

**Action brought on 12 February 2007 — Du Pont de Nemours (France) and Others v Commission**

(Case T-31/07)

(2007/C 69/57)

*Language of the case: English*

**Parties**

*Applicants:* Du Pont de Nemours (France) SAS (Puteaux, France), Du Pont Portugal Serviços (Lisbon, Portugal), Du Pont Ibérica SL (Barcelona, Spain), Du Pont de Nemours (Belgium) BVBA (Mechelen, Belgium), Du Pont de Nemours Italiana Srl (Milan, Italy), Du Pont de Nemours (Nederland) BV (Dordrecht, The Netherlands), Du Pont de Nemours (Deutschland) GmbH (Bad Homburg, Germany), DuPont CZ s.r.o. (Prague, Czech Republic), DuPont Hungary Trading Ltd (Budaors, Hungary), DuPont Poland Sp.z o.o. (Warsaw, Poland), DuPont Romania Srl (Bucharest, Romania), Du Pont (UK) Ltd (Herts, United Kingdom), Du PontAGro Hellas SA (Athens, Greece), DuPont International Operations Sarl (Switzerland), DuPont Solutions (France) SAS (Puteaux, France) (represented by: D. Waelbroeck, N. Rampal, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annulment of the annex of Commission Directive 2006/133/EC amending Directive 91/414/EEC to include flusilazole as active substance insofar as it fixes the expiration date of the inclusion period for flusilazole at 30 June 2008;
- annulment of Article 3(2) of Directive 2006/133/EC amending Directive 91/414/EEC to include flusilazole as active substance insofar as it fixes the date until which Member States shall, after re-evaluation, amend or withdraw the authorisation of products containing flusilazole at 30 June 2008;
- annulment of part A of the Specific Provisions contained in annex of Commission Directive 2006/133/EC amending Directive 91/414/EEC insofar as it places a restriction on the types of crops on which the use of flusilazole may be authorised by the Member States following its inclusion in Annex I to Directive 91/414/EEC, and which must be implemented by 30 June 2007 ('the contested restrictions');
- condemn the Commission to repair any damage suffered by the applicants as a result of the contested restrictions and to set the amount of this compensation for the damage

suffered by the applicants currently estimated at approximately \$109 million (around €84 million); or any other amount reflecting the damage suffered or to be suffered by the applicants as further established by them in the course of this procedure especially to take due account of future damage;

- in the alternative, to order the parties to produce within a reasonable period of time from the date of the judgement figures as to the amount of compensation arrived at by agreement between the parties or, in the absence of agreement, to order the parties to produce within the same period their conclusions with detailed figures;
- order an interest at the rate set at the time by the European Central Bank for main refinancing operations, plus two percentage points, or any other appropriate rate to be determined by the Court, be paid on the amount payable as from the date of the Court's judgment until actual payment;
- order the defendant to pay all costs and expenses in these proceedings.

**Pleas in law and main arguments**

By means of their application, the applicants seek partial annulment of the annex of Commission Directive 2006/133/EC<sup>(1)</sup>, of 11 December 2006 amending Annex I of Directive 91/414/EEC<sup>(2)</sup> concerning the placing of plant protection products on the market (hereinafter, the 'PPPD') insofar as it imposes constraints both to the inclusion period of flusilazole and to the types of crops on which the use of flusilazole may be authorised by Member States.

The applicants claim that the contested restrictions are illegal insofar as they are based on a pure 'hazard' assessment and not a 'risk' assessment as required by Directive 91/414/EEC. More specifically, they submit that by reducing the inclusion period to 18 months instead of the normal period of 10 years, as well as by restricting the authorised use of flusilazole to certain crops only, the Commission has allegedly infringed its obligations deriving from the EC Treaty and the said directive and its amending regulations as well as several fundamental principles and objectives of Community law. Namely, the applicants claim that the principle of proportionality, the principle of sound administration and the right to be heard, as well as principles of legal certainty, legitimate expectations, and non-discrimination, and the duty to provide an appropriate statement of reasons have been violated by the defendant. It is finally submitted that the defendant misused its powers in view of the fact that the restrictions have been decided arbitrarily, irrespective of the criteria set in the directive.

In addition to the action for annulment, the applicants have also introduced an action for compensation on the basis of Articles 235 and 288(2) EC in order to repair the damage allegedly suffered by them as a result of the contested restrictions.

(<sup>1</sup>) Commission Directive 2006/133/EC amending Council Directive 91/414/EEC to include flusilazole as active substance; OJ L 349, 2006, p. 27.

(<sup>2</sup>) Council Directive 91/414/EEC, of 15 July 1991, concerning the placing of plant protection products on the market; OJ L 230, 1991, p. 1.

**Action brought on 7 February 2007 — Slovakia v Commission**

(Case T-32/07)

(2007/C 69/58)

*Language of the case: Slovak*

**Parties**

*Applicant:* Slovak Republic (represented by: J. Čorba, Agent)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annul the contested decision;
- in the event that the Court of First Instance does not agree with the opinion set out at paragraph 95 of the application, preserve, in accordance with Article 231(2) EC, those effects of the contested decision on the basis of which the applicant decides the total quantity of allowances and their allocation to individual businessmen on their territory;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant contests the Commission's Decision of 29 November 2006, which concerns the national allocation plan for the allocation of emissions allowances for greenhouse gases notified by the Slovak Republic in accordance with Directive 2003/87/EC of the European Parliament and of the Council (<sup>1</sup>). According to the contested decision, certain aspects of the Slovak national allocation plan are incompatible with Annex III to Directive No 2003/87/EC.

The applicant submits in support of its action that the Commission infringed Article 9(3) in conjunction with Article 9(1) and Article 11(2) of Directive No 2003/87/EC and the principle of legitimate expectations in that, irrespective of the national allocation plan, in the contested decision it applied its own method of setting the maximum total annual average amount of emissions allocations, appropriating to itself without authority the task which the directive entrusted to the Member States.

Furthermore, the applicant submits that, even if the defendant was entitled to apply its own method of setting the total quantity of emissions allowances, by failing to consult the applicant about the use of that method before the publication of the contested decision, it breached the principle of loyal cooperation of the institutions of the Community with the authorities of the Member States.

Moreover, the defendant infringed Article 9(3) in conjunction with Article 1 and Article 9(1) and criteria 1 to 4 of Annex III to Directive 2003/87/EC and the general legal principle of proportionality, in that the method of setting the total amount of emissions allocations which it applied fails to take into account the need to increase electricity production on the applicant's territory from carbon intensive sources as a result of the obligation to close two power-plant units of the nuclear power station at Jaslovské Bohunice.

Finally, the applicant asserts that there has been a breach of the essential procedural requirement to state adequate reasons.

(<sup>1</sup>) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

**Order of the Court of First Instance of 22 January 2007 — Verband der Internationalen Caterer in Deutschland v Commission**

(Case T-5/05) (<sup>1</sup>)

(2007/C 69/59)

*Language of the case: German*

The President First Chamber has ordered that the case be removed from the register.

(<sup>1</sup>) OJ C 82, 2.4.2005.