EUROPEAN
COMMISSION

Brussels, XXX
C(2016) 3752 projet

DRAFT

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

setting out scientific criteria for the determination of endocrine-disrupting properties pursuant to Regulation (EU) No 528/2012

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products sets out regulatory consequences for active substances having endocrine-disrupting properties and biocidal products containing these substances. Article 5(3) of the Regulation provides that, by 13 December 2013 at the latest, the Commission had to adopt delegated acts specifying scientific criteria for the determination of endocrine-disrupting properties. In its judgement of 16 December 2015 on the Case T-521/14 Sweden versus the Commission, the EU General Court ruled that the European Commission breached EU law by failing to set criteria to identify endocrine disruptors within the deadline indicated in Regulation (EU) No 528/2012.

The delegated act provides scientific criteria to identify endocrine disruptors. These criteria are based on the definitions for endocrine disruptors and adverse effects developed by World Health Organisation through its International Programme for Chemical Safety. These criteria reflect the current state of scientific and technical knowledge and allow a more accurate identification of active substances having endocrine disrupting properties.

On 15 June 2016, the Commission adopted a Communication of the Commission to the European Parliament and the Council on endocrine disruptors and presented the draft Commission acts setting out scientific criteria for their determination in the context of the EU legislation on plant protection products and biocidal products (COM(2016) 350 final). This communication puts the established scientific criteria for biocidal products in a broader context, in particular the link with the setting of scientific criteria for the determination of endocrine-disrupting properties in the domain of plant protection products, the implication for other regulatory areas and other on-going activities of the Commission on endocrine disruptors.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

A public consultation was carried out from September 2014 till January 2015 in the context of an impact assessment. The report was published on 24 July 2015.

The Commission published a draft of the delegated act the 15 of June 2016. This draft delegated act was consulted with the general public between the 30 of June and the 28 of July 2016 via the Better Regulation Portal. A total of 120 responses were received which are publicly available1. This draft delegated act was also notified on the 23 June 2016 under the Agreement on Technical Barriers to Trade and comments were received of five members.

The Commission has consulted an expert group (the 'Biocides CA meeting') consisting of representatives of Member States' competent authorities for biocidal products, in meetings which took place the 22 of June 2016, the 21 of September 2016, the 18 of November and the 21 of December 2016.

[1] https://ec.europa.eu/info/law/better-regulation/share-your-views_en

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act specifies scientific criteria for the determination of endocrine-disrupting properties in accordance with Article 5(3) of Regulation (EU) No 528/2012.

COMMISSION DELEGATED REGULATION (EU) …/...

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 products[2], and in particular the first subparagraph of Article 5(3) thereof,

Whereas:

(1) Scientific criteria for the determination of endocrine disrupting properties pursuant to Regulation (EU) No 528/2012 should be developed taking into account the purpose of that Regulation to improve the free movement of biocidal products within the Union while ensuring a high level of protection of both human and animal health and the environment.

(2) In 2002, the World Health Organisation (WHO) through its International Programme for Chemical Safety, proposed a definition for endocrine disruptors[3] and in 2009 a definition of adverse effects[4]. Those definitions have by now reached the widest consensus among scientists. The European Food Safety Authority endorsed those definitions in its Scientific Opinion on endocrine disruptors adopted on 28 February 2013[5]. It is also the view of the Scientific Committee on Consumer Safety[6]. It is therefore appropriate to base the criteria for the determination of endocrine disrupting properties on those WHO definitions.

(3) In order to implement those criteria, weight of evidence should be applied considering in particular the approach provided for in Regulation (EU) No 528/2012 and in

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2 OJ L 167, 27.6.2012, p. 1.

3 WHO/IPCS (World Health Organization/International Programme on Chemical Safety), 2002. Global Assessment of the State-of-the-science of Endocrine Disruptors. WHO/PCS/EDC/02.2, publicly available at http://www.who.int/ipcs/publications/new_issues/endocrine_disruptors/en/.

