The Consumer Voice in Europe

BEUC ALERTS OMBUDSMAN ABOUT EU COMMISSION DRAGGING ITS FEET ON ENDOCRINE DISRUPTORS IN COSMETICS

Copy of complaint submitted on 30 November 2017

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BEUC alerts Ombudsman about EU Commission dragging its feet on endocrine disruptors in cosmetics

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Against which European Union (EU) institution or body do you wish to complain?

The European Commission

What is the decision or matter about which you complain? When did you become aware of it?

Article 15(4) of the Cosmetics Regulation (Regulation (EC) No 1223/2009) instructs the European Commission to review the Regulation with regard to substances with endocrine-disrupting properties, when Community or internationally agreed criteria for identifying such substances are available, **or at the latest on 11 January 2015**. (Herein the 'EDC review') Despite this unambiguous deadline, the Commission has to date failed to complete the EDC review.

Since January 2015, BEUC has repeatedly raised concern about the delayed EDC review which may create unnecessary health risks for consumers. Sufficient evidence links endocrine-disrupting chemicals (EDCs) to a range of severe diseases and disorders, including infertility and cancer. Cosmetics ingredients with endocrine-disrupting properties represent a significant, potential source of cumulative consumer exposure to EDCs – a fact compelling demonstrated by EU consumer organisations. Consumers are in frequent, intimate and often prolonged contact with cosmetic and personal care products: a survey of more than 2,300 people found that the average adult uses nine personal care products each day. This aggregate figure however hides significant variations. One in four women for example use at least 15 products daily, according to the same survey.

Cosmetic and personal care products are thus major direct sources of consumer exposure to potential EDCs, including for vulnerable groups, such as pregnant and breast-feeding women, children and persons with compromised immune responses. The failure to complete the EDC review may therefore endanger the health of millions of consumers across the EU.

What do you consider that the EU institution or body has done wrong?

Despite the legal deadline established by the Cosmetics Regulation, the European Commission *continues* to delay completion of the EDC review.

According to the 2016 Commission communication on endocrine disruptors (COM(2016) 350 final), "[…] the Commission has to 'review [the Cosmetics Regulation] with regard to substances with endocrine-disrupting properties'. This review is overdue. A screening exercise of certain cosmetic ingredients that has been contracted by the Commission is close to completion. **The Commission will present the review by the end of the year**." (Our emphasis.) On 8 July 2016, Commissioner Elżbieta Bieńkowska assured the European Parliament that "before end-2016, the Commission will complete the review and communicate the results." This has not happened.

At the meeting of the Working Group on Cosmetic Products on 14 March 2017, the Commission instead informed members of the Working Group that "[…] a draft report on the evaluation of the Cosmetics Regulation as regards endocrine disruptors **was prepared in view of its adoption by the College by the end of 2016**. However, the Commission is still examining the draft report and **its adoption was postponed in light of the on-going discussions on the scientific criteria for the definition of endocrine disruptors in the sectors of biocides and plant protection products**." (Our emphasis.)

BEUC considers that the on-going discussions on the Commission's proposed scientific criteria to determine endocrine-disrupting properties in the sectors of biocides and plant protection products (Herein the 'EDC criteria') do not justify the Commission's decision to postpone the EDC review.

Under the Biocidal Product Regulation (Regulation (EC) No 528/2012) and the Plant Protection Products Regulation (Regulation (EC) No 1107/2009), the European Parliament and Council set December 2013 as a deadline for the Commission to adopt EDC criteria. The Biocidal Products Regulation in particular provides that, by 13 December 2013 at the latest, the Commission was to adopt delegated acts setting out EDC criteria. The Commission's failure to adopt such criteria under the Biocidal Products Regulation is unlawful as established by the General Court of the European Union in December 2015.

