



Council of the
European Union

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NOTE

From: Legal Service

To: Permanent Representatives Committee (Part I)

Subject: Case T-521/14 Sweden v Commission

- obligation to adopt a delegated act specifying scientific criteria for the determination of endocrine-disrupting properties pursuant to Parliament and Council Regulation 528/2012 on biocidal products - action for failure to act - decision to intervene in support of the applicant - decision to use the written procedure

1. Notice of the abovementioned case was published in the Official Journal on 1 December 2014¹. By its application, Sweden is seeking a declaration from the General Court that the Commission has unlawfully failed to act, contrary to Article 265 TFEU. More specifically, it is alleged that by failing to adopt delegated acts to specify scientific criteria for the determination of endocrine-disrupting properties, the Commission has infringed Article 5(3) of Regulation (EU) 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 products².

¹ OJ C431/28.

² OJ L167/1 of 27.6.2012.

2. Article 5(3), first subparagraph, of Regulation 528/2012 reads: "*3. No later than 13 December 2013, the Commission shall adopt delegated acts in accordance with Article 83 specifying scientific criteria for the determination of endocrine-disrupting properties.*"
3. Without taking a position on the importance or otherwise of criteria for the determination of endocrine-disrupting properties, it appears to the Legal Service that a position of principle is at stake in the present case. Indeed, in the context of conferral³ of powers, the decision to use "shall" or "may" and the decision as to an appropriate deadline by which the Commission is to act, are issues which are likely to arise in other legislative files. If the obligation to act by a certain deadline is effectively rendered legally meaningless, then the policy intention of the co-legislators will have been undermined. Therefore, the Legal Service recommends that the Council decide to intervene in support of the applicant in this case.
4. In accordance with Article 40 of the Statute on the Court of Justice and Article 115 of the Rules of Procedure of the General Court, any application to intervene will have to be presented within a period of 6 weeks from the date of publication of notice of the case in the Official Journal. That period is extended by a further period of 10 days, in accordance with Article 102(2) of the Rules of Procedure of the General Court. The deadline by which the application to intervene must be lodged with the General Court is therefore **22 January 2015**. Any Member State wishing to do so may also intervene, within the same time frame.
5. However, in view of the Christmas vacation period and the fact that the earliest scheduled Councils in January would only take place a few days before the deadline, the Legal Service recommends that Coreper decide to use the written procedure, with a deadline of close of business on **15 January 2015**. In the event that the Council decides by that date, by simple majority⁴, to intervene in support of the applicant, the Legal Service will then have sufficient time to draft the necessary application in the language of the case (i.e. Swedish).

³ Although the present case relates to a delegated act, the same considerations apply to implementing acts.

⁴ See Article 240(3) TFEU.