

Case T-369/03

Arizona Chemical BV and Others

v

Commission of the European Communities

(Directive 67/548/EEC — Refusal to declassify rosin as a dangerous substance —
Action for annulment — Act not open to challenge — Action for damages —
Limitation — Plea of illegality — Inadmissibility)

Order of the Court of First Instance (Third Chamber), 14 December 2005 . . II - 5845

Summary of the Order

1. *Actions for annulment — Actionable measures — Meaning — Measure producing binding legal effects — Procedure for adapting the directive, relating to classification of dangerous substances, to technical developments — Commission letter rejecting the request of certain producers for a substance to be declassified — Excluded*
(Art. 230 EC; Council Directive 67/548, Art. 29)

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Directive concerning classification, packaging and labelling of dangerous substances — Directive not conferring procedural guarantees on the relevant operators — Actions by those operators against an act coming within the procedure for amending the directive — Inadmissibility*
(Art. 230, fourth para., EC; Council Directive 67/548, Art. 14 and Annex VI, sections 1.7.2, third para., 4.1.3, 4.1.4 and 4.1.5)
3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Measure of general application — Duty of diligence — Obligation not conferring a right of action on operators who participated in the adoption procedure*
(Art. 230, fourth para., EC)
4. *Actions for damages — Limitation period — Starting point — Liability arising from a measure of general application — Date on which the injurious effects of the measure are produced*
(Statute of the Court of Justice, Art. 46)
5. *Actions for damages — Limitation period — Starting point — Damage of a continuing nature — Date to be taken into consideration*
(Statute of the Court of Justice, Art. 46)
6. *Procedure — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Summary of the pleas raised — Action seeking compensation for damage caused by a Community institution — Failure to comply with requirements — Absolute bar to proceeding*
(Rules of Procedure of the Court of First Instance, Art 44(1)(c))

1. An action for annulment — brought by producers of a substance listed as an inhalation sensitiser in Annex I of Council Directive 67/548/EEC, on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances — against the refusal, on the part of the Commission, addressed to the applicants, to propose to the Regulatory Committee a draft amendment of that directive, for the purposes of declassifying that substance, in the context of the twenty-first adapta-

tion of the directive to technical progress, is inadmissible.

It is not sufficient that a letter was sent by a Community institution to its addressee in reply to a request made by that addressee for it to qualify as a decision for the purposes of Article 230

EC, since an action for annulment may be brought under Article 230 EC against only those measures which have binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in his legal position.

substances, nor would it alone be sufficient to confer standing on the recipient.

In this respect, the contested measure is part of the preliminary procedure for the assessment of the intrinsic properties of the substances in question, which, far from being directed at the individual interests of the operators in question, or preparing an individual decision applicable to them, is merely the phase preceding the preparation of a measure of general application, namely a proposal to amend a directive, as provided for by Article 29 of Directive 67/548. Moreover, it would be contrary to the principles outlined above to give to individuals the ability to change the procedure which led to the adoption of measures of general application, amending Directive 67/548 into a procedure of individual concern, by sending the Commission a written request to which that institution is required to respond pursuant to the general rule of good conduct laid down by the third paragraph of Article 21 EC. Such a response, even if it were definitive, would not alter the legal nature of the procedure leading to the classification or declassification of

Further, the legality of a Community institution's refusal to withdraw or amend a measure is only, in itself, a measure which can be reviewed under Article 230 EC where the measure which the Community institution refuses to withdraw or amend could itself be challenged under that provision. The applicants' request for a proposal to amend Directive 67/548 is likewise not a reviewable measure under Article 230 EC, because it is merely preliminary and preparatory in nature, since, with regard to measures or decisions drafted in several stages, in principle only measures definitively laying down the position of the institution concerned on the conclusion of that procedure may be the subject of an action for annulment, so that intermediate measures which serve to prepare for the final decision are excluded.

(see paras 56, 60, 63-64, 66)

2. The fact that a person is involved in some way or other in the procedure leading to the adoption of a Community measure is capable of distinguishing that

person individually in relation to the measure in question, which must mean that the measure has binding legal effects for him, only if the applicable Community legislation grants him certain procedural guarantees. Thus, particularly concerning measures of general application, for which, in principle — according to the general principles of Community law such as the right to a hearing — neither the process of enacting measures of general application nor the nature of those measures themselves require the participation of the persons affected, unless their participation in the process is expressly envisaged, in the absence of expressly guaranteed procedural rights it would be contrary to the letter and spirit of Article 230 EC to allow any individual, once he has participated in the preparation of a measure of a legislative nature, to then bring an action challenging that measure.

they have new information, to submit a proposal to the relevant authorities of a Member State, and sections 4.1.3, 4.1.4 and 4.1.5 of that Annex and Article 14 of the Directive relating to obligations to inform those operators, do not create a procedural guarantee at Community level in their favour. The relevant provisions are therefore not such as to make the present action, brought by the operators against the Commission refusal to make a proposal to amend to the Regulatory Commission, admissible.

(see paras 72-74, 76-78, 80)

In this context Directive 67/548 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances contains no provision conferring on economic operators, such as companies which produce and sell rosin and its derivatives, the power to initiate the adaptation procedure of the directive in question to technical progress, nor does it lay down any rule requiring the Commission, before presenting an adaptation proposal, to follow a procedure in which those operators enjoy procedural guarantees. In particular, section 1.7.2, third subparagraph, of Annex VI to that directive providing the possibility for relevant operators, where

3. In the framework of a procedure leading to the adoption of a measure of general application, the due diligence required of the institutions is essentially an objective procedural guarantee arising from an absolute and unconditional obligation on the Community institution relating to the drafting of the measure and not the exercise of any individual right. It follows that such an obligation, which has a different application than for procedural guarantees, in the context of a procedure resulting in the adoption of an administrative measure of indivi-

dual application, does not confer rights directly on the operators taking part in the adoption procedure and does not give them access to the Community judicature.

before the injurious effects of the measure have been produced and, consequently, before the persons concerned have suffered damage.

(see paras 106-107)

(see paras 86-88)

4. The period of limitation of five years, laid down in Article 46 of the Statute of the Court of Justice, for actions against the Community for non-contractual liability, cannot begin to run before all the requirements governing the obligation to make good the damage are satisfied. Those requirements are the existence of unlawful conduct on the part of the Community institutions, the existence of the damage alleged and the existence of a causal link between that conduct and the loss claimed. The requirement as to the existence of specific damage is satisfied if the damage is imminent and foreseeable with sufficient certainty, even if it cannot yet be precisely assessed.
5. In the case of damage likely to be continuous, the five-year limitation period referred to in Article 46 of the Statute of the Court of Justice applies, by reference to the date of the event which interrupted the limitation period, to the period preceding that date by more than five years and does not affect rights which arose during subsequent periods. In that regard, Article 46 of the Statute treats as an intervening event either the institution of proceedings before the Court or the making of a prior application by the aggrieved party to the relevant institution.

(see para. 116)

Where the Community's liability stems from a measure of general application, the limitation period cannot begin to run

6. Under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, relating to the content of the application, and for which a failure to observe same constitutes an absolute bar to proceeding, any application must state the subject-matter of the proceedings and a summary of the pleas in law on which

the application is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and for the Court to give judgment on the action without recourse to further information. More particularly, an application seeking compensation for damage allegedly caused by a Community institution must set out the evidence from which the conduct which the applicant alleges against the institu-

tion can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered and the nature and extent of that damage.

(see paras 119-120)