



## PRESS RELEASE No. 12/23

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Judgment of the Court in case C-162/21 | Pesticide Action Network Europe and others

### **Plant protection: Member States may not derogate from express bans on the placing on the market and use of seeds treated with plant protection products containing neonicotinoids**

*These prohibitions were adopted to ensure the high level of animal health protection sought in the EU*

Thiamethoxam and clothianidin are insecticides of the neonicotinoid group used in agriculture for seed treatment, originally authorised in the EU. However, due to the high acute and chronic risks to bees from seeds treated with plant protection products containing these neonicotinoids, and given the high level of health protection In 2018, the Commission adopted new regulations imposing very strict restrictions on the use of these active substances. Two regulations

The implementing rules <sup>1</sup> thus prohibited the placing on the market and use, as of the end of 2018, of seeds treated with these neonicotinoids, except for the purpose of cultivation in permanent greenhouses, throughout the life cycle of the crop thus obtained. Nevertheless, in autumn 2018, invoking the derogation and temporary regime set out in Article 53(1) of Regulation 1107/2009 <sup>2</sup>, the Belgian State issued six authorisations for the use of plant protection products based on clothianidin and thiamethoxam for the treatment of seeds of certain crops, including sugar beet, as well as for the placing on the market of these seeds and their sowing in the open air.

Two anti-pesticide and biodiversity associations and a beekeeper have appealed to the Belgian Council of State against these authorisations, which were allegedly granted in an abusive manner, The Belgian State contests this. The applicants argue that these neonicotinoids are increasingly used by means of the seed coating technique, in the sense that, instead of being sprayed on the crop, they are preventively applied to the seeds before seeding, regardless of whether or not the insects that these products are intended to control are present.

The Belgian Council of State is asking the Court to determine whether it is possible, on the basis of Article 53(1) of Regulation No 1107/2009, to derogate from the prohibition on the placing on the market and outdoor use of seeds treated with these products, which is expressly provided for in the implementing regulations, by

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<sup>1</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1)

<sup>2</sup> Commission Implementing Regulation (EU) 2018/784 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions for the approval of the active substance clothianidin (OJ 2018 L 132, p. 35) and Commission Implementing Regulation (EU) 2018/785 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions for the approval of the active substance This is the first time that the EU has adopted a "thiamethoxam" policy (OJ 2018, L 132, p. 40).

authorising :

- the placing on the market of plant protection products containing these active substances for seed treatment and
- the placing on the market and use of seeds treated with these products.

The Court holds that this provision allows Member States, in exceptional circumstances, to authorise the placing on the market of plant protection products containing substances which are not covered by an approval regulation (any active substance is evaluated and has to fulfil certain conditions before being authorised and placed on the market for a given product type). However, this same provision **does not allow them to derogate from EU regulations specifically aimed at prohibiting the placing on the market and use of seeds treated with such products.**

This interpretation is based on the wording of Article 53 of Regulation 1107/2009 and the objective of the Regulation, which is to ensure a high level of protection of human health and safety. It is based on the precautionary principle, which is one of the cornerstones of the Union's high level of environmental protection policy.

The Court recalls that, as provided for in Article 49 of Regulation No 1107/2009, where there are genuine concerns that seeds treated with plant protection products authorised for that use in a Member State are likely to present a serious risk to human or animal health or to the environment and where such a risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned, measures to restrict or prohibit the use and/or sale of such treated seed shall be taken immediately. This was the basis for the adoption of the implementing regulations prohibiting the placing on the market and the outdoor use of the seeds in question.

The Court also emphasises the obligation of all Member States to take all necessary measures to **promote low pesticide-input pest control**, giving priority to **non-chemical methods** wherever possible. Such an obligation implies that professional pesticide users switch to practices and products with the **lowest risk to human health and the environment** among those available to address the same pest problem.

The Court further notes that the Union legislature did envisage, in the context of the derogation provided for in Article 53(1) of Regulation No 1107/2009, the possibility that Member States, in **exceptional circumstances**, namely where a danger or threat to plant production or ecosystems cannot be contained by other reasonable means, may **authorise plant protection products which do not satisfy the conditions laid down** by the regulation in question. However, as regards seeds treated with plant protection products containing substances expressly prohibited, it considers that, by that provision, **the legislature did not intend to allow Member States to derogate from such an express prohibition.**

**REMINDER:** A reference for a preliminary ruling allows the courts of the Member States, in the context of a dispute referred to them, to ask the Court of Justice about the interpretation of Union law or the validity of a Union act. The Court does not

does not decide the national dispute. It is for the national court to resolve the case in accordance with the Court's decision. This decision is likewise binding on other national courts that are seized of a similar problem.

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