

The applicants further submit that the contested Decision errs when it states that studies submitted after the fixed deadlines cannot be examined because, according to the applicants, all procymidone data were timely submitted. They also consider that the contested Decision violates Articles 95(3) and 152(1) EC by refusing to consider studies submitted in time and found satisfactory by the evaluators.

The applicants also invoke violations of the PPPD, of Regulation 3600/92 <sup>(2)</sup>, of the principles of sound administration, of subsidiarity and proportionality, of legitimate expectations and legal certainty, of the excellence and independence of scientific advice, of equal treatment and 'estoppel' and of the duty to state reasons.

Should the court consider that the contested letter is not an act which can be challenged under Article 230(4) EC, the applicants submit that their action is still admissible under Article 232 EC against the Commission's failure to act upon their administrative complaint and formal request. In addition and independently of the actions for annulment and failure to act, the applicants claim compensation for damages suffered as a direct consequence of the contested letter.

<sup>(1)</sup> OJ L 230, 19/08/1991, p. 1.

<sup>(2)</sup> Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8 (2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market, OJ L 366, 15/12/1992, p. 10

## Action brought on 30 December 2005 — Gütermann v Commission

(Case T-456/05)

(2006/C 60/85)

*Language of the case: German*

### Parties

*Applicant:* Gütermann Aktiengesellschaft (Gutach-Breisgau, Germany) (represented by: J. Burrichter, B. Kasten and S. Orlikowski-Wolf, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

The applicant claims that the Court should:

- annul Article 1(1) of the Decision in so far as it declares that the applicant infringed Article 81 EC and Article 53 of the EEA Agreement as regards Sweden, Norway and Finland also in the period from January 1990 up to and including December 1993;
- annul Article 2 of the Decision in so far as it imposes a fine of EUR 4,021 million on the applicant;
- in the alternative, reduce as appropriate the fine imposed on the applicant in Article 2 of the Decision;
- order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

The applicant is challenging Commission Decision C(2005) 3452 final of 14 September 2005 in Case 38.337 — PO/Thread (amended by the defendant's decision of 13 October 2005). In the contested decision a fine was imposed on the applicant for infringement of Article 81 EC and Article 53 of the EEA Agreement.

In support of its application the applicant is relying on four pleas in law.

First, it alleges breach of Article 7 of Regulation No 1/2003. <sup>(1)</sup> In this connection it submits that the finding as to the duration of the infringements in Article 1(1) of the contested decision is incorrect.

In its second plea in law the applicant submits that there has been an infringement of Article 15(2) of Regulation No 17/1962 <sup>(2)</sup> or of Article 23(2) of Regulation No 1/2003. It considers that Article 2 of the contested decision infringes fundamental principles regarding the assessment of fines. In addition, it is submitted that those provisions were infringed by Article 2 of the contested decision due to misapplication of the 1996 Leniency Notice.

Lastly, the applicant submits that Article 2 of the contested decision amounts to an infringement of the principle of proportionality as insufficient regard was had to the individual position of the applicant in fixing the fine.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

<sup>(2)</sup> EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87).