



Germany may provisionally continue to apply its existing limit values for certain heavy metals in toys

Until the final decision of the General Court on the action brought by Germany against the Commission's decision of 1 March 2012 to approve the existing limit values in Germany for lead and barium in toys only until 21 July 2013 and to no longer approve those for antimony, arsenic and mercury, Germany may continue to apply its existing limit values, which in its view are superior to the new EU standard

In 2009, the EU adopted a new directive on toys,¹ in which limit values were laid down for certain chemical substances in toys, in particular for heavy metals. Germany, which voted against that directive in the Council, takes the view that the existing limit values in Germany for lead, barium, antimony, arsenic and mercury, which, incidentally, are in line with those laid down in the earlier directive of 1988,² offer a higher level of protection, and sought authorisation from the Commission to continue to apply those limit values. By decision of 1 March 2012, the Commission approved – in accordance with the transitional rules of the new directive on toys – the continued application of the German limit values for lead and barium in toys until 21 July 2013, but rejected the application in relation to antimony, arsenic and mercury.

Germany brought an action before the General Court for the annulment of that decision. Moreover, Germany applied for an interlocutory order so as to be able to continue to apply the existing limit values in Germany until a final decision has been taken by the General Court in the case.

By decision of 15 May 2013, the President of the General Court ordered the Commission to approve the continued application of the limit values notified by Germany for antimony, arsenic, mercury, barium and lead in toys until the General Court's final decision in the case.

Contrary to the view taken by the Commission, the President finds Germany's application for interim relief to be admissible. In principle, applications for interim relief limited to the suspension of the implementation of a negative decision are inadmissible, since the suspension of a measure alone cannot change the applicant's situation. However, Germany did not apply for the suspension of the enforcement of the decision of 1 March 2012, but for the granting of interim relief. Such applications are also possible in relation to actions for the annulment of negative decisions.

In addition, the President of the General Court finds that Germany has both demonstrated the actual and legal need for an interlocutory order to protect the health of children and has proven the urgency of such an order. Finally, Germany's interest in temporarily continuing to apply its limit values outweighs the Commission's interest in having the application for interim relief dismissed.

¹ Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ 2009 L 170, p. 1). The Member States were required to adopt the necessary legal and administrative provisions to implement the directive by 20 January 2011 at the latest, and those provisions were to be applied from 20 July 2011.

² Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys (OJ 1988 L 187, p. 1).

In particular, the President points out that the controversy between Germany and the Commission regarding the 'correct' limit values for lead, barium, antimony, arsenic and mercury gives rise to highly technical and complex questions, which cannot *prima facie* be dismissed as irrelevant, but require an in-depth examination, which is to be undertaken in the proceedings in the main case.

NOTE: The General Court will deliver final judgment on the substance of this case 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 President of the Court of Justice against the decision of the President of the General Court within two months of notification of the decision.

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The [full text](#) of the order is published on the CURIA website.

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