



Plenary sitting

B8-0733/2016

1.6.2016

MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 123(2) of the Rules of Procedure

on endocrine disruptors: state of play following the Court of Justice judgment
of 16 December 2015
(2016/2747(RSP))

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European Parliament resolution on endocrine disruptors: state of play following the Court of Justice judgment of 16 December 2015 (2016/2747(RSP))

The European Parliament,

- having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products¹,
 - having regard to 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/EEC²,
 - having regard to the Commission roadmap for defining criteria for identifying Endocrine Disruptors in the context of the implementation of the Plant Protection Product Regulation and Biocidal Products Regulation³,
 - having regard to Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products⁴,
 - having regard to the judgment of the General Court of the European Union of 16 December 2015 in Case T-521/14 (case brought by Sweden against the Commission, Sweden being supported by the European Parliament, the Council of the European Union, Denmark, Finland, France and the Netherlands)⁵,
 - having regard to Article 17(1) of the Treaty on European Union (TEU),
 - having regard to Articles 265 and 266 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to the letter of 22 March 2016 addressed by President Jean-Claude Juncker to the President of the European Parliament ((2016)1416502),
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas Article 5(3) of Regulation (EU) No 528/2012 states that the Commission, no later than 13 December 2013, shall adopt delegated acts specifying scientific criteria for

¹ OJ L 167, 27.6.2012, p. 1.

² OJ L 309, 24.11.2009, p. 1.

³ http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2014_env_009_endocrine_disruptors_en.pdf

⁴ OJ L 342, 22.12.2009, p. 59.

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<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d51da24ab07e534c8a920ba78762970884.e34KaxiLc3qMb40Rch0SaxuTa3r0?text=&docid=173067&pageIndex=0&doclang=FR&mode=lst&dir=&cc=first&part=1&cid=717530>

the determination of endocrine-disrupting properties of active substances and biocidal products;

- B. whereas the same requirement had already been laid down in Regulation (EC) No 1107/2009 on plant protection products, and the Commission therefore had four years to adopt those scientific criteria;
- C. whereas according to Article 5 of Regulation (EU) No 528/2012, active substances which are deemed to have endocrine-disrupting properties that may cause adverse effects in humans, either on the basis of scientific criteria to be specified or, pending the adoption of those criteria, on the basis of interim criteria, shall not be approved, except if one of the derogations referred to in Article 5(2) is applicable;
- D. whereas according to Article 1 of Regulation (EU) No 528/2012, the purpose of that regulation is inter alia to ensure a high level of protection of both human and animal health and the environment;
- E. whereas the Commission has still not adopted the scientific criteria, which are now more than two and a half years overdue;
- F. whereas pursuant to Article 15(4) of Regulation (EC) No 1223/2009 on cosmetic products, the Commission shall review that regulation with regard to substances with endocrine-disrupting properties when Community or internationally agreed criteria for identifying substances with endocrine-disrupting properties are available, or at the latest by 11 January 2015; whereas the Commission has not yet conducted that review, contrary to its unconditional legal obligation and unduly linking the matter to its non-adoption of the scientific criteria;
- G. whereas the UNEP/WHO report on the ‘State of the science of endocrine disrupting chemicals 2012’ called endocrine disrupters (EDCs) a global threat, and refers inter alia to the high incidence and the increasing trends of many endocrine-related disorders in humans, as well as noting the observation of endocrine-related effects in wildlife populations;
- H. whereas the most recent study on the ‘Health costs that may be associated with Endocrine Disrupting Chemicals’ found, when assessing five potentially EDC-related health effects, that ‘according to currently available literature, the socio-economic burden of EDC associated health effects for the EU may be substantial’, stating that it ranges from EUR 46 billion to EUR 288 billion per year¹;
- I. whereas the General Court of the European Union declared in its judgment of 16 December 2015 in Case T-521/14 that the Commission was in breach of EU law by failing to act to adopt delegated acts for specifying scientific criteria for the determination of endocrine-disrupting properties;
- J. whereas the Court found that the interim criteria set in Regulation (EU) No 528/2012 cannot be seen as delivering a level of protection that would be sufficiently high (paragraph 77 of the judgment);

