Case C-162/21

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

11 March 2021

Referring court:

Conseil d'État (Belgium)

Date of the decision to refer:

16 February 2021

Applicants:

Pesticide Action Network Europe ASBL

Nature et Progrès Belgique ASBL

TN

Defendant:

État belge

I. Subject matter and facts of the dispute:

1 Neonicotinoids are insecticide substances which are extensively used in conventional agriculture, in particular through increasing use of the seed coating technique: instead of being sprayed on vegetation, they are preventively applied to seeds before sowing.

2 Thiamethoxam and clothianidin are molecules in the neonicotinoid class which are the active substance in several plant protection products.

3 Initially approved by the European Commission, those two active substances were subsequently severely restricted, in particular in the most recent Implementing Regulations 2018/784 ('clothianidin') and 2018/785 ('thiamethoxam') of 29 May 2018, which prohibit their use 'except in permanent greenhouses'. Those implementing regulations also prohibited, as of 19 December 2018, the placing on the market and use of seeds treated with plant protection products containing

clothianidin or thiamethoxam, except in relation to crop production in permanent greenhouses.

4 In autumn 2018, the État belge (Belgian State) nonetheless granted six marketing authorisations for plant protection products based on clothianidin (the insecticide 'Poncho Beta') and thiamethoxam (the insecticides 'Cruiser' and 'Cruiser 600 FS'), for the treatment of seeds of certain crops, including beet, and the sowing of those seeds in the field, during the spring of 2019 essentially.

5 The applicants are, on the one hand, associations campaigning against pesticides and promoting biodiversity and, on the other hand, a beekeeper. They claim that numerous scientific studies have shown that the use of neonicotinoids, and in particular thiamethoxam and clothianidin, entails significant risks to certain animals other than the targeted pests, in particular to bees, bumble-bees and other foraging insects. They argue, inter alia, that the European Food Safety Authority (EFSA) considers, first, that the use of seeds coated with products containing thiamethoxam poses a high risk to honeybees and bumble-bees, on account of the persistence of those substances in crops grown after that produced from those seeds, and, secondly, that it has not been demonstrated that the use of those seed poses only a low risk to solitary bees, with the result that, in accordance with the precautionary principle, a high risk must be presumed. According to the applicants, that authority draws the same conclusion as regards products containing clothianidin.

6 The applicants complain that the authorisations granted by the Belgian State extend the marketing of treated seeds and their use in the field, which have been prohibited since 19 December 2018, and fear that those authorisations may be renewed for many years. In the applicants' view, the Belgian State is wrong to seek to justify those authorisations under the derogation provided for in Article 53 of Regulation No 1107/2009. By application of 21 January 2019, they therefore brought an action before the Conseil d'État (Council of State), seeking annulment of those authorisations based on an infringement of EU law, and requested their immediate suspension.

7 The Belgian State emphasises that the products in question have been approved and used for many years and that their use has been restricted to greenhouse cultivation only since September 2018. Their conditions of use ensure that they do not pose an unacceptable risk to honey bees and require, in general, that the cultivation of bee-attractive plants be avoided for five years following the harvest resulting from the sowing of the treated seeds. Moreover, only crops harvested before flowering are grown from those seeds, thereby making it possible to avoid any contact between bees and plants. According to the Belgian State, the applicants have failed to demonstrate the relevance of the studies on which they rely and have not provided any evidence to justify the sudden and absolute prohibition of the use of those products as provided for by the contested authorisations.

8 The ASBL (non-profit-making association) Confédération des Betteraviers Belges (‘the CBB’) represents approximately 8 200 Belgian sugar beet growers. The public limited companies Isera & Scaldis Sugar and Raffinerie Tirlemontoise are the two sole members of the ASBL Société générale des fabricants de sucre de Belgique (‘SUBEL’), which represents the interests of sugar producers. The public limited company Sesvanderhave submitted two applications for authorisation to use the insecticides in question. These parties intervened in support of the form of order sought by the Belgian State.

9 The CBB argues that the annulment of the contested measures would cause a significant loss of income for the farmers which it represents. SUBEL argues that the annulment of those measures would lead in the short term to a loss of profitability for sugar beet factories. Both take the view that the annulment of those measures could, in the long term, result in the closure of (a part of) the sugar industry in Belgium.

