

TRIBUNAL DE GRANDE INSTNCE DE MELUN

SUMMARY PROCEDURE

N° OF THE RG: 06/00357

N° SCHEDULES: **06/00327**

SCHEDULE OF October 13, 2006

APPLICANT

CE of the ECONOMIC AND SOCIAL UNIT BEIERSDORF

secretary Mr Didier JUSTINIEN

whose registered office is located at 1 rue des sources - 77176 SAVIGNY LE TEMPLE

represented by SCP JDS LAWYERS, lawyer with the bar of BOBIGNY.

DEFENDANTS

LIMITED LIABILITY COMPANY BEIERSDORF HOLDING FRANCE

whose registered office is located at 1 rue des sources - 77176 SAVIGNY LE TEMPLE

represented by Me Marc BORES, lawyer at the bar of PARIS

S.A. BEIERSDORF

whose registered office is located at ZAC DU BOIS DES SAINTS PERES -
15 rue du bois des saits pères - 77176 SAVIGNY LE TEMPLE

represented by Me Marc BORES, lawyer at the bar of PARIS

BEIERSDORF LOGISTICS FRANCE SAS

whose registered office is located at 1 rue des sources - 77176 SAVIGNY LE TEMPLE

represented by Me Marc BORES, lawyer at the bar of PARIS

FORMATION

President: Nicole MAESTRACCI

Clerk of the Court: Mylène SONNEFRAUD

DEBATES

With the public sitting held on 06/10/2006, the lawyers of the parts were heard in their pleadings.

SCHEDULE

Contradictory, in the first resort, publicly marked, by Nicole MAESTRACCI President assisted by Mylène SONNEFRAUD, Clerk of the Court on October 13, 2006

STATEMENT of the DISPUTE

Group BEIERSDORF is a world group which manufactures and markets cosmetic products. It is established primarily in Europe where it has 11 production sites, one of which is located France, and 30 logistic sites.

The French site is established at SAVIGNY LE TEMPLE (SEINE ET MARNE) and combines the

activities of production, activities logistic and activities of seat.

These activities concern three distinct legal entities: limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE.

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These form, pursuant to an agreement of June 28, 2004, an economic and social unit equipped with a common work's council (*factory committee – ed.*).

On September 5, 2006, the direction of BEIERSDORF in FRANCE convened an extraordinary meeting of the work's council with as agenda “information and the consultation on a project of reorganization concerning the industrial activities, logistic, commercial and marketing activites as well as the central services in France”. An “economic and financial note” concerning the details of the project was given at the time of this convocation. It gave a report on a project of transfer of the site of Savigny Temple.

At its meeting on September 12, 2006, the work's council asked that the process of information and consultation be suspended until the authority of European dialogue, instituted by agreement of March 29, 1995, gave an opinion on the considered reorganization.

A new convocation however was addressed to the work's council for October 10, 2006.

At the same time, the Authority of European dialogue was summoned for an extraordinary meeting envisaged for October 19, 2006.

It is under these conditions that the WORK'S COUNCIL OF the ECONOMIC AND SOCIAL UNIT BEIERSDORF has, by act of 20 September 2006, the assigned limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE appeared in front of the Judge in chambers for the purposes:

- to note that the absence of preliminary consultation of the Authority of European Dialogue BEIERSDORF deprives of any useful effect both the consultation of this authority and that of the COMMITTEE of COMPANY OF THE ECONOMICAL AND SOCIAL UNITY BEIERSDORF;

- to note the necessity for the WORK'S COUNCIL of the ECONOMIC AND SOCIAL UNIT BEIERSDORF to acquaint itself of the facts, to give a reasoned opinion, of that of the European Dialogue, and of the content of the exchanges to intervene in any event during the meeting on October 19, 2006;

- to order the stay of the procedure of information and consultation as long as the Authority of European Dialogue has not been completely informed and not have been consulted on the project of reorganization of the activities of BEIERSDORF in EUROPE;

- to order the suspension of implementation of the project of reorganization of the activities of BEIERSDORF in FRANCE;

- to condemn the limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE to pay the WORK'S COUNCIL OF the ECONOMIC AND SOCIAL UNIT BEIERSDORF the sum of 2.000€ on the basis of article 700 of the New Code of Civil Procedure as well as in the whole expense.

In support of its request, it argues primarily that the project of litigious reorganization has a transnational character so that the consultation of the work's council cannot have useful effect if this one does not occur beforehand the opinion of the authority of European dialog.

