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Judgment of the Court in Case C-147/21 | CIHEF and Others

The level of harmonisation achieved at EU level by the Biocidal Products Regulation does not prevent Member States from adopting restrictive rules on the promotion of sales of those products

These bans do not constitute a hindrance to the free movement of goods if their objective is to protect health and the environment, if they are suitable for attaining that objective and if they do not go beyond what is necessary in order to attain it

In order to improve the protection of public health and the environment, two French decrees adopted in 2019 regulate commercial practices and advertising relating to several types of biocidal products. On the one hand, those decrees provide that insecticides and rodenticides cannot be subject to certain commercial practices, such as discounts, price reductions and rebates. On the other hand, they also limit commercial advertising for those products as well as for certain disinfectants.

The Comité interprofessionnel des huiles essentielles françaises (Inter-Trade Committee for French Essential Oils; CIHEF) and certain essential oil manufacturers brought an action before the Conseil d'État (Council of State, France) in order to obtain the annulment of the decrees, in particular because of their alleged incompatibility with the Biocidal Products Regulation¹.

The Council of State thus asked the Court whether that regulation and, more generally, the principle of free movement of goods (which prohibits quantitative restrictions between Member States) preclude restrictive national rules in the area of commercial practices and advertising for authorised biocidal products which pursue an objective of protection of public health and the environment.

EU law does not preclude, per se, the restrictive measures in question as regards commercial practices

The Court holds that neither the Biocidal Products Regulation nor, more generally, EU law precludes national legislation which prohibits certain commercial practices such as discounts, price reductions, rebates, the differentiation of general and special conditions of sale, the gift of free units or any equivalent practices, relating to biocidal products of product-types 14 (rodenticides) and 18 (insecticides, acaricides and products to control other arthropods). It specifies that it is for the referring court to verify whether such prohibitions are **justified by objectives of protection of the health and life of humans and of the environment**, that they are suitable for **securing the attainment of those objectives** and that they do not **go beyond what is necessary** in order to attain them.

The Biocidal Products Regulation precludes national legislation requiring an additional statement for advertising addressed to professionals

The Court holds that the Biocidal Products Regulation precludes national legislation which requires the affixing of a statement, in addition to that provided for by that regulation, to advertisements addressed to professionals for biocidal products of product-types 2 (disinfectants and algacides not intended for direct application to humans or

¹ Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products, (OJ 2012, L 167, p. 1).

animals) and 4 (food and feed area), as well as of product-types 14 and 18.

The Court indicates that the Biocidal Products Regulation **already contains** a provision regulating, in a **detailed and comprehensive** manner, the wording of statements on the risks of using of biocidal products that may appear in advertisements for those products. Indeed, it provides for the existence of a **mandatory statement** ('Use biocides safely. Always read the label and product information before use.'), **expressly prohibits certain statements** such as 'low-risk biocidal product', 'non-toxic' or 'environmentally friendly' and seeks, more generally, to **prohibit any advertising statement** which is **liable to mislead** the user as to the risks that such products may present. Consequently, the field concerning the statements on the risks of using biocidal products that may be used in the advertising of those products **has been fully harmonised by the EU legislature**.

Member States may, under certain conditions, prohibit advertising addressed to the general public

The Court holds that the Biocidal Products Regulation must be interpreted as meaning that it does not preclude national legislation which prohibits advertising addressed to the general public for biocidal products of product-types 2 and 4, as well as of product-types 14 and 18. The EU legislature did indeed regulate the wording of the statements on the risks of using biocidal products that may appear in advertisements for those products, but it did not intend to regulate **all** aspects relating to the advertising of biocidal products and, in particular, to rule out the possibility for Member States to prohibit advertising addressed to the general public.

The Court next verifies that that legislation constitutes a **selling arrangement** which applies to all relevant traders operating within the national territory and which affects in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States. In that regard, the Court indicates that such legislation must satisfy **two** conditions, which is for the referring court to verify:

1. it must apply **without distinction** to all relevant traders operating within French territory;
2. it **affects in the same manner, in law and in fact**, the marketing of domestic products and of those from other Member States

Last, if that legislation affects the access of biocidal products from other Member States to the French market any more than that of such products from France, the Court provides directions for assessing the compatibility of the said legislation with the provisions of the FEU Treaty relating to the free movement of goods.

In that regard, it holds, first, that that legislation is **appropriate for the attainment of the objectives of protecting human health and the environment** since it seeks to limit the incentives to purchase and use such products. Second, it holds that the prohibition of all advertising addressed to the general public for certain biocidal products does not go **beyond what is necessary to achieve those objectives**. The Court specifies that that legislation applies only to advertising addressed to the general public and **therefore does not prohibit advertising to professionals**. Furthermore, it has a **limited scope** since it does not cover all biocidal products but only those of product-types 2 and 4 as well as of product-types 14 and 18, that is to say, **those which pose the highest risks to human health**, and does not apply to biocidal products eligible for the simplified authorisation procedure.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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