Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 October 2020*

(Reference for a preliminary ruling – Environment – Regulation (EC) No 1107/2009 – Placing of plant protection products on the market – Emergency measures – Officially informing the European Commission – Directive (EU) 2015/1535 – Procedure for the provision of information in the field of technical regulations – Neonicotinoids – Protection of bees – Principle of sincere cooperation)

In Case C-514/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 28 June 2019, received at the Court on 8 July 2019, in the proceedings

Union des industries de la protection des plantes

v

Premier Ministre,

Ministre de la Transition écologique et solidaire,

Ministre des Solidarités et de la Santé,

Ministre de l'Agriculture et de l'Alimentation,

Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail,

interveners:

Association Générations futures,

Union nationale de l'apiculture française (UNAF),

Syndicat national de l'apiculture,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen (Rapporteur), C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

* Language of the case: French.

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Union des industries de la protection des plantes, by J.-P. Chevallier, avocat,

– the Union nationale de l'apiculture française (UNAF), by B. Fau, avocat,

– the Syndicat national de l'apiculture, by F. Lafforgue and H. Baron, avocats,

– the French Government, by A.-L. Desjonquères and E. Leclerc, acting as Agents,

– the European Commission, by F. Castilla Contreras, M. Jáuregui Gómez, A. Dawes and I. Naglis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 June 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1), and of Articles 69 and 71 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 (OJ 2009 L 309, p. 1).

2 The request has been made in proceedings between the Union des industries de la protection des plantes (Crop Protection Association, 'the UIPP')), on the one hand, and the Premier ministre (Prime Minister), the ministre de la Transition écologique et solidaire (Minister for Ecological and Inclusive Transition), the ministre des Solidarités et de la Santé (Minister for Solidarity and Health), the ministre de l'Agriculture et de l'Alimentation (Minister for Agriculture and Food) and the Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (France) (National Agency for Food, Environmental and Occupational Health Safety), on the other, concerning the prohibition of the use of plant protection products containing one or more active substances of the neonicotinoid family and seeds treated with those products.

Legal context

European Union law

Directive 2015/1535

3 Article 5(1) and (2) of Directive 2015/1535 provides:

'1. Subject to Article 7, Member States shall immediately communicate to the Commission any draft technical regulation …; they shall also let the Commission have a statement of the grounds which make the enactment of such a technical regulation necessary, where those grounds have not already been made clear in the draft.

…

Where, in particular, the draft technical regulation seeks to limit the marketing or use of a chemical substance, preparation or product on grounds of public health or of the protection of consumers or the environment, Member States shall also forward either a summary or the references of all relevant data relating to the substance, preparation or product concerned and to known and available substitutes, where such information may be available, and communicate the anticipated effects of the measure on public health and the protection of the consumer and the environment, together with an analysis of the risk …

The Commission shall immediately notify the other Member States of the draft technical regulation and all documents which have been forwarded to it …

…

2. The Commission and the Member States may make comments to the Member State which has forwarded a draft technical regulation; that Member State shall take such comments into account as far as possible in the subsequent preparation of the technical regulation.'

4 Article 6 of that directive provides:

'1. Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Commission of the communication referred to in Article 5(1).

…

3. With the exclusion of draft rules relating to services, Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive if, within three months of that date, the Commission announces its intention to propose or adopt a directive, regulation or decision on the matter in accordance with Article 288 TFEU.

4. Member States shall postpone the adoption of a draft technical regulation for 12 months from the date of receipt by the Commission of the communication referred to in Article 5(1) of this Directive if, within the three months following that date, the Commission announces its finding that the draft technical regulation concerns a matter which is covered by a proposal for a directive, regulation or decision …

…

7. Paragraphs 1 to 5 shall not apply in cases where:

(a) for urgent reasons, occasioned by serious and unforeseeable circumstances relating to the protection of public health or safety, the protection of animals or the preservation of plants, and for rules on services, also for public policy, in particular the protection of minors, a Member State is obliged to prepare technical regulations in a very short space of time in order to enact and introduce them immediately without any consultations being possible; …

…

In the communication referred to in Article 5, the Member State shall give reasons for the urgency of the measures taken. The Commission shall give its views on the communication as soon as possible. It shall take appropriate action in cases where improper use is made of this procedure. The European Parliament shall be kept informed by the Commission.'