4 WHO/IPCS (World Health Organization/International Programme on Chemical Safety), 2009. Principles and Methods for the Risk Assessment of Chemicals in Food. Environmental Health Criteria 240, publicly available at http://www.who.int/foodsafety/chem/principles/en/index1.html.

5 "Scientific Opinion on the hazard assessment of endocrine disruptors: Scientific criteria for identification of endocrine disruptors and appropriateness of existing test methods for assessing effects mediated by these substances on human health and the environment", EFSA Journal 2013;11(3):3132, doi: 10.2903/j.efsa.2013.3132.

6 Scientific Committee on Consumer Safety, Memorandum on Endocrine disruptors, 16.12.2014 (SCCS/1544/14)

Regulation (EC) No 1272/2008 of the European Parliament and Council[7] on the weight of evidence. Previous experience with the application of the Guidance document on standardised test guidelines for evaluating chemicals for endocrine disruption of OECD[8] should be also considered. In addition, the implementation of the criteria should be based on all relevant scientific evidence, including studies submitted in accordance with the current regulatory data requirements of Regulation (EU) No 528/2012, which are mostly based on international agreed study protocols.

(4) The criteria for the determination of endocrine disrupting properties reflect the current state of scientific and technical knowledge and allow identifying active substances having endocrine disrupting properties more accurately. Without prejudice to Article 90(2) of Regulation (EU) No 528/2012, the new criteria should therefore apply as soon as possible, except where the Committee referred to in Article 82 of Regulation (EU) No 528/2012 has voted on the draft Regulation presented to it without that Regulation having been adopted by the Commission by [*date of IEF of this Regulation*]. The Commission will consider the implications for each pending procedure and, where necessary, take appropriate measures with due respect for the rights of the applicants. This may include a request for additional information from the applicant and/or a revised opinion from the Agency.

HAS ADOPTED THIS REGULATION:

Article 1

The scientific criteria for the determination of endocrine-disrupting properties referred to in the first subparagraph of Article 5(3) of Regulation (EU) No 528/2012 shall be as set out in the Annex to this Regulation.

Article 2

The criteria laid down in the Annex to this Regulation shall apply as of [date of EIF], except for procedures where the Committee referred to in Article 82 of Regulation (EU) No 528/2012 has voted on the draft Regulation presented to it without that draft Regulation having been adopted by [*date of EIF*].

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

[7] Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

[8] OECD Series on Testing and Assessment No. 150

Done at Brussels,

For the Commission
The President

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COMMISSION

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ANNEX 1

DRAFT

ANNEX

to the

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ANNEX

A substance shall be considered as having endocrine disrupting properties with respect to humans or non-target organisms, where it meets the criteria set out in section A or section B.

Section A - Endocrine disrupting properties with respect to humans

(1) A substance shall be considered as having endocrine disrupting properties that may cause adverse effect in humans if based on points (a) to (e) of point (2), it is a substance that meets all of the following criteria, unless there is information demonstrating that the adverse effects identified are clearly not relevant to humans:

(a) it shows an adverse effect in an intact organism or its progeny, which is a change in the morphology, physiology, growth, development, reproduction or life span of an organism, system or (sub)population that results in an impairment of functional capacity, an impairment of the capacity to compensate for additional stress or an increase in susceptibility to other influences;

(b) it has an endocrine mode of action , i.e. it alters the function(s) of the endocrine system;

(c) the adverse effect is a consequence of the endocrine mode of action.

(2) The identification of a substance as having endocrine disrupting properties that may cause adverse effect in humans in accordance with point (1) shall be based on all of the following:

(a) all available relevant scientific data:

(i) scientific data generated in accordance with internationally agreed study protocols (in vivo studies or adequately validated alternative test systems predictive of adverse effects in humans or animals; as well as in vivo, in vitro , or, if applicable, in silico studies informing about endocrine modes of action).

