

EU Court to rule on banned pesticide use

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In 2013, after evidence demonstrated the adverse effects of neonicotinoids on bees (1, 2), the European Commission limited the use of clothianidin, thiamethoxam, and imidacloprid outside of permanent greenhouses. After an evaluation, these bans were strengthened in 2018 (3). In May, the Court of Justice of the European Union upheld the legality of these bans (4). However, this decision does not address a loophole used by many EU member states to continue to permit the use of neonicotinoids.

EU member states have relied on a provision in the EU pesticide regulation that allows the short-term authorization of pesticides in “emergency situations” where “such a measure appears necessary because of a danger which cannot be contained by any other reasonable means” (5). The regulation does not further define what constitutes an emergency. Given this lack of explicit constraints, several member states allow the “emergency authorization” of banned neonicotinoids for major crops, particularly sugar beets, on a recurring basis (6).

The Court of Justice of the EU will soon interpret what constitutes an emergency in a case that could substantially affect both agricultural practices and the conservation of pollinating insects in Europe (7). Important questions in this case include whether the use of pesticide-coated seeds in outdoor crops can be considered an emergency measure (in light of the fact that the use of such seeds implies that the prospective danger is not unexpected); whether foreseeable, common, or cyclical threats to plants, such as annual pest occurrence, can constitute an emergency; and the extent to which costs can be considered in determining whether an alternate means of pest control is “reasonable.” It is almost by definition difficult to define “emergency,” given that the word implies an element of the unknown, but in this legal context, it must be construed restrictively.

Allowing emergency derogation when the harm to be prevented is regular and foreseeable, and alternative means of preventing the harm are available (8), undermines both the ban and the intent of the pesticide regulation. Instead, it is incumbent on Member States to require and support alternative methods of pest control.

REFERENCES AND NOTES

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