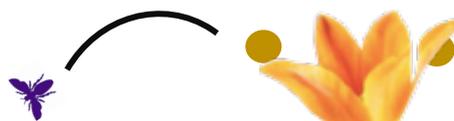


January 2021



JUSTICE  
PESTICIDES



# Neonicotinoïds

*in courts*





**D**eveloped in the 1980s and introduced to the market in the 1990s, neonicotinoids are a family of powerful insecticides that affect the central nervous system of insects by targeting nicotinic acetylcholine receptors in the brain, causing paralysis and death. Their characteristics are their extreme toxicity for insects (a few billionths of a gramme is enough to kill ...) and their long-term action allowing a more effective protection and a decrease in dosage. They are also systemic insecticides, which means that they integrate all the components of the processed plant. These characteristics have made them very popular among farmers, allowing them a comprehensive and sustainable crop protection at lower cost. Neonicotinoids are conventionally used by spraying on crops, or increasingly by coating seeds, which now accounts for about 60% of uses. The seeds to be planted are coated with the insecticide, intended to be present in all parts of the plant until harvest, although only 20% of the active substance is taken up by the plant, so the majority remains in the soil and water. This is a real paradigm shift, since insecticide treatment takes place constantly throughout the entire crop, as opposed to agronomic recommendations to target only "occasional pests" when and where they appear.

The use of neonicotinoids has continued to grow and these products have become the most widely used insecticides around the world. However, these substances are extremely harmful for the environment and represent a worldwide ecological and health threat. Neonicotinoids spread uncontrollably in ecosystems, both terrestrial and aquatic, and poison plant and animal biodiversity. Species like earthworms or bees, not targeted by neonicotinoids, are also poisoned. It is because of their toxic action on bees at infinitesimal doses that these insecticides are called "bee



killers", but their mode of action makes them toxic to a large number of species of insects and other invertebrates, whose disappearance leads to the death of the birds and other animals that feed on them. A wide swathe of biodiversity is impacted by neonicotinoids and without this biodiversity, our food security is threatened. (Environmental Risks and Challenges Associated with Neonicotinoid Insecticides, <https://pubs.acs.org/doi/full/10.1021/acs.est.7b06388>).

(Conclusions of the Worldwide Integrated Assessment on the risks of neonicotinoids and fipronil to biodiversity and ecosystem functioning, <https://link.springer.com/article/10.1007/s11356-014-3229-5>)

In addition, neonicotinoids are suspected to also have an impact on human health. Although more research is needed, scientific studies are pointing to the effects of chronic exposure to these substances. They report "links with unfavorable developmental or neurological consequences": increased risk of autism, memory loss and tremors, a congenital malformation of the heart (known as "Tetralogy of Fallot"), as well as another serious congenital anomaly, anencephaly (partial or total absence of brain and skull at birth). These effects are not particularly surprising, since neonicotinoids were specifically conceived to interact with certain brain receptors that insects have in common with mammals. They are also suspected to be endocrine disruptors, and substances presumed to be toxic to human reproduction. (Effects of Neonicotinoid Pesticide Exposure on Human Health: A Systematic Review, <https://pubmed.ncbi.nlm.nih.gov/27385285/>).

In spite of their dangerousness, known or suspected from the time they were first placed on the market, and bans in the EU imposed by public pressure, the use of neonicotinoids continues to grow, generating litigation in the courts, by environmentalist associations and beekeepers to forbid their use, or conversely, by agrochemical companies to challenge their prohibition or limitations on their use. The mission of "Justice Pesticides" is to collect all legal cases related to pesticides in the world in order to help victims obtain compensation for damages suffered, and to push for banning these toxic products, by making available to all the jurisprudence and legal or scientific arguments used in these litigations. This brochure aims to show how the legal system has taken up this issue within the

European Union (I), and outside (II), through a summary of the cases listed on the association's website.

Among the nearly 400 pesticide-related disputes collected by Justice Pesticides, 40 are about neonicotinoids, in 5 countries as well as the European Union. Three quarters of these cases relate to the massive impact of neonicotinoids on bees and 10% to national exemptions to the European ban on neonicotinoids.

