



St. Gallen, 18 February 2021

Press Release

regarding interim order B-3340/2020 of 15 February 2021

Chlorothalonil: Second interim order

The Federal Administrative Court grants Syngenta Agro AG's requests for precautionary measures. For the time being the Federal Food Safety and Veterinary Office is required to refrain from denoting four degradation products of chlorothalonil as being "toxicologically relevant".

In December 2019, following its review of licenses for plant protection products, the Federal Office for Agriculture (FOAG) prohibited plant protection products that contain chlorothalonil. The key question was how the use of chlorothalonil affects groundwater, and thereby drinking water. Syngenta Agro AG lodged an appeal to overturn this ban in January 2020, and the proceedings are currently pending before the Federal Administrative Court (FAC).

As an expert body, the Federal Food Safety and Veterinary Office (FSVO) was involved in the review process carried out by the FOAG. In its report published on 3 December 2019, the FSVO classified four metabolites (degradation products) of chlorothalonil as being "non-relevant". This means that for these metabolites a limit of ten micrograms per litre of drinking water applies. Additionally the FSVO considered it to be appropriate to reclassify chlorothalonil as a probable carcinogen (category 1B), which would automatically confer relevance to all of its metabolites.

From spring 2020 on, the FSVO stated on its website, among other things, that chlorothalonil is classed a category 1B substance for its carcinogenic effects and that therefore all of its metabolites must be considered to be relevant. According to the Drinking Water Ordinance, a limit value of 0.1 micrograms per litre would apply to these metabolites. Syngenta Agro AG lodged an appeal against this decision with the FAC, as it considered this to be an inadmissible and contradictory reclassification of both the active substance and its metabolites.

First interim order

The appellant filed for initial precautionary measures, claiming that it was suffering significant commercial damage as a result of the FSVO's statement. The FAC granted this request for precautionary measures in its first interim order of 24 August 2020 and instructed the FSVO to temporarily remove a passage on its website which described chlorothalonil as a probable carcinogen and all of its metabolites as relevant. Additionally it enjoined the FSVO to take down from the Internet a document produced by the FOAG, FSVO and Agroscope on the relevancy of metabolites. The document in question classified four metabolites as

toxicologically relevant although they had been described as non-relevant in the FSVO's expert report of 3 December 2019 (cf. [press release dated 28 August 2020](#)).

The FSVO duly removed the passage from its website. However, the disputed information was subsequently included in an FSVO directive with largely identical wording. In addition to this, the four metabolites were still designated as relevant in the updated version of the relevancy document. Furthermore, in May and August 2020, the Federal Office for the Environment (FOEN) published data on the contamination of Swiss groundwater by chlorothalonil metabolites, based on the disputed assumption that all metabolites of chlorothalonil were "relevant" and were thus subject to concentration limits of 0.1 micrograms per litre.

Granting of renewed requests

The appellant therefore filed renewed requests for precautionary measures in September 2020. These have now been granted by the court. The FSVO is instructed to temporarily remove the directive and the document on relevance from the Internet. Thus, for the duration of the present proceedings, the FSVO is requested particularly to refrain from making public assertions pertaining to the relevance of the four metabolites in question. The FSVO must also inform the FOEN that the classification of the four metabolites is still under dispute.

The court specifically took into account the fact that the FSVO's statements could lead to the media reporting stories based on disputed assumptions, especially regarding the concentration limit for drinking water. The court deems it credibly substantiated that the appellant could face considerable damage to its business reputation and economic interests if the media coverage happened to be based on potentially incorrect premises. There is a risk that the view according to which the active substance chlorothalonil contaminates groundwater and endangers public health could become entrenched.

Only in the main ruling, the FAC will have to decide in which category chlorothalonil falls regarding carcinogenicity (category 2 or 1B) and whether placing it into the category 1B would mean that all of its metabolites are automatically relevant. Notably this will lead to answering the question which limit values for drinking water (10 or 0.1 micrograms per litre) are in the present case applicable to these metabolites.

This interim order may be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (300.8 FTE) and its 74 judges (66.25 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.