



Brussels, 20 February 2023

Commissioner Stella Kyriakides
European Commissioner for Health and Consumer Policy
European Commission
B-1049 Brussels – Belgium

Subject: Open Letter to Commissioner Kyriakides Derogations ruling, 1 month later

Dear Health Commissioner Stella Kyriakides,

We, the undersigned NGOs, have in the past years repeatedly drawn your attention and that of Member States, to so-called emergency authorisations of banned pesticides in some Member States which were not carried out in accordance with the provisions of Article 53 of the Pesticide Regulation (EU) 1107/2009. We have also appealed against these authorisations^{1,2}

On January 19, the Court of Justice of the EU (CJEU), referring to an appeal by PAN Europe and Nature & Progrès Belgique against emergency authorisations of neonicotinoids banned since 2018 for outdoor applications, ruled that Member States are not permitted *to authorise the placing on the market of plant protection products for seed treatment, or the placing on the market and use of seeds treated with those products, where the placing on the market and use of seeds treated with those products have been expressly prohibited by an implementing regulation.*

The Court also established that providing a derogation to a pesticide that was expressly banned for environmental or health reasons goes against the regulation as it would be that increase of crop yields has more weight than the protection of health and the environment.

This CJEU ruling not only says that the emergency authorisations for neonicotinoids issued since 2019 were unlawful. It also implies that the emergency authorisations that some Member States had granted year after year since 2014 for neonicotinoid applications in maize, oilseed rape or sunflower (these applications were banned EU-wide in 2013) were not in line with the legal requirements set by the EU pesticide regulation.

The fact that the EU Commission, following EFSA opinions from 2018 and 2021, decided not to take any legal action against the numerous derogations on neonicotinoids casts a very

1 <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-162/21&jur=C>

2 https://www.global2000.at/sites/global/files/GLOBAL2000Beschwerde-Notzulassung_Cruiser_20190416.pdf

negative light on the work of your administration, especially since enforcing EU law – a major task of the European Commission – requires its correct interpretation and implementation.

At present, all eyes are on the EU Commission, as member states are demanding clarity regarding the impact of the CJEU ruling on other emergency authorisations, some of whose applications are currently on hold with the authorities.

We understand that some Member states are pushing the Commission to adopt the narrowest possible interpretation of the ruling, to only prohibit the emergency authorisation of banned neonicotinoids for seed treatment, disregarding all other EU-banned substances. However, it is obvious that the ruling leaves no room for a narrow interpretation, as the reasoning of the judgment puts a strong emphasis on the precautionary principle and the fact that the objective of "protecting human and animal health" takes precedence over plant production. **One month after the publication of the ruling, it is now time to notify to Member States that it applies to all pesticides that have been expressly prohibited due to environmental or health concerns.**

A narrow interpretation, as apparently desired by some Member States, would result in further legal challenges both at EU and national level. Making sure that the ruling is properly implemented would be much preferable than being obliged, once again, to defend an inadequate interpretation of Article 53 before the CJEU. Furthermore, a correct implementation of the ruling will also align with the objectives of the Green Deal.

Were the Commission to follow the pressure of Member States advocating for a very narrow interpretation of the ruling, we do not even want to imagine the impact on the confidence of citizens in European institutions, especially on people's trust in the Commission and its role as the Guardian of the Treaties.

We, therefore, appeal to you, to immediately provide Member States with a reliable interpretation of the ruling, to protect citizens' health, the environment, and citizens' trust in the European Commission.

Sincerely yours,

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