007 concerning the non-inclusion of malathion,² carbosulfan,³ carbofuran⁴ and haloxyfop-R⁵ in Annex I to the directive and the withdrawal of authorisations for plant protection products containing those substances.

The undertakings concerned, together with a number of vendors and users in support, brought four actions before the Court of First Instance for annulment of the Commission decisions. They

¹ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

² Decision 2007/389/EC of 6 June 2007 (OJ 2007 L 146, p. 19).

³ Decision 2007/415/EC of 13 June 2007 (OJ 2007 L 156, p. 28).

⁴ Decision 2007/416/EC of 13 June 2007 (OJ 2007 L 156, p. 30).

⁵ Decision 2007/437/EC of 19 June 2007 (OJ 2007 L 163, p. 22).

also brought four applications for interim measures (*Cheminova and Others v Commission*,⁶ *FMC Chemical and Others v Commission*⁷ and *Dow AgroSciences and Others v Commission*).⁸

In the orders made by the President of the Court of First Instance, the President recalled that he may order suspension of the operation of a Community measure, if the main action appears **prima facie** well founded, in order to **avoid serious and irreparable harm** to the interests of those applying for its suspension. In reaching his decision, he weighs up the interests involved, where appropriate.

Prima facie examination of admissibility

The President pointed out that, in order for an application for interim measures to be admissible, it must be made by a party to a case that is before the Court. This rule implies that the main action, to which the application for interim measures relates, can in fact be examined by the Court.

In the present instance, the President found that **only the applicants which were the notifiers of malathion, carbosulfan, carbofuran and haloxyfop-R – and which actively participated in the procedure for the assessment of an active substance provided for by the directive and benefited from the procedural guarantees provided for by the relevant legislation – were individually concerned, and therefore entitled to bring an application before him**. The other applicants were not individually concerned by the contested decisions, which contain nothing tangible to support the conclusion that they were adopted having regard to their particular situation. The President added that **there were numerous businesses apart from those other applicants which used those substances or were authorised to sell them**.

Urgency

In the context of the examination of urgency, the President stressed **the requirement that the damage** whose **imminence** the notifier **must establish** in order to justify grant of the interim measures sought **must be serious and irreparable**. He stated that, if that damage consisted in **the alleged irremediable loss of a market share**, that market share **should be sufficiently large having regard, in particular, to the size and turnover of the notifier and to the characteristics of the group to which it belongs**. According to the findings made by the President, the data presented in the four cases were not sufficiently detailed to enable him to assess whether the damage alleged to be suffered would be serious.

In any event, **the groups operating worldwide** to which the applicants belong had an **overall turnover** such that the damage pleaded corresponded only to **less than 1%** of that turnover, and such damage could not be classified as serious. Finally, the applicants did not prove to the required legal standard that that damage could be regarded as irreparable. According to the President, the lack of urgency in itself justified dismissal of the applications for interim measures, without any need to examine whether the other conditions governing suspension of the contested decisions' operation were met.

The President dismissed the applications for interim measures.

⁶ Order of the President of the Court of First Instance of 4 December 2007 in Case T-326/07 R *Cheminova and Others v Commission*, not yet published in the ECR.

⁷ Orders of the President of the Court of First Instance of 11 December 2007 in Case T-349/07 R *FMC Chemical and Others v Commission* and in Case T-350/07 R *FMC Chemical and Others v Commission*, neither published in the ECR.

⁸ Order of the President of the Court of First Instance of 17 December 2007 in Case T-367/07 R *Dow AgroSciences and Others v Commission*, not published in the ECR.

IMPORTANT: The Court of First Instance will deliver final judgment on the substance of these cases at a later date. An order as to interim measures is without prejudice to the outcome of the main proceedings. An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against the decision of the President of the Court of First Instance within two months of notification of the decision.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: EN FR

The full text of the orders may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-367/07>

It can usually be consulted after midday CET on the day the order is made.

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