Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

8 June 2017*

(Reference for a preliminary ruling — Agriculture — Placing of plant protection products on the market — Directive 2008/69/EC — Article 3(2) — Procedure for re-evaluation, by the Member States, of authorised plant protection products — Time limit — Divergence between the different language versions)

In Case C-293/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 5 May 2016, received at the Court on 25 May 2016, in the proceedings

Sharda Europe BVBA

v

Administración del Estado,

Syngenta Agro SA,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda and C. Lycourgos (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Spanish Government, by M.A. Sampol Pucurull, acting as Agent,

— the European Commission, by I. Galindo Martín and F. Moro, acting as Agents,

gives the following

* Language of the case: Spanish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(2) of Commission Directive 2008/69/EC of 1 July 2008 amending Council Directive 91/414/EEC to include clofentezine, dicamba, difenoconazole, diflubenzuron, imazaquin, lenacil, oxadiazon, picloram and pyriproxyfen as active substances (OJ 2008 L 172, p. 9).

2 The request has been made in proceedings between Sharda Europe BVBA ('Sharda') and Syngenta Agro SA ('Syngenta') concerning a re-evaluation procedure in respect of a plant protection product registered in Sharda's name.

Legal context

Directive 2008/66/EC

3 Article 3(2) of Commission Directive 2008/66/EC of 30 June 2008 amending Council Directive 91/414/EEC to include bifenox, diflufenican, fenoxaprop-P, fenpropidin and quinoclamine as active substances (OJ 2008 L 171, p. 9), provides:

'By way of derogation from paragraph 1, for each authorised plant protection product containing bifenox, diflufenican, fenoxaprop-P, fenpropidin and quinoclamine as either the only active substance or as one of several active substances all of which were listed in Annex I to [Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1)] by 31 December 2008 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning bifenox, diflufenican, fenoxaprop-P, fenpropidin and quinoclamine respectively. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

…'

Directive 2008/69

4 Recital 7 of Directive 2008/69 states:

'Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of six months after inclusion to review existing authorisations of plant protection products containing the active substances listed in the Annex to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By way of derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.'

5 Article 3 of Directive 2008/69 provides:

‘1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing the active substances listed in the Annex as active substances by 30 June 2009.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to the active substances listed in the Annex are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holders of the authorisations have, or have access to, dossiers satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing one of the active substances listed in the Annex as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 December 2008 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning the active substances listed in the Annex. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

…’

Directive 2008/70/EC

6 Article 3(2) of Commission Directive 2008/70/EC of 11 July 2008 amending Council Directive 91/414 to include tritosulfuron as an active substance (OJ 2008 L 185, p. 40), provides:

‘By way of derogation from paragraph 1, for each authorised plant protection product containing tritosulfuron as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 30 November 2008 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning tritosulfuron. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

…’

Directive 2010/28/EU

7 Article 3(2) of Commission Directive 2010/28/EU of 23 April 2010 amending Council Directive 91/414 to include metalaxyl as an active substance (OJ 2010 L 104, p. 57), provides:

‘By way of derogation from paragraph 1, for each authorised plant protection product containing metalaxyl as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 30 June 2010 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning metalaxyl. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

…’

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 On 14 January 2009, Sharda submitted an application, under Article 3(2) of Directive 2008/69, for re-evaluation of the authorisation issued for the placing on the market of the plant protection product ‘Core’, which contained difenoconazole, one of the active substances listed in the Annex to that directive. That application was granted by the competent national authorities.

9 Syngenta brought an administrative action before the Secretaría General Técnica del Ministerio de Medio Ambiente, Rural y Marino (Technical General Secretariat of the Ministry for Environmental, Rural and Marine Affairs, Spain) seeking to have the authorisation issued for the plant protection product ‘Core’ withdrawn. According to Syngenta, the application for re-evaluation of that product had been submitted after 31 December 2008, the deadline — it claimed — for the submission of such an application for re-evaluation under Article 3(2) of Directive 2008/69. By decision of 20 January 2011, the Technical General Secretariat dismissed that action.

10 Syngenta brought an appeal against that decision before the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid, Spain), which, by a judgment of 25 October 2013, annulled the re-evaluation procedure in respect of the plant protection product ‘Core’, on the ground that the application for re-evaluation had been submitted after the expiry of the deadline set in Article 3(2) of Directive 2008/69.

