

Case T-74/00 R

Artegodan GmbH

v

Commission of the European Communities

(Proceedings for interim relief — Withdrawal of marketing authorisations for medicinal products for human use containing the substance ‘amfepramone’ — Directive 75/319/EEC — Urgency — Balancing of interests)

Order of the President of the Court of First Instance, 28 June 2000 II-2585

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Decision withdrawing authorisation for the marketing of medicinal products for human use which contain amfepramone*
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(1) and (2))
2. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests involved — Precedence to be given to protection of public health over economic considerations — Limits — Decision withdrawing authorisation for the marketing of medicinal products for human use which contain amfepramone*
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. The urgency of an application for suspension of the operation of a measure must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking suspension. In this connection, it is enough, particularly where damage depends on the occurrence of a number of factors, for that damage to be foreseeable with a sufficient degree of probability.

With regard to a Commission decision withdrawing authorisations for the marketing of medicinal products for human use which contain amfepramone, the damage which immediate operation of the contested decision could cause, namely the definitive loss of the applicant's position in the market, would be serious and irreparable.

(see paras 44, 47)

2. Where, on an application for suspension of the operation of a measure, the judge hearing the application balances the various interests involved, he must determine whether later annulment of

the contested measure by the Court when ruling on the main application would allow the situation which would have been brought about by the immediate operation of the measure to be reversed, and, conversely, whether suspension of operation of the measure would prevent it from being fully effective in the event of the main application being dismissed.

In this connection, while the requirements of the protection of public health must be given precedence over economic considerations, mere reference to the protection of public health cannot exclude an examination of the circumstances of the case, in particular of the relevant facts. Suspension of operation of the Commission's decision of 9 March 2000 withdrawing marketing authorisations for medicinal products for human use which contain amfepramone must therefore be granted, since the Commission has not shown that the protective measures it adopted in the contested decision were not manifestly excessive.

(see paras 49, 52-54, operative part)