Although many scientific elements are mobilized in these cases, it appears that legal action alone has not been enough to prevent the commercialization of neonicotinoids but has

undoubtedly contributed to the strengthening of legislative and regulatory mechanisms concerning neonicotinoids.





## European Union case law on neonicotinoids

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The European Union has been at the origin of a harmonization of agricultural, health, environmental and internal market policies within the member states regarding the regulation of neonicotinoids, under the impetus of more and more scientific studies showing they are far from harmless (?). As a result of European policies, several national bans have been introduced and have ultimately upheld by judges where challenged. If European Union jurisprudence focuses mainly on the disappearance of bees (A), French jurisprudence seems to go further (B). In several other European countries (C), judges also rule against the use of neonicotinoids.

### A – The actions of the European Court of Justice

The jurisprudence of the judges of European Court of Justice in Luxembourg on the subject of neonicotinoids is only made up of two decisions - and concerns above all their impact on bees.



The first judgment was handed down by the Court of the European Union on May 17, 2018, in the case "Bayer CropScience et al. v. European Commission". The applicants were two multinational agrochemical companies, Bayer CropScience of Germany and Syngenta Crop Protection, a Swiss company (subsequently acquired by the Chinese company ChemChina). In 2013, due to the risks for bees and pollinators,



identified by the European Food Safety Authority (EFSA), the European Commission adopted implementing regulation 485/2013 which imposed restrictions on the use of three insecticides belonging to the neonicotinoid family: clothianidin, imidacloprid and thiamethoxam. Within the European Union, imidacloprid and clothianidin are

produced and commercialised by the Bayer group and thiamethoxam is produced and commercialised by the Syngenta group. Both manufacturers have therefore appealed against these restrictions. Bayer and Syngenta argued that there was no scientific basis for the contested act, that the precautionary principle and the principle of proportionality had been misapplied, that there had been an infringement of property rights and entrepreneurial freedom and, above all, that the contested act had the potential to harm bees. On this last point, the companies referred to the seriously damaging effects that the act could have on the environment and honey bees. These effects would be due to the fact that, in the absence of the possibility to use plant protection products containing the targeted substances, in particular for seed treatment, farmers would be obliged to resort to older, less targeted products, requiring higher doses and often applied as foliar sprays. In response, the Commission raised the point that there was no scientific evidence that restricting the use of neonicotinoids would have adverse effects on the environment. On the contrary, the Commission argued, without being contradicted by the applicants, that Member States which had suspended certain uses of neonicotinoids for several years (in particular Germany,

France, Italy and Slovenia) had never reported any adverse effects on the environment.

The Court ruled that the Commission could therefore conclude that such effects did not exist or, in any event, were of minor importance. The application was therefore dismissed. The EU Court confirmed the validity of the restrictions introduced in 2013, using the precautionary principle to justify them. The court found that, with the entry into force of Regulation 1107/2009 in 2011, the requirements regarding the absence of unacceptable effects on bees had been tightened. Indeed, it was explicitly required that the exposure of bees to the active substances in question was only "negligible" or that its use had "no unacceptable acute or chronic effects on the survival and development of colonies, taking into account the effects on bee larvae and on the behavior of bees". In addition, the court considered that, in light of the results of new studies, which showed a reduction in the proportion of foragers returning to the hive and effects on bumblebee colony development, the Commission was

justified in considering that a review of the approval of the substances in question was warranted.

On the subject of the precautionary principle, the Court rightly recalled that this principle "allows institutions, where scientific uncertainties remain as to the existence or extent of risks to human health or the environment, to

take protective measures without having to wait until the reality and seriousness of such risks are fully demonstrated or adverse health effects materialise". Furthermore, this principle "gives precedence to the requirements of protecting public health, safety and the environment over economic interests".