11 Sharda brought an appeal against that judgment before the Tribunal Supremo (Supreme Court, Spain), claiming that the date referred to in Article 3(2) did not preclude the submission of applications for re-evaluation after 31 December 2008.

12 Syngenta contended that, since Article 3(2) of Directive 2008/69 constitutes a mandatory provision which is not capable of being interpreted otherwise, the application for re-evaluation submitted by Sharda on 14 January 2009, that is, after the deadline prescribed in that provision, ought never to have been granted.

13 The referring court considers that it is necessary, in order to dispose of the case before it, to determine whether the time limit referred to in Article 3(2) is an absolute deadline, or whether it is a time limit that may be extended by the Member States for objective reasons of *force majeure* or in accordance with their domestic law.

14 In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Is the date 31 December 2008 in Article 3(2) of [Directive 2008/69], in its Spanish version, to be understood as the expiry of the deadline for the Member States to carry out a re-evaluation, or as the final date for inclusion in the list in Annex I of [Directive 91/414] of active substances that must be re-evaluated, or as the final day for submitting the corresponding application for inclusion?

2. Is the expression “by 31 December 2008 at the latest” in Article 3(2) of Directive 2008/69 a fixed deadline on account of the aim pursued by the system established by [Directive 91/414], and does it preclude the Member States from extending it, with the result that it is calculated according to [directive 2008/69]?

3. If it is understood that the deadline may be extended, may it be extended for objective reasons of *force majeure* or may the Member States, to which the mandate in Article 3 is addressed, extend it in accordance with the conditions and requirements of their national legislation?'

Consideration of the questions referred

The first question

15 By its first question, the referring court asks, in essence, whether the first subparagraph of Article 3(2) of Directive 2008/69 must be interpreted as meaning that the date of 31 December 2008 to which it refers corresponds, for an already authorised plant protection product containing one of the active substances listed in the Annex to that directive, to a deadline by which the Member States must carry out the re-evaluation, provided for in the first subparagraph of Article 3(2), of that plant protection product, or to a deadline by which the corresponding application for re-evaluation must be submitted, or to the deadline by which all the active substances contained in that plant protection product, other than those listed in the Annex to Directive 2008/69, must have been included on the list in Annex I to Directive 91/414, in order for an obligation to carry out a re-evaluation of that product to arise.

16 The first subparagraph of Article 3(2) of Directive 2008/69, the interpretation of which is sought, provides that 'for each authorised plant protection product containing one of the active substances listed in the Annex as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 31 December 2008 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC'.

17 As the referring court states, there is a discrepancy between the wording of the Spanish version of the first subparagraph of Article 3(2) of Directive 2008/69 and that of the other language versions.

18 The Spanish version of that provision, according to which '*todo producto fitosanitario autorizado … será objeto de una nueva evaluación, a más tardar, el 31 de diciembre de 2008*', appears to lead to an interpretation whereby the date of 31 December 2008 constitutes the deadline by which, at the latest, the Member States must carry out a re-evaluation, within the meaning of that provision, of each authorised plant protection product containing one of the active substances listed in the Annex to that directive as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414.

19 By contrast, the German version ('*die sämtlich bis spätestens 31 Dezember 2008 in Anhang I der Richtlinie 91/414/EWG aufgeführt waren*'), English version ('all of which were listed in Annex I to Directive 91/414/EEC by 31 December 2008 at the latest') and French version ('*toutes inscrites à l'annexe I de la directive 91/414/CEE au plus tard le 31 décembre 2008*') of the first subparagraph of Article 3(2) of Directive 2008/69 lead to an interpretation whereby the date of 31 December 2008 refers to the listing of the active substances contained in the authorised plant protection product that is to be re-evaluated by the Member States, in accordance with the requirements of Article 3(2). The same is true, inter alia, of the Greek, Italian and Dutch versions of that provision.

20 More specifically, the wording of all those language versions, with the exception of the Spanish version, indicates that the plant protection product concerned must be re-evaluated if all the active substances composing it, together with those listed in the Annex to Directive 2008/69, had been listed in Annex I to Directive 91/414 by 31 December 2008 at the latest.