10 By judgment of 5 June 2019, the Conseil d’État rejected the request for suspension which accompanied the action for annulment.

11 By judgment of 16 February 2021, the Conseil d’État, referring expressly to the account of the facts set out in the first judgment, asked the Court of Justice to give a preliminary ruling in the present case.

II. European Union law

The Charter of Fundamental Rights of the European Union

12 Article 35 of the Charter of Fundamental Rights of the European Union (‘the Charter’), [1] entitled ‘Health care’, provides:

> ‘Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.’

13 Under Article 37 thereof, entitled ‘Environmental protection’:

> ‘A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.’

[1] OJ 2007 C 303, p. 1.

Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides

14 Article 14(1) of Directive 2009/128, [2] entitled 'Integrated pest management', provides:

> '1. Member States shall take all necessary measures to promote low pesticide-input pest management, giving wherever possible priority to non-chemical methods, so that professional users of pesticides switch to practices and products with the lowest risk to human health and the environment among those available for the same pest problem. …'

Regulation 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

15 Article 2 of Regulation No 1107/2009 defines its scope:

> '1. This Regulation shall apply to products, in the form in which they are supplied to the user, consisting of or containing active substances, safeners or synergists, and intended for one of the following uses:
>
> (a) protecting plants or plant products against all harmful organisms or preventing the action of such organisms, unless the main purpose of these products is considered to be for reasons of hygiene rather than for the protection of plants or plant products;
>
> (b) influencing the life processes of plants, such as substances influencing their growth, other than as a nutrient or a plant biostimulant;
>
> (c) preserving plant products, in so far as such substances or products are not subject to special Community provisions on preservatives;
>
> (d) destroying undesired plants or parts of plants, except algae unless the products are applied on soil or water to protect plants;
>
> (e) checking or preventing undesired growth of plants, except algae unless the products are applied on soil or water to protect plants.
>
> These products are referred to as "plant protection products".'

16 Article 3 sets out the definitions for the purposes of the regulation, inter alia the definition of 'plants', which means 'live plants and live parts of plants, including fresh fruit, vegetables and seeds'.

[2] OJ 2009 L 309, p. 71.

17 Article 4 sets out the approval criteria for active substances:

> '1. An active substance shall be approved in accordance with Annex II if it may be expected, in the light of current scientific and technical knowledge, that, taking into account the approval criteria set out in points 2 and 3 of that Annex, plant protection products containing that active substance meet the requirements provided for in paragraphs 2 and 3.
>
> …
>
> 3. A plant protection product, consequent on application consistent with good plant protection practice and having regard to realistic conditions of use, shall meet the following requirements:
>
> (a) it shall be sufficiently effective;
>
> (b) it shall have no immediate or delayed harmful effect on human health, including that of vulnerable groups, or animal health, directly or through drinking water (taking into account substances resulting from water treatment), food, feed or air, or consequences in the workplace or through other indirect effects, taking into account known cumulative and synergistic effects where the scientific methods accepted by the Authority to assess such effects are available; or on groundwater;
>
> (c) it shall not have any unacceptable effects on plants or plant products;
>
> (d) it shall not cause unnecessary suffering and pain to vertebrates to be controlled;
>
> (e) it shall have no unacceptable effects on the environment, having particular regard to the following considerations where the scientific methods accepted by the Authority to assess such effects are available:
>
> (i) its fate and distribution in the environment, particularly contamination of surface waters, including estuarine and coastal waters, groundwater, air and soil taking into account locations distant from its use following long-range environmental transportation;
>
> (ii) its impact on non-target species, including on the ongoing behaviour of those species;
>
> (iii) its impact on biodiversity and the ecosystem.'

18 In accordance with Article 28(1):

> '1. A plant protection product shall not be placed on the market or used unless it has been authorised in the Member State concerned in accordance with this Regulation.'

19 According to Article 29(1)(a):

> '1. Without prejudice to Article 50 a plant protection product shall only be authorised where following the uniform principles referred to in paragraph 6 it complies with the following requirements:
>
> (a) its active substances, safeners and synergists have been approved …'.