¹ http://www.uu.nl/sites/default/files/rijk_et_al_2016_-_report_iras_-_health_cost_associated_with_edcs_3.pdf

- K. whereas the root cause for the failure of the Commission to act was the decision by its Secretary-General on 2 July 2013 to undertake a socio-economic impact assessment for possible scientific criteria, including the introduction of regulatory changes to sectorial legislation (i.e. introduction of further elements of risk assessment and of further socio-economic considerations to reduce or prevent socio-economic impact – see section C of the Commission roadmap); whereas a fully-fledged proposal for scientific criteria was ready at the time after three years of work by the services;
- L. whereas the Court ruled in its judgement that the Commission had a clear, precise and unconditional obligation to adopt delegated acts in order to establish the aforementioned scientific criteria no later than 13 December 2013;
- M. whereas the Court went on to state that no provision of Regulation No 528/2012 required an impact assessment of scientific hazard-based criteria, and even if the Commission considered that such an impact assessment was necessary, this would not exonerate it from respecting the deadline laid down in the regulation (paragraph 74 of the judgment);
- N. whereas the Court furthermore ruled that the specification of scientific criteria can only be carried out in an objective manner on the basis of scientific data related to the endocrine system, independently of any other consideration, in particular economic ones (paragraph 71 of the judgment); whereas the Court thus clarified that a socio-economic impact assessment is not appropriate for deciding on a scientific matter;
- O. whereas the Court furthermore ruled that the Commission, in the context of the application of the powers delegated to it by the legislator, cannot question the regulatory balance laid down by the legislator between the improvement of the internal market and the protection of both human and animal health and the environment (paragraph 72 of the judgment); whereas the Court thus clarified that it is inappropriate for the Commission to assess regulatory changes of sectorial legislation as part of the impact assessment related to the adoption of a delegated act;
- P. whereas pursuant to Article 266 TFEU, the institution whose failure to act has been declared to be contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union;
- Q. whereas in February 2016, Commissioner Andriukaitis told Parliament in plenary that the Commission would nevertheless continue with the impact assessment, considering it a ‘useful and even essential tool to guide its future decision on the criteria’;
- R. whereas President Juncker confirmed, in his letter of 22 March 2016 to President Schulz, the Commission’s intention to first seek the opinion of the Regulatory Scrutiny Board on the impact assessment before deciding on the scientific criteria, thus confirming the continuation of an impact assessment that is neither required nor appropriate and does not respect the limitation of the powers delegated to the Commission, hence further delaying the adoption of scientific criteria;
- S. whereas there is therefore no doubt that the Commission has not yet taken action to comply with the judgment of the Court, but is, rather, persisting in its breach of EU law as declared by the Court, and is thus now also in breach of Article 266 TFEU;

- T. whereas it is absolutely unacceptable for the Commission, as the guardian of the Treaties, not to comply with the Treaties;
1. Agrees with the General Court that it is inappropriate for the Commission to undertake a socio-economic impact assessment for the determination of a scientific matter, and that the Commission is not entitled to change the regulatory balance laid down in a basic act via the application of powers delegated to it pursuant to Article 290 TFEU, an aspect which the Commission, however, evaluates in its impact assessment;
 2. Condemns the Commission not only for its failure to comply with its obligation to adopt delegated acts pursuant to Regulation (EU) No 528/2012, but moreover for failing to comply with its institutional obligations as laid down in the Treaties themselves, notably in Article 266 TFEU;
 3. Calls on the Commission to immediately comply with its obligations under Article 266 TFEU and to immediately adopt hazard-based scientific criteria for the determination of endocrine-disrupting properties;
 4. Considers this resolution as a formal notice to the Commission to act within the meaning of Article 265 TFEU;
 5. Reserves its right pursuant to Article 265 TFEU to bring an action before the Court of Justice of the European Union to have the infringement of Article 266 TFEU established should the Commission not define its position within the next two months;
 6. Instructs its President to forward this resolution to the President of the Council and the President of the Commission, and to notify them of the result of the vote on it in plenary.