That fact however does not exonerate the Commission from the obligation to review the Cosmetics Regulation with regard to substances with endocrine-disrupting properties. On the contrary. The specific formulation of the Cosmetics Regulation's Article 15(4) as well as the absence of a legal reference to either the Plant Protection Products Regulation or the Biocidal Product Regulation demonstrate that the EDC review obligation exists in its own right and *independent* of the Commission's obligation to develop EDC criteria in other sectors. This conclusion is further corroborated by the *Travaux Préparatoires* for the Cosmetics Regulation which states the legislator's intention that the Commission shall complete the EDC review **no later than 5 years after the date of entry into force of the Regulation**.

Further, the EDC criteria proposed by the Commission are developed exclusively based on a sectoral view (biocides/pesticides). It is therefore unclear if the proposed criteria can be applied to other sectors or product groups, such as cosmetics. The Dutch National Institute for Public Health and the Environment (RIVM) for example concludes: "Due to the ban on animal testing for cosmetic ingredients effective since 2013, it is not possible to identify a chemical as an EDC based on the draft EU criteria. If a chemical is only used in cosmetic products, it will be extremely difficult to differentiate between a potential EDC and EDC."

Cosmetic products are a significant, direct sources of consumer exposure to potential EDCs, including for vulnerable groups, such as pregnant and breast-feeding women, children and persons with compromised immune responses. Cosmetics ingredients with endocrine-disrupting properties should therefore be regulated consistent with substances of equivalent concern, such as those that cause cancer, change DNA or are toxic to reproduction (CMRs). The Cosmetics Regulation prohibits use of known, presumed and *suspected* CMR substances, and a parallel approach is needed for substances with endocrine-disrupting properties to achieve a high level of consumer protection. The proposed EDC criteria however only allows for the identification of known and presumed EDCs, but excludes suspected (potential) EDCs.

This suggests that to achieve the objectives of the Cosmetics Regulation, specifically a high level of protection, the proposed EDC criteria will most certainly need to be modified and further developed. As such, and since the Commission has set aside the commitment under the 7th Environmental Action Programme to develop *horizontal* EDC criteria, the delay with respect to adopting the EDC criteria developed for the biocides and pesticides sectors cannot justify the failure to complete the EDC review for cosmetics.

In short, the legislator set an unequivocal deadline for the Commission to review the Cosmetics Regulation – whether agreed criteria for identifying substances with endocrine-disrupting properties are available or not. The on-going discussions on such criteria in the sectors of biocides and plant protection products, therefore, can in no way justify the Commission's decision to postpone the review of the Cosmetics Regulation.

BEUC further considers that the failure to review the Cosmetics Regulation with regard to substances with endocrine-disrupting properties may create unnecessary risks for consumers. The Commission's decision to postpone the EDC review directly conflicts with the high level of protection sought by the legislator. Political concerns rather than legitimate scientific or technical reasons would thus appear to dictate the delay in completing the EDC review.

What, in your view, should the institution or body do to put things right?

The European Commission must complete the review foreseen in Article 15(4) of the Cosmetics Regulation without further delay, and independent of the on-going discussions on EDC criteria in the sectors of biocides and plant protection products. Based on the review, the Commission should, where appropriate, propose amendments to the Cosmetics Regulation to ensure a high level of consumer protection against substances with endocrine-disrupting properties.

Have you already contacted the EU institution or body concerned in order to obtain redress?

On 2 February 2016, BEUC Director General, Monique Goyens wrote to Commissioner Vytenis Andriukaitis to emphasise, among others, the Commission's failure to perform the EDC review despite the legal obligation to do so no later than 11 January 2015. Commissioner Andriukaitis' written response dated 13 February 2016 did not address the delayed EDC review.

BEUC again raised the EDC review with the responsible Commission services at a meeting on 3 March 2017. At our request, the delayed EDC review was likewise included on the agenda for the 3 July 2017 meeting of the Working Group on Cosmetic Products.

At the July meeting, the Commission explained that the situation with regard to the EDC review was similar to the situation presented at the March 2017 meeting. The Commission reiterated that the adoption of the draft EDC review report by the College had been postponed in light of the on-going discussions on the EDC criteria in the biocides and plant protection products sectors. The Commission could not provide further information about when the EDC review would be finalised.

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Not applicable

Has the object of your complaint already been settled by a court or is it pending before a court?

No

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

ENDS

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