

Case T-13/99 R

Pfizer Animal Health SA/NV

v

Council of the European Union

(Procedure for interim relief — Suspension of operation of Council Regulation (EC) No 2821/98 — Withdrawal of virginiamycin from the list of authorised additives — Council Directive 70/524/EEC — Urgency — Balancing of interests)

Order of the President of the Court of First Instance, 30 June 1999 II-1964

Summary of the Order

1. *Applications for interim measures — Conditions for admissibility — Consideration of the admissibility of the main application — Inappropriate — Limits*
(EC Treaty, Arts 185 and 186 (now Arts 242 EC and 243 EC); Rules of Procedure of the Court of First Instance, Art. 104(1))
2. *Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Urgency — Serious and irreparable damage — Pecuniary damage — Assessment of the economic circumstances of the applicant company — Account may be taken of the situation of the group to which that undertaking belongs*
(EC Treaty, Arts 185 and 186 (now Arts 242 EC and 243 EC); Rules of Procedure of the Court of First Instance, Art. 104(2))

3. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests at stake — Priority to be given to protection of public health over economic considerations*
 (EC Treaty, Arts 185 and 186 (now Arts 242 EC and 243 EC); Rules of Procedure of the Court of First Instance, Art. 104(2))

1. As a general rule, the issue of the admissibility of the main action should not be examined in proceedings for interim relief, so as not to prejudge the Court's decision on the substance of the case. It may nevertheless appear necessary, when it is contended that the main application to which the application for interim measures relates is manifestly inadmissible, to establish whether there are any grounds for concluding that the main application is *prima facie* admissible.

2. The urgency of an application for interim measures must be assessed in relation to the necessity for an interim order to prevent serious and irreparable damage to the party applying for those measures. It is for the party seeking suspension of operation of an act to prove that it cannot wait for the outcome of the main proceedings without suffering damage that would entail serious and irreparable consequences. The Court hearing an application for interim measures may, in its consideration of the criterion of urgency, take such damage into account only in so far as it may be caused to the interests of the party seeking interim relief; any damage caused to another party may be taken into consideration only when

the Court comes to balance the interests at stake.

Damage of a purely pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable or even as being repairable only with difficulty, if it can ultimately be the subject of financial compensation.

Where the applicant undertaking alleges that the negative impact on its financial viability would endanger its existence, consideration may be given, for the purposes of assessing its economic circumstances, to the characteristics of the group of which, by virtue of its shareholding structure, it forms part.

3. When the Court hearing an application for suspension of operation of a measure weighs the various interests at stake, it must determine whether the possible annulment of the contested act by the Court hearing the main action would allow the situation brought about by its immediate implementation to be reversed and, conversely, whether suspension of the operation of that act would be such as to prevent its being

fully effective in the event of the main application being dismissed.

wait until the reality and seriousness of those risks become fully apparent.

There can be no question but that the requirements of the protection of public health must take precedence over economic considerations. In addition, where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to

The Court must therefore dismiss the application for suspension of operation of Regulation No 2821/98 withdrawing antibiotics such as virginiamycin from the list of additives the incorporation of which in feedingstuffs is authorised at Community level, since there is a risk that the use of such substances would increase antimicrobial resistance in human medicine, with very serious consequences for public health.