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Neonicotinoids: ban challenged in Court by pesticides producers Judgment by the General Court of the EU Appeal by Bayer to come

The European Commission has in 2013 deleted certain neonicotinoid pesticides from the list of permitted active pesticide substances, because of their serious impacts on honeybee colonies. Producers Bayer CropScience and Syngenta have challenged the relevant Regulation in Court, supported by several agricultural organisations. The Commission has been supported in this legal dispute by the Member State Sweden and French, Austrian and German beekeeper associations.

The General Court of the EU has dismissed these legal challenges, both in substance and as regard claim for compensation.

Bayer CropScience has announced it will challenge this judgment by appeal to the European Court of Justice.

The placing on the market of plant protection product had been governed until 14.06.2011 by Directive 91/414/EEC, and has been governed since 14.06.2011 by Regulation (EC) No 1107/2009.

Active substances clothianidin, thiamethoxam and imidacloprid (part of the neonicotinoid family) were in 2006, 2007 and 2008 included in Annex I to Directive 91/414. Within the European Union, imidacloprid and clothianidin are produced and marketed by the Bayer group and thiamethoxam is produced and marketed by the Syngenta group.

Following a number of incidents in 2008 and 2009 involving the misuse of plant protection products containing the substances covered resulted in losses of honeybee colonies. The Member States affected reacted by taking various restrictive measures, and the Commission commenced a review of approvals, in particular through the scientific support of EFSA, the European Food Safety Agency. On 24 May 2013, the Commission by Implementing Regulation (EU) No 485/2013 amending Implementing Regulation 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..

The Implementing Regulation

- prohibited any non-professional use of the substances,
- prohibited uses 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;
- prohibited foliar treatments for barley, millet, oats, rice, rye, sorghum, triticale and wheat;
- prohibited uses as seed treatment, soil treatment or foliar application for around 100 crops, including rapeseed, soya, sunflowers and maize, with the exception of uses in greenhouses and of foliar treatment after flowering.

Furthermore, the Implementing Regulation prohibited use and placing on the market of seeds of crops listed in Annex II which have been treated with plant protection products containing the substances covered, with the exception of seeds used in greenhouses. That covered, inter alia, the seeds of summer cereals, rapeseed, soya, sunflowers and maize.

Bayer and Syngenta and others contested this Implementing Regulation by application to the General Court and requested its annulment, alleging breaches of specific provisions of Regulation No 1107/2009, breach of the principles of legal certainty, protection of legitimate expectations and respect for the rights of the defence, breach of the precautionary principle and of the principles of proportionality and of good administration, and infringement of the right to property and of the freedom to conduct a business.

Syngenta in addition claimed that the Implementing Regulation would constitute a manifest breach of a rule of law intended to confer rights on individuals which is sufficiently explicit, clear and serious to render the European Union liable. It therefore claimed compensation to loss of gross profits relating to the sale of products containing thiamethoxam; harm to its image and reputation; and extraordinary costs incurred in defending the approval of thiamethoxam during the review procedure. It argues that this damage is the direct, immediate and exclusive result of the Commission's unlawful conduct.

The Court, by judgment of 17 May 2018 in cases T-429/13 and T-451/13

- dismissed the actions by the applicants,
- ordered Bayer Crop Science Protection AG and other applicants to bear their own costs and to pay those incurred by the European Commission, the Union nationale de l'apiculture française, Deutscher Berufs- und Erwerbssimkerbund eV and Österreichischer Erwerbssimkerbund.
- ordered the Kingdom of Sweden to bear its own costs;
- ordered the Association générale des producteurs de maïs et autres céréales cultivées de la sous-famille des panicoïdées (AGPM), The National Farmers' Union (NFU), the Association européenne pour la protection des cultures (ECPA), Rapool-Ring GmbH Qualitätsraps deutscher Züchter, the European Seed Association (ESA), the Agricultural Industries Confederation Ltd, Pesticide Action Network Europe (PAN Europe), Bee Life European Beekeeping Coordination (Bee Life), Buglife — The Invertebrate Conservation Trust and Stichting Greenpeace Council to bear their own costs.

Bayer CropScience AG announced in July 2018 that it will appeal against the judgment to the European Court of Justice. Appeal case Bayer CropScience v Commission filed under case C-499/18 P.

Read the full judgment of the Court

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=202052&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=429229>