

The applicant claims that the Court should:

1. Declare that this appeal is admissible and well-founded;
2. Set aside the judgment of the Court of First Instance of 28 June 2005;
3. Grant the application made at first instance seeking the annulment of Commission Decision 2003/308/EC ⁽¹⁾ of 2 May 2003 concerning the non-inclusion of metalaxyl in Annex I to Council Directive 91/414/EEC; ⁽²⁾
4. In the alternative, refer the case back to the Court of First Instance for judgment;
5. In any event, order the Commission to pay all the costs of the present proceedings as well as those incurred as a result of the proceedings before the Court of First Instance and, where appropriate, those relating to the interlocutory proceedings.

Pleas in law and main arguments

1. First, Industrias Químicas del Vallés, SA (IQV) takes the view that the Court of First Instance (CFI) has distorted the evidence in the proceedings in its analysis of the legal opinion of the Commission concerning the consequences of the withdrawal from the procedure for the evaluation of metalaxyl of the only notifier which submitted a complete dossier.
2. Secondly, IQV takes the view that the CFI has erred in law by rejecting a plea of IQV solely on the basis of an extract from a document to which, as the CFI itself accepts, IQV never had access during the administrative procedure.
3. Thirdly, IQV submits that the CFI erred in law by incorrectly interpreting and applying to the present case the precautionary principle and the principle of proportionality and by upholding the decision of the Commission originally contested on the grounds of public health.
4. Fourthly, IQV submits that the CFI erred in law in its interpretation and application to the present case of the relevant legal framework, in particular the provisions of Directive 91/414/EEC and Regulation 3600/92 on the procedure for the evaluation of active substances contained in plant protection products. In particular, IQV believes that the CFI (i) confused the terms 'complete dossier' and 'additional information', (ii) wrongly determined that, where there are multiple notifiers in respect of the same substance, each notifier must compile a complete dossier; and (iii) made an incorrect assessment of the role of the rapporteur Member State in the stages following preparation of the study.
5. Fifthly, IQV submits that the CFI erred in law when it held that the Commission did not make a manifest error of assessment by refusing to grant an extension of the time-

limit for evaluating metalaxyl. In that regard, the CFI relied on a false premise and stated grounds which were inconsistent with the extensions granted by the Commission in the field concerned.

6. Sixthly, IQV considers that the CFI gave contradictory and anomalous grounds for rejecting a plea of IQV on the basis of reasons for the decision which do not actually appear in the contested decision.
7. Finally, IQV considers that the CFI infringed provisions governing the procedure by failing to have regard to part of the written submissions of IQV in the Report for the Hearing drawn up by the Judge-Rapporteur, without giving any grounds for so doing in the judgment.

⁽¹⁾ OJ L 113 of 7.5.2003, p. 8.

⁽²⁾ OJ L 230 of 19.8.1991, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof by decision of that court of 28 June 2005 in Finanzamt Dinslaken v Gerold Meindl, third party: Christine Meindl-Berger

(Case C-329/05)

(2005/C 271/30)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by decision of the Bundesfinanzhof (Germany) of 28 June 2005, received at the Court Registry on 2 September 2005, for a preliminary ruling in the proceedings between Finanzamt Dinslaken and Gerold Meindl, third party: Christine Meindl-Berger, on the following question:

Is there an infringement of Article 43 of the Treaty establishing the European Communities when a resident taxpayer is refused joint assessment to income tax with his spouse who lives in Austria, from whom he is not separated, on the ground that that spouse obtained both more than 10 % of joint income and more than DEM 24 000, when that income is tax-free in Austria?