(ii) other scientific data selected applying a systematic review methodology.

(b) an assessment of the available relevant scientific data based on a weight of evidence approach in order to establish whether the criteria set out in point (1) are fulfilled.

(c) in applying the weight of evidence determination the assessment of the scientific evidence shall, in particular, consider all of the following factors:

(i) both positive and negative results.

(ii) the relevance of the study designs for the assessment of adverse effects and of the endocrine mode of action.

(iii) the biological plausibility of the link between the adverse effects and the endocrine mode of action.

(iv) the quality and consistency of the data, considering the pattern and coherence of the results within and between studies of a similar design and across different species.

(v) the route of exposure, toxicokinetic and metabolism studies.

(vi) the concept of the limit dose, and international guidelines on maximum recommended doses and for assessing confounding effects of excessive toxicity.

(d) adverse effects that are non-specific secondary consequences of other toxic effects shall not be considered for the identification of the substance as endocrine disruptor.

(e) Where there is information demonstrating that the adverse effects are clearly not relevant for humans the substance should not be considered a human endocrine disruptor.

Section B - Endocrine disrupting properties with respect to non-target organisms

(1) A substance shall be considered as having endocrine disrupting properties that may cause adverse effects on non-target organisms if, upon the application of points (a) to (e) of point (2), it is a substance that meets all of following criteria, unless there is information demonstrating that the adverse effects identified are not relevant at the (sub)population level for non-target organisms:

(a) it shows an adverse effect in non-target organisms, which is a change in the morphology, physiology, growth, development, reproduction or life span of an organism, system or (sub)population that results in an impairment of functional capacity, an impairment of the capacity to compensate for additional stress or an increase in susceptibility to other influences;

(b) it has an endocrine mode of action, i.e. it alters the function(s) of the endocrine system;

(c) the adverse effect is a consequence of the endocrine mode of action.

(2) The identification of a substance as having endocrine disrupting properties that may cause adverse effects on non-target organisms in accordance with point (1) shall be based on all of the following:

(a) all available relevant scientific data:

(i) scientific data generated in accordance with internationally agreed study protocols (in vivo studies or adequately validated alternative test systems predictive of adverse effects in humans or animals; as well as in vivo, in vitro or, if applicable, in silico studies informing about endocrine modes of action). In particular, guidance on the implementation of Regulation (EU) No 528/2012, issued by the European Chemicals Agency shall be considered.

(ii) other scientific data selected applying a systematic review methodology.

(b) an assessment of the available relevant scientific data based on a weight of evidence approach in order to establish whether the criteria set out in point 1 are fulfilled.

(c) in applying the weight of evidence determination, the assessment of the scientific evidence shall consider all of the following factors:

(i) both positive and negative results, discriminating between taxonomic groups (e.g. mammals, birds, fish) where relevant.

(ii) the relevance of the study designs for the assessment of the adverse effects and its relevance at the (sub)population level, and for the assessment of the endocrine mode of action.

(iii) the adverse effects on reproduction, growth/development, and other relevant adverse effects which are likely to impact on (sub)populations. Adequate, reliable and representative field or monitoring data and/or results from population models shall as well be considered where available.

(iv) the biological plausibility of the link between the adverse effects and the endocrine mode of action.

(v) the quality and consistency of the data, considering the pattern and coherence of the results within and between studies of a similar design and across different taxonomic groups.

(vi) the concept of the limit dose and international guidelines on maximum recommended doses and for assessing confounding effects of excessive toxicity.

(d) adverse effects that are non-specific secondary consequences of other toxic effects shall not be considered for the identification of the substance as endocrine disruptor with respect to non-target organisms.

(e) If the mode of action of the active substance being assessed, as defined under point 3.6 of Part A of the Annex to Commission Regulation (EU) No 283/2013, acts by regulating moulting and/or growth of harmful organisms via their endocrine system, it shall not be considered for the identification of the substance as endocrine disruptor with respect to non-target organisms.