General Court of the European Union
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Judgments in Joined Cases T-429/13 Bayer CropScience AG and Others v Commission and T-451/13 Syngenta Crop Protection AG and Others v Commission, and in Case T-584/13 BASF Agro BV and Others v Commission

Press and Information

The General Court confirms the validity of the restrictions introduced at EU level in 2013 against the insecticides clothianidin, thiamethoxam and imidacloprid because of the risks those substances pose to bees

However, it largely upholds the action brought by BASF and annuls the measures restricting the use of the pesticide fipronil, since they were imposed without a prior impact assessment

In 2012, as a result of the loss of bee colonies because of a number of instances of misuse of pesticides, the Commission decided to review the EU approvals granted for the active substances clothianidin, thiamethoxam and imidacloprid (part of the neonicotinoid family) and the active substance fipronil (part of the phenylpyrazole family). In particular, it asked the European Food Safety Authority (EFSA) to conduct a new risk assessment of those substances as regards bee health.

In the light of the risks identified by EFSA, on 24 May 2013 the Commission adopted Implementing Regulation No 485/2013[1] prohibiting, as from 26 May 2013, in the case of clothianidin, thiamethoxam and imidacloprid:

- any non-professional use, indoors or outdoors;
- any use for seed treatment or soil treatment on the following cereals when these are to be sown from January to June: barley, millet, oats, rice, rye, sorghum, triticale, wheat;
- any foliar treatment for the following cereals: barley, millet, oats, rice, rye, sorghum, triticale, wheat;
- any use as seed treatment, soil treatment or foliar application for around 100 crops, including rapeseed, soya, sunflowers and maize, except for uses in greenhouses and foliar treatment after flowering.

The implementing regulation also prohibits, from 1 December 2013, the use and placing on the market of seeds of certain crops treated with plant protection products containing those substances (including the seeds of summer cereals, rapeseed, soya, sunflowers and maize), with the exception of seeds used in greenhouses.

The Commission also adopted, on 14 August 2013, Implementing Regulation No 781/2013[2] in relation to fipronil.

[1] Commission Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances (OJ 2013 L 139, p. 12).

[2] Commission Implementing Regulation (EU) No 781/2013 of 14 August 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substance fipronil, and prohibiting the use and sale of seeds treated with plant protection products containing this active substance (OJ 2013 L 219, p. 22).

That implementing regulation:

- restricts, from 16 August 2013, the use of plant protection products containing fipronil to crops in greenhouses and to seeds of leek, onions, shallots and the group of *Brassica* vegetables intended to be sown in fields and harvested before flowering, and

- prohibits, from 1 March 2014, the use and placing on the market of seeds treated with plant protection products containing fipronil, with the exception of seeds of leek, onions, shallots and the group of *Brassica* vegetables intended to be sown in fields and harvested before flowering.

The two implementing regulations also require Member States to amend or withdraw existing authorisations for plant protection products containing clothianidin, thiamethoxam and imidacloprid by 30 September 2013 (with any grace period to end by 30 November 2013 at the latest). In the case of plant protection products containing fipronil, the same requirement is imposed with a deadline of 31 December 2013 (with any grace period to end by 28 February 2014 at the latest).

The Bayer group, which produces and markets imidacloprid and clothianidin in the European Union, the Syngenta group, which produces and markets thiamethoxam (and treated seeds), and the BASF group, which produces and markets fipronil, brought proceedings before the General Court for annulment of those prohibitions and restrictions. Syngenta also sought payment of compensation of at least €367.9 million.

By one of its judgments of today's date, the Court dismisses in their entirety the actions brought by Bayer and Syngenta in relation to the neonicotinoids clothianidin, thiamethoxam and imidacloprid.

The Court notes in that regard that, when Regulation 1107/2009 [3] entered into force on 14 June 2011, the requirements relating to the absence of unacceptable effects on bees (which, together with other pollinators, play an important role both for natural flora and for arable crops [4]) were substantially strengthened at EU level. It is now expressly required that exposure of bees to the active substances in question be only 'negligible' or that their use not have 'unacceptable acute or chronic effects on colony survival and development, taking into account effects on honeybee larvae and honeybee behaviour'. The new requirements also apply when existing approvals are reviewed.

According to the Court, given the existence of new studies the results of which, [5] as compared with the knowledge available at the time of the earlier assessment, raised concerns as to whether the conditions of approval were still satisfied, the Commission was fully entitled to find that it was appropriate to review the approval of the substances in question.

Furthermore, the period of approximately eight months which EFSA was given in this case to carry out the new risk assessment was neither excessively short nor unusual.

As regards the uses restricted or prohibited in 2013, the Court rules that the Commission has succeeded in demonstrating that, in view of the considerable strengthening of the requirements that there should be no unacceptable effects of the active substances on bees, the risks identified by EFSA warranted the conclusion that the three substances in question no longer satisfied the approval criteria. Consideration of the arguments put forward by Bayer and Syngenta in that respect did not reveal any errors (such as manifest errors of assessment) or any misapplication of the precautionary principle or the principle of proportionality. So far as the **precautionary principle** is concerned, the Court recalls that, where there is scientific uncertainty as to the existence or extent of risks to human health or to the environment, this

[3] Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Directives 79/117/EEC and 91/414/EEC of Council (OJ 2009 L 309, p. 1).

[4] According to the United Nations Food and Agriculture Organisation (FAO), 84% of the 264 crop species in Europe are dependent on pollinators, including bees.

[5] Three studies had produced concerning findings as regards the effects of bee exposure to sub-lethal doses of the substances in question (reduction in the proportion of foraging bees returning to the hive and effects on the development of bumble-bee colonies).

principle allows the institutions to take protective measures without having to wait until the reality and seriousness of those risks become fully apparent or until adverse health effects materialise. The precautionary principle, moreover, gives precedence to the requirements relating to the protection of public health, safety and the environment over economic interests.

As regards the ban on using treated seeds and placing them on the market, the Court finds that that was the only way to ensure that the restriction of the approval of the substances in question would have practical effect. Without it, existing stocks of seeds lawfully treated before the actual withdrawal or amendment of existing authorisations at national level could have circulated among the Member States and been used in those Member States which had not adopted any national measures.

In the case of fipronil, the Court, by its other judgment of today's date, annuls Implementing Regulation No 781/2013 in so far as it (i) restricts, with effect from 16 August 2013, the use of plant protection products containing that active substance to crops in greenhouses and to seeds of leek, onions, shallots and the group of *Brassica* vegetables intended to be sown in fields and harvested before flowering, and (ii) requires the Member States to amend or withdraw existing authorisations for plant protection products containing fipronil.

The Commission adopted those restrictions without first having assessed the consequences of its action, as against the possible consequences of its inaction, for the various interests at stake. By failing to conduct such an impact assessment, the Commission breached the precautionary principle.

By contrast, as regards the ban on using and placing on the market, from 1 March 2014, seeds treated with plant protection products containing fipronil, the Court dismisses BASF's action. As that group does not itself market seeds treated with such products, the ban is not of direct concern to it, and it is not, therefore, entitled to seek to have the ban annulled.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

The full text of the judgments T-429-13 and T-451/13 and T-584/13 is published on the CURIA website on the day of delivery

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