The second decision was handed down on October 8, 2020 by the Court of Justice of the European Union in the case "*Union des industries de la protection des plantes vs. Premier Ministre et al.*" (n° 514/19). In this case, France had forbidden the use of active substances of the neonicotinoid family, even though some of them were authorised by the European Union. Before adopting the 2018 decree of the EU Court of





Justice on the definition of active substances of the neonicotinoid family, France had nevertheless informed the European Commission of the need to adopt measures on this subject, recalling the major impact of these substances on the environment and the risk to human health. However, it had not expressly invoked the safeguard clause of the European regulation that had harmonised the authorisation of active substances and plant protection products in the European Union. Ironically, two days after France adopted the bill to backtrack on its ban of neonicotinoids, the EU Court of Justice handed down its decision on the conformity with Union law of the measures banning neonicotinoids taken by France in 2018, after a complaint filed by the *Union des industries de la protection des plantes* that led the Council of State asking EUCJ for a preliminary ruling. The Court of Justice of the European Union ruled that France had validly informed the Commission of the need to adopt measures aimed in particular at protecting bees and that it was therefore justified in adopting this national ban, considered as an emergency measure, subject to the assessment of the Council of State.

## **B - The action of the French judges**

France has seemed to tighten its policy of banning neonicotinoids in recent years, but the subject has taken on particular prominence in 2020. Indeed, most of these products have been banned since September 1, 2018 (according to the "biodiversity" law of August 8, 2016). Nevertheless, under pressure from sugar beet growers and the sugar industry, on December 14, 2020, the French government published Law No. 2020-1578 "relating to the conditions for placing certain plant protection products on the market in the event of a health hazard for sugar beet" allowing their temporary reintroduction into sugar beet crops until 2023. This derogation illustrates that the fight for a definitive ban on these products is still far from being won, even though it is crucial in view of the extent of their environmental and health consequences. A study of

constitutional (1) and, above all, administrative (2) case law demonstrates the persistent inadequacies of French law.

## 1 - The action of the Constitutional Council

The Constitutional Council is the body responsible for monitoring the constitutionality of laws. It can be used to challenge the conformity of a legislative provision with the Constitution, the supreme text of the hierarchy of laws in France. Several cases have been taken to the Constitutional Council appealing against the various laws governing the use of neonicotinoids, which has enabled it to establish a clear position on this subject.

First of all, it has become a protector of the environment on the occasion of a decision handed down on August 4, 2016 on the constitutionality of the law on "biodiversity", nature and landscapes. It was this law that had prohibited the use of products containing neonicotinoids as of July 1, 2018, although it did allow for the possibility of granting exemptions to this general ban until July 1, 2020. Contrary to what the petitioning parliamentarians had raised, the constitutional judge considered that the law did not constitute an "unjustified and disproportionate infringement of the entrepreneurial freedom" of the producers and users of neonicotinoids with regard to the general interest objective of environmental protection and the constitutionally valid objective of public health protection that this law pursues.

An objective of constitutional value may allow that a constitutionally guaranteed right be limited: in this case, the freedom of enterprise. It is a means that the Constitutional Council uses to balance different rights. An objective of general interest may constitute a limitation on a right constitutionally guaranteed. The general interest objective is slightly less far-reaching than the objective of constitutional value, especially in symbolic terms.

The Council subsequently confirmed this position in favour of a strict framework for the use of neonicotinoids (among others) in a decision of January 31, 2020 establishing the validity of the EGALIM law (Law no. 2018-938 of October 30, 2018 for the balance of trade relations in the agricultural and food sector and for healthy, sustainable and accessible food for all), which extended the principle of prohibition to products containing active substances with identical modes of action. In this case, the *Union des industries de la protection des plantes* (UIPP), a group of companies producing and marketing pesticides, claimed a violation of its freedom of enterprise by the ban on exporting the products in question to countries outside the European Union.



The Constitutional Council goes further than in 2016 by considering that "the legislator is justified in taking into account the effects that activities carried out in France may have on the environment abroad". It considers that by prohibiting the production, storage and circulation of the products in question, "the legislator intended to prevent damage to human health and the environment likely to result from the dissemination of the active substances contained in the products in question, the harmfulness of which has been observed [...]". Finally, it justifies this legitimate infringement of the freedom of enterprise by the existence of a constitutionally valid objective of environmental and health protection. This is the legal nature of environmental protection, which is now raised from a simple objective of general interest to a genuine objective of constitutional value.

Therefore, the Constitutional Council has twice validated the progressive ban on neonicotinoids, giving priority to environmental rather than economic considerations, using the tools at its disposal.