5 Article 7(1)(c) of that directive provides:

‘Articles 5 and 6 shall not apply to those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States:

…

(c) make use of safeguard clauses provided for in binding Union acts’.

Regulation No 1107/2009

6 Recital 8 of Regulation No 1107/2009 is worded as follows:

‘The purpose of this 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. …’

7 Article 21(1) of that regulation states:

‘The Commission may review the approval of an active substance at any time. It shall take into account the request of a Member State to review, in the light of new scientific and technical knowledge and monitoring data, the approval of an active substance …’

8 Article 49(2) of that regulation reads as follows:

‘Where there are substantial concerns that treated seeds as referred to in paragraph 1 are likely to constitute a serious risk to human or animal health or to the environment and that such 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 seeds shall be taken immediately in accordance with the regulatory procedure referred to in Article 79(3). …’

9 Article 69 of that regulation provides:

‘Where it is clear that an approved active substance … or a plant protection product which has been authorised in accordance with this Regulation is likely to constitute a serious risk to human or animal health or the environment, and that such 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 that substance or product shall be taken immediately in accordance with the regulatory procedure referred to in Article 79(3), either at the own initiative of the Commission or at the request of a Member State. …’

10 Article 70 of Regulation No 1107/2009 states:

‘By way of derogation from Article 69, the Commission may in cases of extreme urgency provisionally adopt emergency measures after consulting the Member State or Member States concerned and informing the other Member States.

As soon as possible, and at the latest after 10 working days, those measures shall be confirmed, amended, revoked or extended in accordance with the regulatory procedure referred to in Article 79(3).’

11 Article 71 of that regulation states:

‘1. Where a Member State officially informs the Commission of the need to take emergency measures, and no action has been taken in accordance with Article 69 or 70, the Member State may adopt interim protective measures. In this event, it shall immediately inform the other Member States and the Commission.

2. Within 30 working days, the Commission shall put the matter before the Committee referred to in Article 79(1) in accordance with the regulatory procedure referred to in Article 79(3) with a view to the extension, amendment or repeal of the national interim protective measure.

3. The Member State may maintain its national interim protective measures until Community measures have been adopted.’

Implementing Regulation (EU) 2018/783

12 Commission Implementing Regulation (EU) 2018/783 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance imidacloprid (OJ 2018 L 132, p. 31) determines the conditions for the placing on the market and use of imidacloprid.

Implementing Regulation (EU) 2018/784

13 Commission Implementing Regulation (EU) 2018/784 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) determines the conditions for the placing on the market and use of clothianidin.

Implementing Regulation (EU) 2018/785

14 Commission Implementing Regulation (EU) 2018/785 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) determines the conditions for the placing on the market and use of thiamethoxam.

French law

15 Article L. 253-8, II, of the code rural et de la pêche maritime (Rural and Maritime Fishing Code) provides:

‘The use of plant protection products containing one or more of the active substances of the neonicotinoid family and seeds treated with those products shall be prohibited from 1 September 2018.

…

Derogations from the prohibition referred to in the first and second subparagraphs of this paragraph II may be granted until 1 July 2020 by joint order of the ministers for agriculture, the environment and health.

