



C/2024/2632

22.4.2024

Action brought on 9 February 2024 – Pollinis France v Commission

(Case T-75/24)

(C/2024/2632)

Language of the case: English

Parties

Applicant: Pollinis France (Paris, France) (represented by: A. Bailleux, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Commission's decision, dated 1 December 2023, rejecting the applicant's request for internal review, filed under Article 10 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council ⁽¹⁾, regarding Commission Implementing Regulation (EU) 2023/918 ⁽²⁾ ('the contested decision'), insofar as it extends the approval period of the active substance boscalid;
- order the Commission to bear the costs of proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging that the contested decision infringes Article 17 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council ⁽³⁾ read in combination with the precautionary principle, Article 168(1) TFEU, Article 191(2) TFEU and Articles 35 and 37 of the Charter of fundamental rights of the European Union ('the Charter').

Article 17 of Regulation 1107/2009 cannot be interpreted as obliging the Commission to extend an approval indefinitely, irrespective of the number and duration of previously granted extensions and irrespective of the risks such an extension may pose for human health or for the environment.

In the case of boscalid in particular, the Commission could not extend for so many years its approval considering that the application for renewal raised a large number of questions from the European Food Safety Authority and that numerous studies raise serious doubts as to the safety of boscalid for both human health and the environment.

⁽¹⁾ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

⁽²⁾ Commission Implementing Regulation (EU) 2023/918 of 4 May 2023 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances aclonifen, ametoctradin, beflubutamid, benthialdicarb, boscalid, captan, clethodim, cycloxydim, cyflumetofen, dazomet, diclofop, dimethomorph, ethephon, fenazaquin, fluopicolide, fluoxastrobin, flurochloridone, folpet, formetanate, Helicoverpa armigera nucleopolyhedrovirus, hymexazol, indolylbutyric acid, mandipropamid, metalaxyl, metaldehyde, metam, metazachlor, metribuzin, milbemectin, paclobutrazol, penoxsulam, phenmedipham, pirimiphos-methyl, propamocarb, proquinazid, prothioconazole, S-metolachlor, Spodoptera littoralis nucleopolyhedrovirus, Trichoderma asperellum strain T34 and Trichoderma atroviride strain I-1237 (OJ 2023 L 119, p. 160).

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

2. Second plea in law, alleging, in subsidiary order, that Article 17 of Regulation 1107/2009 must be declared inapplicable pursuant to Article 277 TFEU because it is contrary to the precautionary principle, Articles 168 and 191 TFEU and Articles 35 and 37 of the Charter.

If the Court were to take the view that the contested decision (and Implementing Regulation 2023/918) are based on a sound reading of Article 17 of Regulation 1107/2009, this legislative provision should be set aside for the purpose of the present proceedings, pursuant to Article 277 TFEU, because it would be contrary to the precautionary principle, Articles 168 and 191 TFEU and Articles 35 and 37 of the Charter. Accordingly, Article 17 of Regulation 1107/2009 should not be applied and could not serve as a proper legal justification for the contested decision, which should therefore be annulled.

3. Third plea in law, alleging, in the further alternative, that the Commission erred in considering that the explicit conditions under Article 17 of Regulation 1107/2009 were met.

The Commission erred in considering that the conditions for extension explicitly laid down in Article 17 of Regulation 1107/2009 were satisfied:

- the Commission erred in considering that the delay in the renewal process was not attributable to the applicant for renewal, without investigating at all the role played by the applicant in that delay;
- the Commission erred in considering that the extension of the approval period of boscalid, for an additional period of 2 years and 8.5 months, was necessary to examine the application for renewal.