20 Article 53 ('Emergency situations in plant protection') provides, in paragraphs 1 and 4 thereof:

> '1. By way of derogation from Article 28, in special circumstances a Member State may authorise, for a period not exceeding 120 days, the placing on the market of plant protection products, for limited and controlled use, where such a measure appears necessary because of a danger which cannot be contained by any other reasonable means.
>
> …
>
> 4. Paragraphs 1 to 3 shall not apply to plant protection products containing or composed of genetically modified organisms unless such release has been accepted in accordance with Directive 2001/18/EC.'

Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances, as amended by Commission Implementing Regulations (EU) 2018/784 and (EU) 2018/785

21 Article 1 of Regulation No 540/2011, [3] as amended by Implementing Regulations (EU) 2018/784 [4] and (EU) 2018/785, [5] provides:

> 'The active substances as set out in the Annex to this Regulation shall be deemed to have been approved under Regulation (EC) No 1107/2009.'

22 Part A of entry No 121 of the Annex to that regulation provides that 'only uses [of clothianidin] as insecticide, in permanent greenhouses or for the treatment of seeds intended to be used only in permanent greenhouses, may be authorised. The resulting crop must stay within a permanent greenhouse during its entire life cycle.'

[3] OJ 2011 L 153, p. 1.

[4] Implementing Regulation of 29 May 2018, amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance clothianidin (OJ 2018 L 132, p. 35).

[5] Implementing Regulation of 29 May 2018, amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance thiamethoxam (OJ 2018 L 132, p. 40).

23 Part A of entry No 140 of that annex places identical restrictions on the use of thiamethoxam.

III. Arguments of the parties:

24 The applicants complain that the contested decisions authorise the placing on the market of thiamethoxam or clothianidin for use in the field, although EU law prohibits the use of those substances in outdoor crops.

25 They rely on a single plea, put forward in three parts, alleging, in essence, infringement of the Charter, Directive 2009/128, Regulation No 1107/2009 and Implementing Regulation No 540/2011.

First part of the single plea

Position of the applicants

26 The applicants take the view that the scope of Article 53 of Regulation No 1107/2009 does not include the placing on the market or sowing in the field of seeds treated with the substances in question. They base that conclusion on the following arguments:

– The wording of Article 53 limits its scope to ‘the placing on the market of plant protection products’.

– Article 53 derogates from Article 28, concerning the placing on the market and use of plant protection products, but not from Article 49, concerning the placing on the market and use of treated seeds.

– Article 53 is intended to allow Member States to respond urgently to the occurrence of pests which may cause serious damage. The typical response is to spray affected plants or treat the soil around them. The treatment of seeds before they have even been sowed, and thus before any danger arises, is a preventive measure and not an emergency response measure.

– Recital 13 of Implementing Regulation 2018/784 and of Implementing Regulation 2018/785 states that ‘taking into account the risks for bees from treated seeds, the placing on the market and the use of seeds treated with plant protection products containing clothianidin [or thiamethoxam] should be subject to the same restrictions as the use of clothianidin [and thiamethoxam].’ That need to align the legal regime governing seed use with the legal regime governing use of active substances shows that there are two separate regimes, as is confirmed by the legal basis for those regulations, which includes not only Article 21(3) of Regulation No 1107/2009, but also Article 49(2) thereof.

– The EU legislature laid down provisions expressly covering treated seeds because it was mindful of their specific nature. That legislative choice confirms that Article 53 does not apply to treated seeds, which are not a 'plant protection product' but 'plants' within the meaning of Article 3.

27 As to the remainder, the applicants take the view that the following elements are not relevant to the analysis:

– Article 53(4), on the ground that treated seeds are not plant protection products containing GMOs and fall outside the scope of Article 53 without the need for any express derogation.

– The practice of other Member States which have already used Article 53 to authorise the treatment and sowing of coated seeds.

– The claim that the Commission has indirectly endorsed that practice or is about to endorse it expressly, on the ground that the Commission has no competence to give a definitive interpretation of EU law.

28 In the alternative, the applicants request that the Conseil d'État refer a question to the Court for a preliminary ruling, to determine whether Article 53 allows a Member State to grant an authorisation for the placing on the market and the sowing of seeds coated with plant protection products.