On the other hand, on November 10, 2020, the Council had the opportunity to pronounce itself on the possibility of using neonicotinoids in

times of crisis. The bill reauthorising the use of neonicotinoids until 2023 on sugar beet crops was submitted to the Council in response to the epidemic of yellowing of these plants propagated by insect pests.

This time, the Constitutional Council preferred to give priority to France's economic interests and "food sovereignty" by validating the government's bill granting derogation to the general ban.

While recognizing that neonicotinoids "have an impact on biodiversity, particularly for birds and pollinating insects, as well as consequences for water and soil quality and induce risks for human health", the



Constitutional Council considered that the law was in the general interest in seeking to preserve the beet industry. Moreover, it stressed that the temporary, limited and necessary nature of the derogation from the general principle of prohibition of neonicotinoids makes it consistent with the

constitutionally valid objectives of environmental and health protection.

In addition to the provisions of the Environmental Charter, the petitioning parliamentarians had raised the "principle of non-regression" incorporated in Article L110-1 of the French Environmental Code, which implies that "environmental law can only be subject to constant improvement, taking into account the scientific and technical knowledge of the moment". However, in this decision, the Constitutional Council seems to refuse to control the legislative provisions on the basis of this principle, which is not explicit in the Constitution. This decision makes it clear that an objective with constitutional value is not a panacea, since it must be reconciled with other constitutional rules.



## 2 - The action of administrative judges

Privileged access to French case law resources, for reasons related to both language and availability, allows us to work on a broader basis. The density of the jurisprudential substratum of this chapter is therefore not indicative of a particularly dynamic litigation activity that would be peculiar to France.

The history of litigation relating to neonicotinoids before the administrative court reveals a considerable number of decisions. Each case corresponds to a marketing authorisation or a revocation of an authorisation granted by the Minister of Agriculture for certain products.

The events surrounding the marketing of the pesticide Gaucho, marketed by Bayer since 1991 and intensively used since 1994, are characteristic of the tensions that have been running through the neonicotinoid dispute. The imidacloprid-based product is the subject of a first request for withdrawal of authorisation formulated by the National Union of French Beekeepers (UNAF) for all of its applications. In particular, it was on the grounds that the only ban by the Minister of the product for the treatment of sunflower seeds (omitting maize seeds, a non-melliferous plant unlike sunflower) does not protect bees from its harmful effects. The Council of State upheld the request of UNAF, complaining to the Minister for having neglected the abundant production of pollen by maize crops, which can affect bees (EC, 09/10/2002, n°233870).

However, the Council of State declared that another means put forward by UNAF, the proven long-lasting persistence (>1 year) of Gaucho in the soils, could not be accepted, as the rate of imidacloprid found in the plants was, according to the judge, much lower than the threshold of risk. In this decision, the administrative judge instructed the Minister to take a new decision to authorise or withdraw Gaucho from the market within two months. On January 21, 2003, the Minister published a decision refusing once again the UNAF request to revoke the authorisation, which was then annulled in March 2004 by a decision of the administrative judge (EC, 31/03/2004, n°254637), on the grounds that it did not consider the consequences on bee larvae of the imidacloprid content of the pollen. In

this case, the methodology of the studies to which the decision of 21 January 2003 refers did not follow the provisions of Article 16 of the interministerial decree of 6 September 1994 implementing the decree of 5 May 1994 on the control of plant protection products.

The Minister replied that these provisions, which are in line with those of Directive 91/414/EEC of 15 July 1991, were not mandatory, in so far

as the Directive itself opens up the possibility for Member States to derogate, until 25 July 2003, from this

system of authorisations for active substances placed on the market before 25 July 1993.

Although imidacloprid does fit into this case, the court nevertheless pointed out that, since the

interministerial order itself did not open up the possibility of the derogation

regime proposed by the directive for authorisation, the

authorisation procedure should have followed the mandatory

provisions referred to above. Finally, the judge instructed the

Minister, after quashing his new decision refusing to repeal, to

formulate a new decision within a period of two months. This time, the

Minister of Agriculture published a decision to cancel the authorisation to market

Gaucha for maize seeds, which was challenged in summary proceedings by the General Association of Maize Producers (AGPM). The Council of

State took up the case in summary proceedings, recalling that "the procedure to be followed and the checks to be carried out to withdraw a

marketing authorisation are different from those that precede the delivery of such an authorisation" (EC, Judge in summary proceedings,