…’

16 Article D. 253-46-1 of that code, introduced by décret nº 2018-675, du 30 juillet 2018, relatif à la définition des substances actives de la famille des néonicotinoïdes présentes dans les produits phytopharmaceutiques (Decree No 2018-675 of 30 July 2018 concerning the definition of active substances of the neonicotinoid family present in plant protection products) (JORF of 1 August 2018, text No 7), provides:

'The following are the substances of the neonicotinoids family referred to in Article L. 253-8:

– Acetamiprid;

– Clothianidin;

– Imidacloprid;

– Thiacloprid;

– Thiamethoxam.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 Article L. 253-8 of the Rural and Maritime Fisheries Code prohibits the use of plant protection products containing one or more active substances of the neonicotinoid family and seeds treated with those products as from 1 September 2018. However, that code authorises the grant of certain derogations from that prohibition until 1 July 2020.

18 On 2 February 2017, the French Republic communicated to the Commission a draft decree listing the active substances referred to in that article. That communication was expressly based on the fourth subparagraph of Article 5(1) of Directive 2015/1535 and did not refer to Regulation No 1107/2009. That communication referred to various studies indicating the major impact of neonicotinoids on the environment and a risk to human health.

19 On 3 August 2017, the Commission replied to that communication, stating that it shared the concerns expressed by the French Republic regarding certain substances of the neonicotinoid family. In addition, the Commission stated that the European Food Safety Authority (EFSA) had published conclusions concerning three of the substances covered by the notified draft decree, which encouraged the Commission to consider the need to implement further restrictions.

20 Subsequently, Implementing Regulations 2018/783, 2018/784 and 2018/785 prohibited the use of imidacloprid, clothianidin and thiamethoxam from 19 December 2018, with the exception of treatments for crops staying within permanent greenhouses during their entire life-cycle.

21 On 30 July 2018 the Prime Minister adopted, on the basis of Article L. 253-8 of the Rural and Maritime Fisheries Code, Decree No 2018-675 which defined the active substances of the neonicotinoid family referred to in that article. That decree inserted into that code Article D. 253-46-1, under which those prohibited substances are acetamiprid, clothianidin, imidacloprid, thiacloprid and thiamethoxam.

22 On 1 October 2018, the UIPP brought an action before the Conseil d'État (Council of State, France) seeking the annulment of that decree in so far as it is incompatible with Regulation No 1107/2009.

23 In the light of the procedure prior to the adoption of Decree No 2018-675, the referring court considers that the lawfulness of that decree depends on whether, under Article 71 of Regulation No 1107/2009, the French Republic was entitled to adopt that decree as an emergency measure after issuing a communication based on Directive 2015/1535, even though the Commission had adopted a series of measures relating to the use of some of the neonicotinoids covered by that decree.

24 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Where a national measure designed to restrict the use of active substances has been formally notified to the Commission on the basis of Article 5 of Directive 2015/1535 …, together, however, with a presentation of the information which leads the Member State to take the view that the substance is likely to constitute a serious risk to human or animal health or to the environment and that that risk can be adequately controlled, as the legislation currently stands, only by measures taken by the Member State, a presentation sufficiently clear for the Commission not to make the mistake of thinking that that notification has been made on the basis of Regulation No 1107/2009 …, can the … Commission regard that notification as having been submitted under the procedure laid down in Articles 69 and 71 of that regulation and adopt, as appropriate, additional measures of enquiry satisfying both the requirements of that legislation and the concerns expressed by that Member State?

(2) If the answer to that question is in the affirmative, must … Implementing Regulations 2018/783, 2018/784 and 2018/785 … prohibiting the use of the substances thiamethoxam, clothianidin and imidacloprid, from 19 December 2018, with the exception of treatments for crops staying within permanent greenhouses during their entire life-cycle, be regarded as measures taken in response to the application made by [the French Republic] on 2 February 2017 for the general prohibition of the use of plant protection products containing one or more substances belonging to the neonicotinoid family and of seeds treated with those products?

(3) If the answer to the previous question is in the affirmative, what can a Member State do if it has asked the Commission, pursuant to Article 69 of Regulation No 1107/2009, to take measures to restrict or prohibit the use of plant protection products containing one or more substances of the neonicotinoid family and of seeds treated with those products, and the Commission complies only in part with its request by not restricting the use of all the substances belonging to the neonicotinoid family but by restricting the use of three of them?'