Position of the Belgian State

29 The Belgian State takes the view that Article 53 of Regulation No 1107/2009 allows the derogation to be applied to treated seeds, since paragraph 4 thereof excludes only products containing GMOs. That interpretation, which is also that of the Commission, is consistent with the practice of several Member States which have applied Article 53 to seed treatment and to sowing.

30 In the alternative, it requests that the Conseil d'État refer a question to the Court for a preliminary ruling, to determine whether Article 53 allows a Member State to grant an authorisation for the treatment of seeds with plant protection products or for the sale or sowing of those seeds, where such a measure appears necessary because of a danger which cannot be contained by any other reasonable means.

Position of the interveners

31 The CBB notes that the placing on the market of a plant protection product under Article 53 of Regulation No 1107/2009 necessarily covers its use. As Article 53 does not distinguish between the various possible uses, it applies both to the treatment of seeds with the product and to their marketing. The CBB bases that conclusion on the following arguments:

– The concept of ‘danger’ set out in Article 53 necessarily implies that a plant protection product can be used to prevent, through the use of treated seeds, a real threat from arising. Otherwise, that provision would be meaningless, since it would be necessary to wait until crops are attacked before requesting a derogation.

– Article 53(4) provides that plant protection products containing GMOs cannot benefit from the derogation. The EU legislature therefore intended that other non-excluded products would be able to benefit from it.

32 The CBB also disputes that the EU legislature intended to make treated seeds subject to a specific legal regime, not covered by Article 53. It relies on recital 33 of the regulation and also argues that Article 49 and Article 53 are not part of the same subsection of the regulation. Article 49 allows a Member State to impose prohibitions, whereas Article 53 allows it to issue authorisations. The explanation for their coexistence lies in a difference in material scope and not the deliberate introduction of separate legal regimes relating to the same subject matter (namely marketing authorisations), but not the same object (on the one hand, treated seeds under Article 49 and, on the other hand, plant protection products under Article 53).

33 The other interveners refer, in essence, to the arguments put forward by the Belgian State.

Second part of the single plea

Position of the applicants

34 The applicants take the view that the derogation provided for in Article 53 of Regulation No 1107/2009 does not permit the authorisation of uses of plant protection products which are expressly prohibited by the European Union. In cases of emergency, that derogation permits only the temporary authorisation of plant protection products containing an active substance which has not, or has not yet, been assessed at EU level, or the authorisation of products containing an approved active substance, for uses which have not, or have not yet, been authorised at national level. They base that conclusion on the following arguments:

– Commission Working Document SANCO/10087/2013 of 1 February 2013, on the application of Article 53, recalls that the use of that provision should not undermine the purpose of ensuring a high level of protection for both human and animal health and that, for the purposes of granting authorisation for a product containing a non-approved active substance, Member States should take into account the need to ‘safeguard … the protection of human health and the environment’.

– Article 53 derogates from Article 28, which provides that a plant protection product is not to be placed on the market or used unless it has been authorised, but not from Article 29, which makes such authorisation subject to approval of the active substances, or from Article 4, which sets out the approval criteria for those substances.

– Article 53 reproduces almost word for word Article 8(4) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, [6] but differs from it in two essential respects:

  – Article 8(4) of the directive introduced a derogation from Article 4 thereof, which made authorisation to place plant protection products on the market conditional, inter alia, upon the approval of their active substances. Article 53 of the regulation contains no derogation from Article 29 thereof, which imposes the same condition.

  – Article 8(4) of the directive expressly provided for the possibility of authorising the placing on the market of products not complying with Article 4 thereof. Article 53 does not provide for such a possibility for products not complying with the requirements of Article 29, which include approval of the active substances in accordance with Article 4.

– The positions of the European Parliament, both before and after the adoption of the regulation, prove that the absence of an express derogation from Article 29 in Article 53 is the result of the EU legislature's intention. Recital 32 of the regulation, which has no binding legal force and uses terms very different from those of Article 53, does not support the conclusion that this is a simple oversight and that Article 53 contains an implied derogation from Article 29.

