

Case T-45/02

DOW AgroSciences BV and DOW AgroSciences Ltd

v

European Parliament and Council of the European Union

(Decision No 2455/2001/EC — Action for annulment — Inadmissibility)

Order of the Court of First Instance (Third Chamber), 6 May 2003 . . . II-1977

Summary of the Order

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Decision establishing the list of priority substances in the field of water policy and amending Directive 2000/60 — Measure of general scope (Arts 230, fourth para., EC and 249 EC; Directive 2000/60 of the European Parliament and of the Council, Art. 16(2), (3), (6), (7), (8) and (11); Decision No 2455/2001 of the European Parliament and of the Council)*

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Criteria — Decision establishing the list of priority substances in the field of water policy and amending Directive 2000/60 — Inclusion of chlorpyrifos and trifluralin in that list — Companies manufacturing and marketing those substances — Whether directly concerned — Not so concerned*

(Art 230, fourth para., EC; Directive 2000/60 of the European Parliament and of the Council, Art. 16(1), (6), (7) and (8); Decision No 2455/2001 of the European Parliament and of the Council)

3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Decision establishing the list of priority substances in the field of water policy and amending Directive 2000/60 — Inclusion of chlorpyrifos and trifluralin in that list — Action by companies manufacturing and marketing those substances — Inadmissible*

(Art 230, fourth para., EC; Directive 2000/60 of the European Parliament and of the Council, Art. 16(11); Council Directive 91/414; Decision No 2455/2001 of the European Parliament and of the Council)

1. The term 'decision' in the fourth paragraph of Article 230 EC must be understood in the technical sense in which it is employed in Article 249 EC and the criterion for distinguishing between a measure of a legislative nature and a decision within the meaning of that latter article must be sought in the general application or otherwise of the measure in question.

Decision No 2455/2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60 may not, notwithstanding its title, be regarded as constituting a decision within the meaning of the fourth paragraph of Article 230 EC. On the contrary, it is of the same general nature as Directive 2000/60 establishing a framework for Community action in the field of water policy. That decision, which is based directly on Article 175(1) EC, is a legislative act adopted by the Parliament and the

Council at the end of the procedure under Article 251 EC. It establishes the list of priority substances, including substances identified as priority hazardous substances, provided for in Article 16(2) and (3) of Directive 2000/60. According to Article 16(11) of that directive, that list 'shall be added to Directive 2000/60 as Annex X'. The decision in question thus amends Directive 2000/60, the general application of which is not disputed, by inserting an annex which lists the substances in respect of which Article 16(6) to (8) of that directive requires the Commission to propose specific measures for the protection and enhancement of the aquatic environment.

(see paras 31-33)

2. The condition relating to direct concern, within the meaning of the fourth paragraph of Article 230 EC, requires that the Community act complained of should directly affect the legal situation of the individual and leave no discretion to the addressees of that act who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from the Community rules alone without the application of other intermediate rules.

Decision No 2455/2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60, which identifies chlorpyrifos and trifluralin as priority substances, does not in itself produce effects on the legal position of the applicant companies active in the manufacture and marketing of chlorpyrifos and trifluralin, and therefore does not directly concern them within the meaning of the fourth paragraph of Article 230 EC.

The inclusion of chlorpyrifos and trifluralin in the list of priority substances does not place economic operators under an obligation to reduce the production, marketing or use of those substances. The decision at issue merely lists the substances, including chlorpyrifos and trifluralin, in respect

of which the Commission is required to submit proposals to the Parliament and the Council for specific measures in accordance with Article 16(6) to (8) of Directive 2000/60 establishing a framework for Community action in the field of water policy. The Parliament and the Council may then adopt the measures proposed by the Commission, on the basis of Article 16(1) of that directive. However, the inclusion of chlorpyrifos and trifluralin in Annex X to Directive 2000/60 does not give any specific indication of the measures which will be proposed by the Commission and which may be subsequently adopted by the Parliament and the Council and thus does not *per se* affect the legal position of the applicant companies.

(see paras 35, 37-38, 40)

3. Natural or legal persons may be regarded as individually concerned by a measure of general application only if the measure in question affects them because of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons in the same way as the addressee.

Decision No 2455/2001 establishing the list of priority substances in the

field of water policy and amending Directive 2000/60, which identifies chlorpyrifos and trifluralin as priority substances, does not individually concern companies which manufacture and market those products.

The fact that those companies hold marketing authorisations for chlorpyrifos- and trifluralin-based products in accordance with Directive 91/414 concerning the placing of plant protection products on the market is not sufficient to distinguish them for the purposes of the fourth paragraph of Article 230 EC. Even if it were assumed that the contested measure does affect their market position, those companies, which do not assert any exclusive intellectual property right in respect of the substances identified by that decision, are in a situation comparable to that of any other economic operator who might now or at some time in the future be active in the marketing of those substances.

Even if, moreover, the fact that, by virtue of specific provisions, the Community institutions are under a duty to take account of the consequences of a measure which they intend to adopt on the position of certain individuals may be capable of differentiating them, the fact remains that there is no provision of Community law which requires the Parliament or the Council, when they establish the list of priority substances in the sphere of water in accordance with Article 16(11) of Directive 2000/60 establishing a framework for Community action in the field of water policy, to take account of the special position of economic operators, such as the applicant companies, who hold marketing authorisations for plant protection products.

(see paras 42-43, 46-47)