21 It must be recalled that, in accordance with the settled case-law of the Court, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions in that regard. The need for uniform application and, therefore, for uniform interpretation of an EU measure precludes one version of the text being considered in isolation, but requires that the measure be interpreted by reference to the general scheme and purpose of the rules of which it forms part (see, inter alia, judgments of 27 October 1977, *Bouchereau*, 30/77, EU:C:1977:172, paragraph 14, and of 17 March 2016, *Kødbranchens Fællesråd*, C-112/15, EU:C:2016:185, paragraph 36).

22 In this connection, first, it must be pointed out that Directive 2008/69 came into force on 1 January 2009. It would be incompatible with the scope *ratione temporis* of that directive to interpret the first subparagraph of Article 3(2) thereof as requiring the re-evaluations, within the meaning of that provision, to be carried out, or the corresponding applications for re-evaluation to be submitted, by 31 December 2008 at the latest, that is, before the date of the coming into force of that directive.

23 Second, it should be noted that recital 7 of Directive 2008/69 refers to a period of six months, from which period derogation should be made for the submission and assessment of the complete dossier provided for in Article 3(2) of that directive. That period starts to run, in accordance with the first sentence of that recital, from the inclusion of an active substance in Annex I to Directive 91/414, that is to say, from the coming into force of Directive 2008/69 which provides for that listing. Since Directive 2008/69 came into force on 1 January 2009, recital 7 thereof refers, as regards the submission and assessment of the complete dossier provided for in Article 3(2) of that directive, to a date subsequent to 30 June 2009. It follows that the date of 31 December 2008, referred to in Article 3(2) of Directive 2008/69, cannot constitute the deadline by which the re-evaluation of a plant protection product, within the meaning of that provision, must be carried out.

24 Third, as the Commission has indicated in its written observations, it is appropriate to refer to Directives 2008/66, 2008/70 and 2010/28 which, like Directive 2008/69, amend Directive 91/414 in order to add active substances to Annex I thereof, and each of which includes an Article 3(2) which is different from Article 3(2) of Directive 2008/69 only as regards the date and the active substance or substances to which it refers. The wording of Article 3(2) in each of those directives, including in the Spanish version thereof, corresponds to the wording of the language versions of Article 3(2) of Directive 2008/69, referred to in paragraph 19 of the present judgment, from which it is clear that the date referred to in each of those Articles 3(2) constitutes the deadline by which all the active substances contained in a plant protection product containing, in addition, one of the active substances listed in the Annex to each of those directives, must have been included on the list in Annex I to Directive 91/414, in order for an obligation to carry out a re-evaluation of that product to arise.

25 In the light of all the foregoing considerations, the answer to the first question is that the first subparagraph of Article 3(2) of Directive 2008/69 must be interpreted as meaning that the date of 31 December 2008 to which it refers corresponds, for an already authorised plant protection product containing one of the active substances listed in the Annex to that directive, to the deadline by which all the active substances contained in that plant protection product, other than those listed in the Annex to Directive 2008/69, must have been included on the list in Annex I to Directive 91/414, in order for an obligation to carry out a re-evaluation of that product, provided for in the first subparagraph of Article 3(2), to arise.

The second and third questions

26 The second and third questions referred are based on the premiss that the date of 31 December 2008, referred to in Article 3(2) of Directive 2008/69, corresponds to a deadline by which an application for the re-evaluation of a plant protection product, provided for in that provision, must be submitted. It is clear from the answer to the first question that the date in question does not correspond to such a time limit.

27 It follows that it is not necessary to answer the second and third questions posed by the referring court.

Costs

28 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

The first subparagraph of Article 3(2) of Commission Directive 2008/69/EC of 1 July 2008 amending Council Directive 91/414/EEC to include clofentezine, dicamba, difenoconazole, diflubenzuron, imazaquin, lenacil, oxadiazon, picloram and pyriproxyfen as active substances, must be interpreted as meaning that the date of 31 December 2008 to which it refers corresponds, for an already authorised plant protection product containing one of the active substances listed in the Annex to that directive, to the deadline by which all the active substances contained in that plant protection product, other than those listed in the Annex to Directive 2008/69, must have been included on the list in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, in order for an obligation to carry out the re-evaluation of that product, provided for in the first subparagraph of Article 3(2), to arise.

[Signatures]