– The scope of any hypothetical implied derogation from Article 29 would be very uncertain and could not, in particular, allow the use of a product which clearly does not comply with that provision and, consequently, with the conditions of approval of the substances laid down in Article 4(3).

– In any event, Article 53 does not allow a derogation from measures adopted on the basis of Articles 21(3) and 49(2) of the regulation, such as Implementing Regulations 2018/784 and 2018/785, which prohibit the uses covered by the contested decisions.

– Those prohibitions are based on a rigorous scientific assessment and were dictated by the precautionary principle. A Member State wishing to derogate from such a prohibition would, in any event, have to rely on new scientific assessments or data which could call into question the EFSA's conclusions

6 OJ 1991 L 230, p. 1.

as to the hazardousness of the substance or use on which the prohibition is based.

35 The applicants take the view that any other interpretation of Article 53 would be contrary to the principle of integrated pest management set out in Article 14 of Directive 2009/128, which makes the use of pesticides subject to compliance with a principle of subsidiarity.

36 More specifically, an interpretation which exempts Member States from complying with the requirements of Article 4 of the regulation would be contrary to Articles 35 and 37 of the Charter. An interpretation allowing each Member State unilaterally to call into question prohibitions decided at EU level would in turn jeopardise the effectiveness of Regulation No 1107/2009, recital 9 of which states that it should 'lay down harmonised rules for the approval of active substances and the placing on the market of plant protection products'.

37 In the alternative, the applicants request that the Conseil d'État refer a question to the Court for a preliminary ruling, to determine whether Article 53 allows a Member State to authorise uses of plant protection products expressly prohibited by EU law because of the risks which they pose to the environment or health.

Position of the Belgian State

38 The Belgian State takes the view that a distinction should be drawn between the provisions of Article 4 et seq. of Regulation No 1107/2009, relating to the approval of active substances, and the provisions of Articles 28 and 29 et seq., relating to authorisation for the placing on the market and use of plant protection products.

39 It submits that Article 53 introduces an express derogation from the general principle set out in Article 28, but also an implied derogation from the ordinary authorisation procedure for plant protection products provided for by Article 29.

40 Recital 32 of the regulation, which states that 'in exceptional cases, Member States should be permitted to authorise plant protection products not complying with the conditions provided for in this Regulation, where it is necessary to do so because of a danger or threat to plant production or ecosystems which cannot be contained by any other reasonable means …', demonstrates that the absence of an express derogation from Article 29 is the result of a simple oversight and not the intention of the legislature.

41 That implied derogation from Article 29 may be used for any plant protection product containing active substances which have not been approved on the basis of the regulation, whether because the approval procedure is still pending, because certain uses of that product are not authorised by the Annex to Implementing Regulation No 540/2011, or because any approval granted at a given time was withdrawn.

42 That interpretation follows from the Commission's consistent practice, is in accordance with the wording of Article 53, and does not conflict with the Charter, with the principle of integrated pest management set out in Directive 2009/128, or with the effectiveness of Regulation No 1107/2009.

43 The Belgian State also relies on the judgment of 17 October 2013, *Sumitomo Chemical*, C-210/12, EU:C:2013:665, from which it infers that the derogation in Article 53 does not require the Member States to carry out scientific risk evaluations prior to issuing such an authorisation, and maintains that the applications for derogation under Article 53 which have been submitted to it have been the subject of a very detailed scientific assessment and examination.

44 In the alternative, it requests that the Conseil d'État refer a question to the Court for a preliminary ruling, to determine whether Article 53 allows a Member State to authorise the placing on the market of plant protection products, for limited and controlled use, in respect of uses which are non-approved, or even prohibited, under the Annex to Regulation No 540/2011, where such a measure appears necessary because of a danger which cannot be contained by any other reasonable means.

Position of the interveners

45 The CBB takes the view that Article 53 of Regulation No 1107/2009 derogates not only from Article 28 but also from the ordinary authorisation procedure for plant protection products provided for by Article 29 and, consequently, from the conditions of approval for active substances laid down by Article 4(3). It therefore permits the authorisation of plant protection product uses that are expressly prohibited by the European Union, and not only uses of products containing an active substance which has not, or has not yet, been assessed at EU level. The CBB bases that conclusion on the following arguments:

– Regulation No 1107/2009 is the only measure of EU law which distinguishes between the concepts of 'approved active substance' and 'non-approved active substance'.