24/07/2004, n°269104). It did not accept the AGPM's argument that the legality of the act was undermined by the fact that the anti-parasite

commission had not been consulted and that the "requirements of the adversarial nature of the procedure" had not been met, and rejected the

application for annulment of the act. In a later judgment on the plea put



forward by the chemical company Bayer who manufactured Gaucho, that the opinion motivating the act of July 12 2004 did not respond to the objections that it formulated and transmitted to the Minister of Agriculture, and by which it defended the harmlessness of its product, the judge declared that "it does not result (...) that the act of July 12 2004 was not in conformity with the requirements of the contradictory nature of the procedure and that it did not take into account the requirements of the contradictory nature of the procedure from any legislative or regulatory text nor from any general principle of law that the authors of this decision or this opinion would have been required to respond point by point to the arguments raised by the company holding the authorisation in the context of the adversarial procedure initiated by the administration" [EC, 28/04/2006, n°269103].

On another occasion, the administrative judge annulled an authorisation granted by ANSES, on the grounds that ANSES had not acceded to the request, in particular formulated by the Minister of Ecological Transition and the Minister of Agriculture, to examine data as a matter of priority, in view of new scientific data available [TA Nice, 24/11/2017, n°1704690].

Recently, the dispute has also come under the jurisdiction of local elected officials to restrict the use of neonicotinoid pesticides within the territory of their communes. The administrative judge stated, with regard to a mayor who had banned the use of neonicotinoids on the territory of his commune, that "the plea raised by the prefect of Yvelines, based on the incompetence of the mayor, seems likely to create serious doubt as to the legality of the contested acts" [TA Versailles, 20/09/2019]. The same conclusion was reached regarding a municipal decree prohibiting the use of plant protection products at a distance of less than 150 m from any cadastral parcel [CA Versailles, 29/08/2019, n°1906708]. In these cases, the administrative judges deprived mayors of the possibility of protecting the environment or the health of their citizens.

## C –The action of national judges in other EU countries

### 1 – In Sweden

In the case of Sweden, the only case listed on the association's website shows that the fight against neonicotinoids is progressing, as everywhere in Europe.

On April 2, 2019, the Land and Environmental Court of the Nacka District Court ruled favorably on the application of environmental NGOs, beekeepers and a private individual. The aim of the request was to annul the exemption from the neonicotinoids bans in the European Union and Sweden for the insecticide « Gaucho ». This insecticide had been reauthorized for sugar beet production at the request of growers. On February 27, 2019, this derogation was cancelled in emergency and this decision confirms the cancellation's content. Thus, the judge did not accept that the beet growers were obliged to use Gaucho for their production, which would have justified a temporary authorization for economic reasons. Here, the judge sided with the protection of the environment and health by granting the applicants' request.

### 2 – In Belgium

For Belgium, Justice Pesticides website lists three recent cases, which are representative of a civic reaction against neonicotinoids, but which also demonstrate the great reluctance of Belgian judges. A 4th application against the derogation recently granted to the ban on neonicotinoids by the Belgian government will be filed in early 2021.

A first ruling was pronounced by the Belgian Council of State on June 5, 2019. It had to rule on the request of environmental NGOs and private individuals to suspend, by way of emergency interim proceedings, and then to annul six



decisions authorizing the use of neonicotinoid insecticides banned in the European Union. But the Council of State rejected the request on the basis that the uses concerned by these exemptions are not "professional uses" and therefore do not violate state regulations.

This judgment was a provisional judgment, but the final ruling was pronounced on January 27, 2020 by the Council of State. This time, the same claimants are requesting the urgent suspension of the execution of two of these decisions, those authorizing the sowing of sugar beet seeds coated with thiamethoxam and clothianidin-based insecticides, two active substances of the neonicotinoid family among the six previously mentioned. The judge did not detect a situation of extreme urgency and did not grant the request which validated the use of the six neonicotinoids banned in the European Union for sugar beet production. These two rulings show that the judge gave priority to the economic interests of sugar beet production over environmental protection.