Consideration of the questions referred for a preliminary ruling

Admissibility

25 The UIPP disputes the admissibility of the request for a preliminary ruling.

26 It submits that the national measure at issue in the main proceedings could not be adopted under Article 71 of Regulation No 1107/2009, in so far as that measure constitutes a definitive prohibition and not an interim measure put in place pending the adoption of measures at EU level. Nor is that measure of an urgent nature, in so far as it stems from a law of 2016, the effects of which were deferred until 2018. Furthermore, notification of that measure does not follow from the emergency procedure provided for in Directive 2015/1535.

27 In those circumstances, the first question, which concerns compliance with the procedural conditions laid down in Article 71 of Regulation No 1107/2009, has no bearing on the outcome of the dispute in the main proceedings. The same is true of the second and third questions, since they were referred only in the event of the first question being answered in the affirmative. Moreover, the second question has no connection with the subject matter of the main proceedings.

28 In that regard, it should be recalled that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 26 and the case-law cited).

29 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 27 and the case-law cited).

30 The arguments put forward by the UIPP are not sufficient to rebut the presumption of relevance which applies to the questions referred.

31 It appears, in the first place, that the referring court has not determined, at this stage, the scope of the national measure at issue in the main proceedings. In those circumstances, it cannot be ruled out that that court might consider, if necessary by interpreting that measure in accordance with EU law, that it is of a provisional nature and may, therefore, constitute an 'interim protective measure' within the meaning of Article 71 of Regulation No 1107/2009.

32 In the second place, the duration of the national procedure which preceded the adoption of the national measure at issue in the main proceedings cannot be decisive, since that duration is not sufficient to rule out the possibility that, at the final stage of that procedure, that measure might have appeared to be an 'emergency measure', within the meaning of that provision, in so far as the adoption of that measure had by then become necessary in order to deal urgently with a serious risk to human or animal health or to the environment.

33 In the third place, as regards the failure to use the emergency procedure provided for in Directive 2015/1535 in order to communicate the national measure at issue in the main proceedings, it should be noted that the first question seeks to provide the referring court with the elements of EU law necessary to determine whether, and if so under what conditions, a communication made under that directive may be taken into account under the procedure laid down in Article 71 of Regulation No 1107/2009. The assessment of the argument of the UIPP is therefore inextricably linked to the answer to be given to that question and, consequently, cannot entail the inadmissibility of that question (see, by analogy, judgments of 17 January 2019, *KPMG Baltics*, C-639/17, EU:C:2019:31, paragraph 11, and of 3 December 2019, *Iccrea Banca*, C-414/18, EU:C:2019:1036, paragraph 30).

34 In the fourth place, as regards the relationship between the second question and the subject matter of the dispute in the main proceedings, it must be held that that question seeks to determine whether certain measures taken by the Commission after the communication from the French Republic may be regarded as having been taken in response to that communication. First, given that, in order to

decide the dispute in the main proceedings, the referring court must determine whether Decree No 2018-675 could be adopted by the French Republic pursuant to Article 71 of Regulation No 1107/2009 and, second, given that the latter provision makes action by Member States subject to the Commission not having adopted certain measures, it cannot be held that the second question is manifestly unconnected to the subject matter of the dispute in the main proceedings.

35 It follows that the questions referred for a preliminary ruling are admissible.

The first question

36 By its first question, the referring court asks, in essence, whether Article 5 of Directive 2015/1535 and Article 71(1) of Regulation No 1107/2009 must be interpreted as meaning that the communication, under Article 5 of that directive, of a national measure prohibiting the use of certain active substances covered by that regulation must be regarded as the official provision of information on the need to take emergency measures within the meaning of Article 71(1) of that regulation, where that communication contains a clear presentation of information showing, first, that those active substances are likely to constitute a serious risk to human or animal health or the environment and, second, that that risk can be contained satisfactorily only by measures taken by the Member State concerned.