– Non-approved active substances are those which do not satisfy the conditions for authorisation under Article 4, and include both substances which have not yet been assessed and substances which have been assessed and prohibited.

– The hazardousness of substances which have been assessed is known, whereas the hazardousness of substances which have not, or have not yet, been assessed is essentially unknown.

– The authorities to whom an application for a derogation under Article 53 is made may make an informed evaluation of a substance which has been

assessed and prohibited, but cannot do the same in the case of a substance which has not, or has not yet, been assessed.

46 The other interveners refer, in essence, to the arguments put forward by the Belgian State.

Third part of the single plea

Position of the applicants

47 The applicants take them view that the contested authorisations were issued as a preventive measure, with a view to fulfilling an economic profitability imperative, and do not comply with the conditions for the application of Article 53 of Regulation No 1107/2009, relating to emergency, the existence of special circumstances and the absence of reasonable alternatives.

48 As regards emergency, they argue as follows:

– Emergency is referred to only in the title of Article 53. The Court has nevertheless always attached importance to the title of provisions in interpreting their meaning and scope. In the judgment of 17 October 2013, *Sumitomo Chemical*, C-210/12, EU:C:2013:665, it also referred to derogating authorisations as 'emergency marketing authorisations'.

– The contested decisions were taken on 19 October and 7 December 2018, when the crops concerned had not yet been sown. The targeted pests were therefore not yet present.

– The applications for authorisation for Cruiser 600 FS recognise that it is not possible to know in advance where pest attacks might occur.

The contested decisions are therefore not justified by any emergency.

49 As regards special circumstances, the applicants argue as follows:

– Pest attacks are closely linked to the crops concerned and may occur each year. Farmers are continually faced with a moderate presence of the pests targeted by the contested decisions.

– The risk of proliferation of those pests is the logical and predictable consequence of unnecessary agricultural practices.

– The fact that the occurrence of a pest is probable is not sufficient to establish the danger of significant damage to agricultural yields. The extent of the probable damage depends on how early a pest attack occurs and the number of pests observed, or at least anticipated. The figures produced in that regard by the interveners are not based on independent studies, are inconclusive and exaggerate the seriousness of the consequences of pest attacks.

The contested decisions are therefore not justified by any special circumstances.

50 As regards the absence of reasonable alternatives, the applicants argue as follows:

– No country in the same climatic zone as Belgium has granted a similar derogation from the contested decisions, though this has had no impact on yields in 2019.

– The political advisor of the Vlaams Gewest (Flemish Region, Belgium) states that (chemical) alternatives are actually available in Belgium, even if farmers are not yet familiar with them.

– The Institut royal belge pour l'amélioration de la betterave (Royal Belgian Institute for Beet Improvement) has drawn the attention of beet growers to the availability of alternative insecticides. Data available on its website show that 70 to 85% of them decided not to use neonicotinoid-treated seeds in 2019 and that those alternatives have proven to be effective.

– Alternatives include organic farming, which uses no synthetic pesticides, as well as a combination of crop rotation and other effective insecticides.

– The implementation of Article 53 cannot, in any event, be justified by the mere lack of reasonable alternatives or the economically suboptimal nature of alternative techniques. Permitting States to continue to authorise a plant protection product prohibited at EU level on the sole ground that no alternative can match its performance would actually render the prohibition meaningless.

– It is also clear from the wording of Article 53 that the absence of any other reasonable means of pest control is not in itself tantamount to proof of special and emergency circumstances.

51 Finally, as regards the relative importance of economic imperatives, the applicants argue as follows:

– The Belgian State confined itself to the irrelevant assertions contained in the requests for derogation under Article 53, whereas it could have demanded further explanations from the applicants or carried out its own independent scientific examination of the plausibility of the yield losses referred to.

– Recital 8 of the regulation states that the purpose of that regulation 'is to ensure a high level of protection of both human and animal health and the environment and at the same time to safeguard the competitiveness of Community agriculture. … The precautionary principle should be applied ….'. Article 1(4) of the regulation provides that ''the provisions of [the] Regulation are underpinned by the precautionary principle …'.

