

EU COURT NEONICOTINOID INSECTICIDE JUDGMENTS: SIGNIFICANCE FOR UK AGRICULTURE, CHEMICALS AND ENVIRONMENTAL POLICY

In the first of this series of articles, we consider three important linked judgements about neonicotinoid pesticides, which damage bees, from the EU General Court, issued on 17 May 2018, which have widespread implications for agriculture, chemicals and environmental policy, especially for the UK, for example in the way the judgement endorses the precautionary principle.

In the next article we will consider in more detail why these judgements come at a particularly significant point for agriculture in the UK and EU, the immediate implications for Brexit, how they represent a divergence between the UK government and some farming organisations, and why that matters for the current consultations on an [Environmental Principles and Governance Bill](#). We will be considering the consultations on environmental principles and governance further in future articles.

In the third article we will consider some of the impacts of farm chemicals on farmland birds and on water, and question the implications of the judgements and current policies and practices for human health.

In judgements on three joined cases [[T-429-13](#), [T-451-13](#), [T-584-13](#)] issued on 17 May 2018, the General Court of the European Union confirmed the validity of restrictions introduced at EU level in 2013 against three neonicotinoid insecticides, because of the risks those substances pose to bees.

The active ingredients restricted were clothianidin, produced by *Takeda Chemical Industries* and *Bayer Crop Science*, thiamethoxam, made by *Syngenta*, and imidacloprid, made by *Bayer Crop Science*.

The Court dismissed the challenges brought to the EU legislative restrictions by *Bayer Crop Science AG and Others*, and *Syngenta Crop Protection AG and Others*, the “Others” in both cases including the UK National Farmers Union ‘NFU’.

However, in the third case the Court largely upheld the action brought by *BASF*, and annulled the restrictions on the use of the pesticide fipronil, since they were imposed without a prior impact assessment by the [European Food Safety Authority](#) ‘EFSA’.

In all three cases, the Court made a strong and clear re-statement of the importance of the ‘precautionary principle’.

As the Court’s [Press Release](#) on the judgements explained –

“As regards the uses restricted and 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 risk 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 principle allows the institutions to take protective measures without having to wait until the reality and seriousness of those risks becomes fully apparent or until adverse health effects materialise. The precautionary principle, moreover, gives precedence to the requirement relating to the protection of public health, safety and the environment over economic interests.”

In the [third BASF case](#), the Court made it clear that the reason for allowing the challenge by *BASF* to the restrictions on fipronil was the failure by the Commission to secure an adequate prior impact assessment by EFSA, which itself constituted a failure to apply the precautionary principle correctly.

In sum, therefore, the manufacturers of these pesticides and their supporters have won themselves one of the strongest endorsements to date of the precautionary principle. It remains to be seen whether they will seek to appeal against the judgement to the next level within the Court of Justice of the European Union. The next article in this series will consider some of the reasons why the judgements have particular significance to agricultural, chemicals and environmental policy at this point.

About the Author:

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