37 Article 71(1) of Regulation No 1107/2009 provides that where a Member State officially informs the Commission of the need to take emergency measures, and where no action has been taken in accordance with Article 69 or 70 of that regulation, that Member State may adopt interim protective measures. It must then immediately inform the other Member States and the Commission of those measures.

38 Article 69 of that regulation authorises the Commission to take emergency measures to restrict or prohibit the use or sale of an active substance or plant protection product where it is clear that the active substance or product which has been authorised under that regulation is likely to constitute a serious risk to human or animal health or to the environment, and where that risk cannot be contained satisfactorily by means of measures taken by the Member State or Member States concerned. Article 70 of Regulation No 1107/2009 gives the Commission power to adopt such emergency measures following a simplified procedure in cases of extreme urgency.

39 The procedure established by Article 71 of that regulation is thus intended to enable the Commission or, failing that, a Member State, to adopt emergency measures covering the use or sale of certain substances or products where those measures appear necessary to protect human or animal health or the environment.

40 Article 5 of Directive 2015/1535 provides that Member States must immediately communicate to the Commission any draft technical regulation. That communication must in principle be followed, under Article 6 of that directive, by a postponement of the adoption of that draft technical regulation, in order to enable the Commission and the other Member States to submit comments on that draft.

41 Although the procedure laid down by that directive may, in accordance with the fourth subparagraph of Article 5(1) of that directive, relate to a Member State's measures seeking to restrict the marketing or use of a chemical substance or product on grounds of public health or protection of the environment, the fact remains that the two procedures referred to in the first question are different.

42 In the first place, although Article 5 of that directive applies, in principle, to any draft technical regulation, Article 71(1) of Regulation No 1107/2009 concerns the measures applicable to substances and products approved or authorised under that regulation.

43 In the second place, the communication which constitutes the start of the procedure provided for in Article 5 of that directive does not have the same function as the official provision of information which initiates the procedure established by Article 71 of Regulation No 1107/2009, since that communication is intended to enable the Commission and the other Member States to submit comments, when the primary purpose of providing that information is to encourage the Commission to respond to that information by adopting the emergency measures necessary to control the risk identified by the Member State concerned.

44 In the third place, the consequences which the EU legislature attaches to the communication and to the provision of information, provided for in Article 5 of Directive 2015/1535 and Article 71 of Regulation No 1107/2009 respectively, are not the same. Thus, while that communication entails, in principle, postponement of the adoption of the draft technical regulation concerned, the provision of information, referred to in Article 71(1) of Regulation No 1107/2009 may, in certain circumstances, enable the Member State concerned to adopt without delay interim protective measures at national level.

45 In that regard, although it is true that the procedure laid down in Article 5 of Directive 2015/1535 may also lead to the immediate adoption of national measures, where the Member State concerned makes use of the power provided for that purpose by Article 6(7)(a) of that directive, that power is merely an exception, the applicability of which is, moreover, subject to a condition which does not appear in Article 71(1) of Regulation No 1107/2009, namely that the situation which is the subject of the adopted emergency measure is unforeseeable.

46 In the fourth place, it should be noted that Article 71(1) of that regulation must be treated as a safeguard clause, as the Advocate General stated in point 58 of her Opinion.

47 The difference between the procedures laid down in Article 5 of that directive and Article 71 of that regulation respectively is therefore confirmed by Article 7(1)(c) of that directive, which provides that Articles 5 and 6 of that directive are not to apply to the provisions of the Member States by which the latter make use of safeguard clauses provided for in binding Union acts.