Regularly assigned, the limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE rejects the request for the reason that no text obliges it to consult with the Authority of European dialogue before the consultation of the work's

council. They dispute moreover the transnational character of the project of reorganization. They put forward finally that the agreement of March 29, 1995 which created the authority of European dialogue is founded on article 1134 of the Civil code and constitutes by no means an agreement of anticipation of the Community directive of September 22, 1994 so that this one would not be applicable for them. They ask that the defendants be condemned to pay him the sum of 2000€ on the basis of article 700 of the NCPC.

In the audience, the limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE asks that they be given by act that they do not intend to ask for an opinion from the work's council before the Authority of European dialogue was in situation to provide an opinion.

MOTIVES FOR THE DECISION:

It results from the articles L432-1 and L431-5 of the Fair labour standards act that the work's council must obligatorily be informed and be consulted on the projects of reorganization of the company and that it must to this end be recipient in good time of all information likely to enable it to formulate a reasoned opinion.

The companies defendants cannot seriously claim that the reorganization considered is not transnational since in the document entitled "Note economic and financial concerning a project of reorganization of the activities of Beiersdorf in France" and submitted to the work's council on September 5, 2006, they specify the strategy of the Beiersdorf group in the following terms: "The Group undertook to close three factories (announced closing of the Swedish and Dutch factories and of a German factory) whose volumes will be transferred to other sites from the group in Europe according to the constraints of the installed technologies and competitiveness of the costs"... "On line with the practices of industry in this market, the Group must pass from a multisite strategy - multi technology with local vocation with a monosite strategy with European vocation - by technology." They conclude finally that "the group did not retain the site of Savigny-le Temple like future European sites for one or the other of its technologies..."

The Community directive of September 22, 1994 has the aim of improving the right to information and the consultation of the workers in the Community companies and the groups of Community company of dimension.

Article 13 of this directive specifies that the companies or groups of companies of Community size in which there is already an agreement applicable to the whole of the workers envisaging information and a transnational consultation of the workers are not subjected to the obligations rising from this directive.

The agreement of March 29, 1995 envisages well such a procedure and it is in vain that the companies defendants support that which it is not a question of an agreement of anticipation since they specify in their writings that by instituting the authority of European dialogue the group BEIERSDORF "anticipated with regard to the effectiveness of the European directive concerned".

In any event, it is a given that the existence of a preexistent agreement organizing the dialogue at the European level, does not exempt, pursuant to article 13 referred to above, only the procedure planned for the organization of another structure. It cannot call into question the obligation to respect the standards of the Community directive relating to the information and the consultation of the employees since measurements considered "affect the interests of the workers considerably".

The Community directive of March 11 2002 which applies to all the companies of more than 50 employees specified the methods of information and consultation which must be carried out “at one time, in a way and with contents adapted, likely in particular to allow to the representatives of the workers to carry out an adequate examination and to prepare, if necessary, the consultation”.

It follows that the work's council of the economic and social unit Beiersdorf cannot usefully be consulted on the transfer under consideration without having been recipient of the observations and opinions received from the authority of European dialogue.

At the end of the debates, the limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE committed itself to not consulting the Work's council before this one was able to take note of the opinion of the authority of European dialogue.

It is advisable to give to them act and to notice that the demand of suspension of the procedure of piece of information and consultation became groundless.

It appears equitable to condemn the limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE to pay the sum of 1.500 € to the work's council of the economic and social unit Beiersdorf on the basis of article 700 of the NCPC.

The company defendants will be condemned for the expenses.

BY THESE REASONS

Considering articles 808 and 809 of the New Code of Civil procedure;

Considering the articles L 431-5 and L 432-1 of the Fair labor standards act

Considering the directive of the 94/45/CE of September 22, 1994

Considering the directive 2002/14/CE of March 11, 2002

Let us note that the work's council of the economic and social unit BEIERSDORF cannot deliver a useful opinion on the reorganization under consideration on the site of Savigny Temple without having been able to examine the opinion of the authority of European dialogue created by the agreement of March 29, 1995.

Let us give act to the PRIVATE COMPANY BEIERSDORF HOLDING COMPANY FRANCE, the BEIERSDORF LIMITED COMPANY and SAS BEIERSDORF LOGISTICS France of the fact that they make a commitment not to consult the factory committee of the economic and social unit BEIERSDORF on the project of reorganization of the site of Savigny the Temple before this one was an addressee of the opinion(notice) of the authority of European dialogue.

Let us say as a consequence that the demand became groundless.

Let us condemn the limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORFLOGISTICS FRANCE to pay to the work's council of the economic and social unit BEIERSDORF the sum of 1.500 € on the basis of article 700 of the New Code of Civil procedure.

Let us condemn the limited liability company BEIERSDORF HOLDING FRANCE, SA BEIERSDORF and SAS BEIERSDORF LOGISTICS FRANCE for the expenses.

Président:

Greffier:

N. MAESTRICCI

Mylène SONNEFRAUD

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