– The Commission's working document of 1 February 2013 states that applications for derogations under Article 53 'solely based on industry interests should be refused'.

Even if economic imperatives are relevant, the EU legislature chose to give greater importance to the values of respect for health and the environment. The Belgian State adopted the opposite approach.

52 In the alternative, the applicants request that the Conseil d'État refer a question to the Court for a preliminary ruling, to determine whether:

– the expression 'emergency situations' covers situations in which a danger that is not certain to occur has not yet arisen.

– the expression 'special circumstances' covers situations closely linked to specific agricultural practices and to which growers using those practices are primarily exposed, such as the risk of a proliferation of insect pests in crops with which those insects are naturally associated.

– the expression 'which cannot be contained by any other reasonable means' covers an absence of means to ensure that a grower, in the short term, has the same productivity, costs and working time as those which are associated with use of the plant protection products for which authorisation is sought.

Position of the Belgian State

53 The Belgian State refers to the judgment of 17 October 2013, *Sumitomo Chemical*, C-210/12, EU:C:2013:665, and takes the view that the application of Article 53 of Regulation No 1107/2009 is not conditional upon an emergency situation, the existence of special circumstances or the absence of reasonable alternatives.

54 The derogation is intended to respond to a danger which cannot be contained by any other reasonable means. It is therefore not relevant to examine whether or not the identified danger is foreseeable, or whether the occurrence of pest attacks is closely linked to the crops in question.

55 The Belgian State argues that the Approval Committee systematically considered alternatives to the use of the substances in question and that it relied on expert opinions in taking the view that there was no reasonable alternative for controlling the pests identified in the contested decisions.

56 In the alternative, the Belgian State requests that the Conseil d'État refer a question to the Court for a preliminary ruling, to determine, first, whether Article 53 covers only situations in which the danger is unforeseeable at the time of the adoption of a derogating measure and, secondly, whether the expression 'which cannot be contained by any other reasonable means' makes it possible to safeguard the competitiveness of Community agriculture within the meaning of recital 8 of the regulation.

Position of the interveners

57 The CBB submits that Article 53 of Regulation No 1107/2009 does not require proof of an emergency or exceptional circumstances. Those concepts are equivalent to establishing the existence of 'a danger or threat to plant production or ecosystems which cannot be contained by any other reasonable means'. In the present case, the existence of special circumstances, justifying a derogation measure because of a danger which cannot be contained by any other reasonable means, has been established.

58 The other interveners take the view that the applicants rely on organic farming to establish the existence of alternatives, but argue that that method does not provide an effective remedy in the present case.

IV. Assessment of the Conseil d'État:

59 The parties differ in their interpretations of the scope of Article 53 of Regulation No 1107/2009 and the requirements for its implementation.

60 The application of Article 53 is not so obvious as to leave no room for reasonable doubt.

61 In particular, the applicants request that the Conseil d'État refer to the Court for a preliminary ruling questions which appear to be relevant and which relate to the interpretation of several concepts contained in that provision.

62 The Court has not yet interpreted those concepts. It should therefore be requested to do so by way of a reference for a preliminary ruling.

V. The questions referred:

1. Is Article 53 of 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 to be interpreted as allowing a Member State to grant, in certain circumstances, an authorisation for the treatment, sale or sowing of seeds treated with plant protection products?

2. If the answer to the first question is in the affirmative, can the aforementioned Article 53 be applied, in certain circumstances, to plant protection products containing active substances the marketing or use of which is restricted or prohibited in the territory of the European Union?

3. Do the 'special circumstances' required by Article 53 of the aforementioned regulation cover situations in which the occurrence of a danger is not certain but only plausible?

4. Do the 'special circumstances' required by Article 53 of the aforementioned regulation cover situations in which the occurrence of a danger is foreseeable, common and even cyclical?

5. Is the expression 'which cannot be contained by any other reasonable means', as used in Article 53 of the regulation, to be interpreted as giving equal importance, in the light of the wording of recital 8 of the regulation, on the one hand, to ensuring a high level of protection of both human and animal health and the environment and, on the other hand, to safeguarding the competitiveness of Community agriculture?