



Press and Information

General Court of the European Union

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Order of the President of the General Court in Case T-125/17  
BASF Grenzach GmbH v European Chemicals Agency (ECHA)

## **The President of the General Court dismisses BASF Grenzach's application for interim measures regarding triclosan, a preservative for cosmetic products**

*BASF Grenzach has not established that it is urgent to suspend the implementation of the decision by which the ECHA requires it to carry out animal testing*

The German company BASF Grenzach manufactures the antibacterial triclosan which it has registered for cosmetic use under the REACH regulation.<sup>1</sup> Due to concerns about the persistence, bioaccumulation and toxicity properties of that product and the potential for endocrine disruption, the European Chemicals Agency (ECHA) ordered BASF Grenzach, by decision of 19 September 2014, to provide information so that triclosan can be evaluated as part of the Community Rolling Action Plan.

To that end, BASF Grenzach must, inter alia, perform three studies: (1) simulation tests on ultimate degradation in fresh surface water and sea water ('persistence test'), (2) a neurotoxicity study of development and reproduction on rats ('rat test'), in view of concerns that triclosan raises as to its potential effects on the endocrine system, and (3) a test on the sexual development of fish, to be conducted on zebrafish or Japanese medaka ('fish test'). The deadline for the information requested was initially set at 26 September 2016.

The ECHA Board of Appeal, before which BASF Grenzach brought an administrative appeal, confirmed, by decision of 19 December 2016,<sup>2</sup> the obligation on BASF Grenzach to carry out those three studies. However, it extended the deadline for submission of the information until 26 December 2018.

BASF Grenzach brought an action before the General Court, in essence, for annulment of the decision whereby the ECHA Board of Appeal dismissed its administrative appeal.

In addition, BASF Grenzach brought an application for interim measures before the General Court for, inter alia, suspension of the decision of the ECHA Board of Appeal as regards the rat test, the fish test and the persistence test. BASF Grenzach claims in that regard that there is a risk of serious and irreparable harm to it. In its view, it is in the untenable situation where it would have to choose between compliance with the contested decision and the risk of incurring liability (including criminal liability) for infringement of the Cosmetics Regulation<sup>3</sup> - a regulation which prohibits, as a general rule, animal testing for cosmetic ingredients. In addition, BASF Grenzach claims that it risks losing its entire European market for triclosan because customers using triclosan in cosmetic products will, pursuant to the contested decision, be led to replace that antibacterial by other ingredients.

<sup>1</sup> 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).

<sup>2</sup> Decision A-018-2014 of the Board of Appeal of ECHA, of 19 December 2016, relating to the substance evaluation of triclosan.

<sup>3</sup> Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ 2009 L 342, p. 59).

**By today's order, the President of the General Court dismisses BASF Grenzach's application for interim measures on the ground that it has not established the urgency of the interim measures requested.**

**As regards the alleged risk of facing legal action for a possible infringement of the Cosmetics Regulation**, the President notes that the fact for BASF Grenzach of complying with the decision of the ECHA Board of Appeal — a decision which is individually addressed to it and which requires it to carry out animal testing — cannot result in it incurring liability under another EU measure of general scope (namely the Cosmetics Regulation). That risk therefore appears to be purely hypothetical in nature and cannot, therefore, establish the imminent risk of serious and irreparable harm.

**As for the alleged risk of losing its entire European market for triclosan**, the President notes first of all that the harm claimed is of a financial nature.

The President next states that, otherwise than in exceptional circumstances, pecuniary harm cannot be regarded as irreparable since, as a general rule, pecuniary compensation is capable of restoring the aggrieved person to the previous situation. Where the harm alleged is of a financial nature, the interim measures sought are justified only if, in the absence of those measures, the applicant would be in a position likely to imperil its financial viability before the final judgment is given in the main action or if its market share would be affected substantially in the light, inter alia, of the size and turnover of its undertaking and, where appropriate, the characteristics of the group to which it belongs.

However, BASF Grenzach has not provided any information on its size, turnover or possibly belonging to the BASF group and, where appropriate, the characteristics of that group. Furthermore, it has not provided any information on the importance of triclosan in its product range. In addition, it also does not indicate the importance of sales of triclosan in the EU or on a global level. Finally, it does not show the turnover that it generates with triclosan in the EU or elsewhere. In the absence of information on that subject, the President of the General Court concludes that BASF Grenzach has not established the importance which the loss of its entire European market for triclosan would represent for its undertaking and, where appropriate, for the group to which it belongs.

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**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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