The last ruling listed on the association's website concerns the Walloon region. The regional regulation banning neonicotinoids in March 2018 was considered unconstitutional. Indeed, on June 11, 2020, the Council of State granted the request of economic actors to overturn the Walloon Government's decree of March 22, 2018, aimed at banning the use of pesticides containing neonicotinoids in a general way. The Council considered that, since the federal authorities had introduced an exemption to the European ban on neonicotinoids, the region could not implement a general ban. The judge's decision here aborted a decision in favour of a general and definitive ban on neonicotinoids, but this could change if the Belgian federal state itself implements such a ban, allowing no derogation. The current permissiveness of the legislation explains the behaviour of the judge in these judgments.

### 3 – In Poland

In Poland for many years rapeseed growers have been asking successive ministers of agriculture for permission to use neonicotinoids. Until the arrival of Agriculture

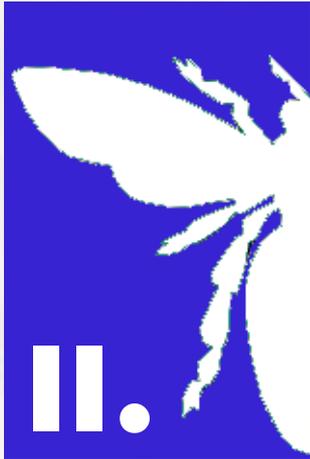


Minister Ardanowski in June 2018, the ban by the European Commission was systematically opposed to them. Nevertheless, the European Union provides for exceptions, but these can only come into force after the health and environment ministers have given their opinion. Following the exemptions to the ban on neonicotinoids granted by Minister Ardanowski, Greenpeace Poland referred the matter to the Warsaw Public Prosecutor on June 9, 2020 to order an investigation. The association claims that the minister authorized neonicotinoids without waiting for the mandatory notices required by Polish law, in violation of European regulations.

#### 4 -In Bulgaria

In Bulgaria, the Public Prosecutor's Office represented by the prosecutor ordered the Minister of Agriculture and the director of the food safety agency to take measures to combat the disappearance of bees. Millions of bees were found dead around their hives and several pesticides belonging to the category of neonicotinoids were implicated in the destruction. Despite field studies linking the disappearance of bees in Bulgaria to the use of pesticides banned by the European Union, regional prosecutors have refused to open investigations into the disappearance of bees in some Bulgarian regions over the past three years. An investigation has been ordered into the refusal of these prosecutors. The investigation shows that Bulgaria has not taken any measures to ban these pesticides.





## Case law outside the European Union

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### 1 – In Canada

Canada lags far behind in the protection from pesticides, including neonicotinoids, and it was not until 2012 that the PMRA (Pest Management Regulatory Agency) began a process to re-evaluate neonicotinoids at the national level. It is more at the level of Canadian regions that regulations have emerged. In Ontario, this resulted in a decision of the Ontario Court of Appeal in April 2016 (Grain Farmers vs. Ontario Ministry of Environment and Climate Change). As Ontario's regulation drastically reduced the use of neonicotinoids but did not ban their use in agriculture, farmers challenged its ambiguity. In response, the judges upheld the toxicity of neonicotinoids and their impact on biodiversity, including pollinators, to dismiss their claims.

The bulk of neonicotinoid litigation in Canada is focused on issues of the admissibility (eligibility) of groups and individuals to challenge decisions of the PMRA and Ministers regarding marketing authorizations for neonicotinoids.

In a decision of April 10, 2018, in the case of "David Suzuki Foundation et al v. Minister of Health et al", the Federal Court validated the reasoning of the judges of first instance and affirmed the possibility for environmental groups to seek judicial review of the PMRA's authorizations to market neonicotinoids.

In another decision, dated February 20, 2018, the Quebec Superior Court authorized a class action by beekeepers against two major companies producing neonicotinoids, Bayer and Syngenta. The financial compensation sought could amount to several tens of millions of dollars, since at least 300 beekeepers would be affected in Quebec.

