

Action brought on 26 February 2002 by DOW Agro-Sciences B.V. and DOW AgroSciences Ltd. against the European Parliament and the Council of the European Union

(Case T-45/02)

(2002/C 144/96)

(Language of the case: English)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance of the European Communities on 26 February 2002 by DOW AgroSciences B.V. and DOW AgroSciences Ltd., represented by Mr Koen Van Maldegem and Mr Claudio Mereu of McKenna & Cuneo LLP, Brussels (Belgium).

The applicant claims that the Court should:

- declare the present application admissible and well-founded;
- order the partial annulment of Decision no. 2455/2001/EC of the European Parliament and of the Council of 20 November 2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60/EC, so as to remove chlorpyrifos and trifluralin from the measure;
- order the defendants to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicants in the present case seek the partial annulment of Decision 2455/2001⁽¹⁾, mentioned above, in as much as it lists as 'priority substances' two of their plant protection product active substances, chlorpyrifos and trifluralin, using a procedure other than the one based on the risk assessment results of Council Directive 91/414/EEC concerning the placing on the market of plant protection products⁽²⁾ (the Plant Protection Products Directive — PPPD), as it should be provided in Article 16(2) point (a) of Directive 2000/60/EC of 23 October 2000, establishing a framework for Community action in the field of water policy⁽³⁾ (the Water Framework Directive — WFD), which the contested measure purports to implement.

The contested measure would restrict the marketing and use of the applicants' chlorpyrifos and trifluralin-based agricultural products. Moreover, by placing these two substances in a

newly created sub-category of priority substances, allegedly 'under review', which might be reclassified as 'priority hazardous substances' in twelve months' time, the contested measure would also create the legal conditions for the phasing-out and ultimate ban of the said substances.

The applicants submit that the inclusion of chlorpyrifos and trifluralin in the list of priority substances is illegal for the following reasons:

- the defendants improperly used the simplified (fast-track) procedure of Article 16(2), second paragraph, of the WFD, instead of basing the inclusion on the final PPPD risk assessment results, as required by Article 16(2) point (a). Furthermore, the defendants listed chlorpyrifos and trifluralin on the basis of a summary and expedited 'hazard assessment', rather than on the basis of aquatic toxicity and exposure data and a completed PPPD 'risk assessment', as required by Article 16(2) point (a) of the WFD.
- By circumventing Article 16(2) point (a) of the WFD, the defendants disregarded the hierarchy among sources of Community law (principle of *lex superior*).
- By including chlorpyrifos and trifluralin in Annex X of the WFD, the contested measure also places the WFD in conflict with the more specific and therefore prevailing PPPD (principle of *lex specialis*).
- By ignoring available scientific and technical data in their expedited and summary hazard assessment, and by imposing a maximum environmental standard for the two substances in question, the defendants violated Articles 174, 175 and 176 of the Treaty.
- By restricting and potentially banning chlorpyrifos and trifluralin through the contested measure and thereby placing them at a competitive disadvantage with competing substances, the defendants distorted competition, in violation of Article 2 of the Treaty.

The applicants also raise the point of a violation of the principles of consistency and uniform application of Community law, of proportionality and of legal certainty and legitimate expectations.

In addition, the applicants claim that the contested measure also departs from the letter and the spirit of the international agreements to which it expressly refers (OSPAR, HELCOM and the Barcelona Convention).

⁽¹⁾ OJ L 331, of 15.12.2001, p. 1.

⁽²⁾ OJ L 170, of 25.6.1992, p. 40.

⁽³⁾ OJ L 327, of 22.12.2000, p. 1.

tion product active substance trifluralin in the list of priority substances which will be restricted in the EU insofar as it entails direct or indirect 'discharges, emissions and losses' in the aquatic environment during normal agricultural use.

The pleas in law and main arguments are similar to those relied upon in Case T-45/02 (DOW AgroSciences and Others - v- Parliament and Council ⁽²⁾).

⁽¹⁾ OJ [2001] L 331, p. 1.

⁽²⁾ See p. 46 of the present Official Journal.

Action brought on 26 February 2002 by Finchimica, S.p.A. and I.Pi.Ci. — Industria Prodotti Chimici, S.p.A. against the European Parliament and the Council of the European Union

(Case T-46/02)

(2002/C 144/97)

(Language of the case: English)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance of the European Communities on 26 February 2002 by Finchimica, S.p.A. and I.Pi.Ci. — Industria Prodotti Chimici, S.p.A., represented by Mr Koen Van Maldegem and Mr Claudio Mereu of McKenna & Cuneo LLP, Brussels (Belgium).

The applicant claims that the Court should:

- partially annul Decision no. 2455/2001/EC of the European Parliament and of the Council of 20 November 2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60/EC ⁽¹⁾, so as to remove trifluralin from the measure;
- order the defendants to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicants seek the partial annulment of Decision no. 2455/2001/EC which includes the applicants' plant protec-

Action brought on 27 February 2002 by Makhteshim-Agan Holding B.V. against the European Parliament and the Council of the European Union

(Case T-57/02)

(2002/C 144/98)

(Language of the case: English)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance of the European Communities on 27 February 2002 by Makhteshim-Agan Holding B.V., represented by Mr Philippe Logelain, Mr Koen Van Maldegem and Mr Claudio Mereu of McKenna & Cuneo, LLP, Brussels (Belgium).

The applicant claims that the Court should:

- order the partial annulment of Decision no. 2455/2001/EC of the European Parliament and of the Council of 20 November 2001 establishing the list of priority substances and priority hazardous substances in the field of water policy and amending Directive 2000/60/EC, so as to remove the applicant's substances — Atrazine, Chlorpyrifos, Diuron, Endosulfan, Isoproturon (IPU), Simazine and Trifluralin — from the measure;
- order the defendants to pay all costs and expenses in these proceedings.