

**Action brought on 4 November 2013 — BASF Agro and Others v Commission**

(Case T-584/13)

(2014/C 9/43)

*Language of the case: English*

**Parties**

*Applicants:* BASF Agro BV (Arnhem, Netherlands); BASF SE (Ludwigshafen am Rhein, Germany); BASF Belgium Coordination Center (Antwerpen, Belgium); BASF Española, SL (Barcelona, Spain); BASF Italia SpA (Cesano Maderno, Italy); BASF Nederland BV (Arnhem); and BASF Slovensko spol. s r. o. (Bratislava, Slovakia) (represented by: J. Montfort and M. Peristeraki, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- Annul Commission Implementing Regulation (EU) No 781/2013 of 14 August 2013, amending Commission 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);
- In the alternative, and only if the form of order sought above is not granted, annul the contested regulation, insofar as it withdraws the authorisation for the use and sale of sunflower seeds treated with fipronil;
- Order the defendant to pay the costs of the applicants that they incurred in these proceedings.

**Pleas in law and main arguments**

In support of the action, the applicants rely on seven pleas in law.

1. First plea in law, alleging that the Commission violated Article 21 of Regulation (EC) No 1107/2009 <sup>(1)</sup> because in adopting the contested regulation it did not rely on any new scientific or technical knowledge but rather on 'high controversy' data. The Commission also ignored relevant monitoring data. Monitoring data that were available did not show any adverse effects on honeybee colonies. The applicants also submit that the Commission wrongfully considered that the criteria of Article 4 of Regulation (EC) No 1107/2009 were no longer satisfied by the active substance fipronil.
2. Second plea in law, alleging that the Commission violated Article 49 of Regulation (EC) No 1107/2009 because with

the contested regulation it adopted restrictive measures on seeds treated with fipronil without demonstrating that these treated seeds are likely to constitute a 'serious risk' to bees that cannot be contained satisfactorily by other means. Furthermore, the Commission failed to take into account risk mitigation measures that could contain the alleged risks in a satisfactory manner.

3. Third plea in law, alleging that the contested regulation was adopted on the basis of a methodology provided in draft guidance documents, rather than the existing and approved guidance. This way, the Commission committed errors in law, and violated the fundamental principles of legal certainty and legitimate expectations given that guidance documents must be available and agreed *ex ante*, before the review of an approval of an active substance, and not *ex post*.
4. Fourth plea in law, alleging that the contested regulation cannot be justified on the basis of the precautionary principle, given that the conditions of that principle are not met in the present case. More precisely, the applicants submit that the risks the Commission considered relevant were based on mere hypotheses that have not been scientifically confirmed; relevant data were not considered; the Commission's risk assessment was based on a wrong methodology; while the Commission failed to involve the applicants in the risk management stage, as it ought to have done. This led to the adoption of disproportionate and inconsistent measures with the contested regulation.
5. Fifth plea in law, alleging that the contested regulation imposes excessive restrictions on the fipronil seed treatment without these being neither appropriate nor necessary to protect bee health in the EU. The applicants also point out that with regard to sunflowers in particular, the Commission disregarded that fipronil treatment has never had adverse consequences on bee health.
6. Sixth plea in law, alleging that because of the tight time frame within which the contested regulation was adopted and the complexity of the case, the Commission was not able to take into account the substantive and detailed comments of the applicants on the technical, regulatory and scientific aspects of the European Food Safety Authority's 'Conclusion on the peer review of the pesticide risk assessment for bees for the active substance fipronil' in an effective manner.
7. Seventh plea in law, alleging that the Commission failed to explain adequately the concerns that led it to request EFSA to review the approval of fipronil. The Commission also failed to explain why it dismissed the arguments and the evidence submitted by the applicants. The contested regulation also fails to clearly disclose the primary objective pursued by the Commission with its adoption.

<sup>(1)</sup> 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 Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1)