1978 was the beginning of neonicotinoids court cases in the United States. Indeed, it was in 1978 that the U.S. Congress authorized the Environmental Protection Agency (EPA) to issue "provisional" authorizations for the use of pesticides before the end of impact studies, in order to speed up registration procedures. These "provisional" authorizations could only be justified by a public health emergency. However, in 2013, the EPA recognized that it used these provisional authorizations for 65% of the 16,000 pesticides present on the U.S. market. For these facts, the California Court of Appeals, in a May 8, 2017 ruling entitled "Ellis v. Housenger", partially upheld the plaintiffs' claim by recognizing that the EPA had illegally registered 59 pesticides between 2007 and 2012. At the same time, this same case recognized that the EPA had systematically violated the US Endangered Species Act of 1973 by authorizing these neonicotinoids. On another basis, on April 3, 2019, the Center for Biological Diversity filed a complaint to force the Fish and Wildlife Service to comply with its obligation to inform the public about neonicotinoids. This obligation is based on the 1967 U.S. Freedom of Information Act. Finally, two lawsuits were filed in July 2019 by consumer protection associations against misleading labeling by manufacturers that do not mention the presence of neonicotinoids in their products, which are qualified as natural and intended for consumption.

## 2 – In South America

In South America, neonicotinoids are allowed in Argentina, Chile, Brazil, Colombia and Costa Rica, but they are also subject to court decisions. This is particularly the case in Colombia. In November 2018, the Cartagena court ordered the Ministries of Environment and Agriculture to take measures to stop the extinction of bees in the country and guarantee their survival. Unfortunately, in a decision issued on May 20, 2019, the Criminal Chamber of the High Court of Cartagena canceled the above-mentioned judgment. The judge held that the problem should be dealt with by popular action and not by guardianship. However, on December 12, 2019, the Administrative Court of Cundinamarca ordered the government to

conduct studies and define a roadmap to limit or even prohibit the use of insecticides that have been linked to the death of bees and other pollinating insects. Also in Costa Rica, in a 2019 ruling, the Constitutional Chamber of the Supreme Court of Justice ordered the Ministry of Agriculture and Livestock to conduct a scientific study on the effects on health, the environment and honeybees of the use of agrochemicals containing neonicotinoids. The resolution provides that if the study "reveals serious risks or damage to health, biodiversity or the environment, including bee populations, the Ministry will take appropriate measures to safeguard these constitutional assets". But these countries are not the only ones fighting against neonicotinoids. The Society of Beekeepers of Argentina is also calling for a ban on the use of neonicotinoids in seeds and as pesticides throughout the Republic.



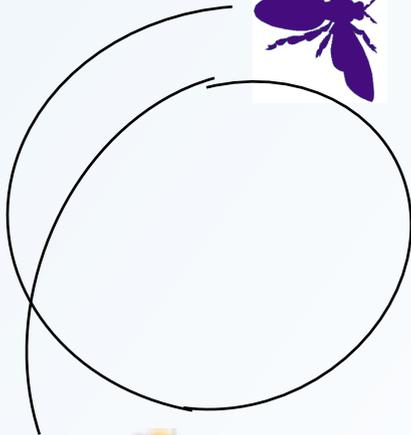


## Need for better jurisdictional protection against the use of neonicotinoids

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As soon as neonicotinoid insecticides have been brought to the market, scientists have alerted us to their impact on bees, pollinators and the whole biodiversity. Since then, faced with the collapse of bee colonies, the massive disappearance of insects and pollinators, largely linked to the use of neonicotinoids, more and more voices are being raised against their use and judges are more committed to this fight for the protection of the environment. But this commitment is still far from global. Within the European Union, the struggle oscillates between legislative and jurisprudential advances and temporary regressions that sometimes seem to annihilate them (as in France in 2020). The same is true in the rest of the world.

Better jurisdictional protection against the use of neonicotinoids is necessary to make the ban on neonicotinoids definitively effective. The European Union could once again be at the origin of progress in this area. Thanks to the multiplication of litigation, national judges, especially constitutional judges, could stand up against legislative and regulatory regressions. Litigation against neonicotinoids is also a means of strengthening protective legislation, both to prevent ambiguous derogations granted to producers and to alert and mobilize public opinion in order to force political decision-makers to protect the environment against pesticide lobbies. The real progress will mainly involve updating regulations, in particular Regulation 1107/2009 concerning the placing of plant protection products on the market, whose shortcomings were highlighted by the report of the “PEST” Committee of the European Parliament on the failures of the pesticides regulations in the EU.





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