48 Nevertheless, although it follows from the Court's case-law that a Member State's power, provided by an EU act, to adopt emergency measures requires compliance with both the substantive conditions and procedural conditions laid down by that act (see, to that effect, judgments of 8 September 2011, *Monsanto and Others*, C-58/10 to C-68/10, EU:C:2011:553, paragraph 69, and of 13 September 2017, *Fidenato and Others*, C-111/16, EU:C:2017:676, paragraph 32), it is important to note that a notification to the Commission under Article 71(1) of Regulation No 1107/2009 requires only that the Member State concerned 'officially informs' that institution, without having to do so in a particular manner.

49 Furthermore, it should be noted that, under the principle of sincere cooperation enshrined in Article 4(3) TEU, the European Union and the Member States must, in full mutual respect, assist each other in carrying out tasks which arise from the Treaties. In that regard, the Court has held, inter alia, that that principle not only obliges the Member States to take all the measures necessary to guarantee the application and effectiveness of EU law but also imposes on the EU institutions mutual duties to cooperate in good faith with the Member States (judgments of 4 September 2014, *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 87, and of 19 December 2019, *Amoena*, C-677/18, EU:C:2019:1142, paragraph 55).

50 It is also important to note that the principle of sound administration is included among the guarantees conferred by the EU legal order, that principle entailing the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (judgment of 29 March 2012, *Commission* v *Estonia*, C-505/09 P, EU:C:2012:179, paragraph 95 and the case-law cited).

51 In those circumstances, despite the difference in the procedures provided for in Article 5 of Directive 2015/1535 and Article 71(1) of Regulation No 1107/2009 respectively, the Commission cannot, in the light of the objective of protecting human and animal health and the environment, as referred to in recital 8 of that regulation, dismiss any relevance, for the purposes of applying Article 71(1), of a communication of a draft technical regulation under Article 5 of that directive where the information contained in that communication is sufficient to enable that institution to understand that the Member State concerned should have notified it under Article 71(1) of that regulation.

52 That condition is satisfied where the communication concerned refers, first, to the existence of a risk associated with an approved active substance or an authorised plant protection product which the notified draft technical regulation is intended to control and, second, to the fact that it is impossible to control that risk without adding, as a matter of urgency, additional measures to the legislation in force.

53 In such a case, it is for the Commission to ask the Member State concerned whether that communication should be treated as the official provision of information under Article 71(1) of Regulation No 1107/2009.

54 In the event that the Commission failed to put that question to the Member State, the Commission should be regarded as having been officially informed, by means of that communication, of the need to take emergency measures within the meaning of Article 71(1) of that regulation.

55 In the present case, it is apparent from the actual wording of the first question that the referring court, which is exclusively responsible for assessing the facts in the context of the procedure laid down in Article 267 TFEU (see, to that effect, judgment of 14 May 2020, *Azienda Municipale Ambiente*, C-15/19, EU:C:2020:371, paragraph 26 and the case-law cited), considers that the information referred to in paragraph 52 of the present judgment is indeed apparent from the French Republic's communication.

56 Furthermore, it is not apparent from the order for reference or from the file before the Court that the Commission asked the French Republic whether that communication must be treated as the official provision of information under Article 71(1) of Regulation No 1107/2009.

57 In any event, it is important to note that the fact that the official provision of information by a Member State to the Commission already includes a draft measure does not release that Member State from the obligation to inform the other Member States and the Commission immediately of the final adoption of that measure, in accordance with the second sentence of Article 71(1) of Regulation No 1107/2009.

58 In the light of the foregoing, the answer to the first question is that Article 5 of Directive 2015/1535 and Article 71(1) of Regulation No 1107/2009 must be interpreted as meaning that the communication, under Article 5 of that directive, of a national measure prohibiting the use of certain active substances falling within the scope of that regulation must be regarded as the official provision of information on the need to take emergency measures within the meaning of Article 71(1) of that regulation, where:

– that communication contains a clear presentation of the evidence showing, first, that those active substances are likely to constitute a serious risk to human or animal health or to the environment and, second, that that risk cannot be satisfactorily controlled without the adoption, as a matter of urgency, of the measures taken by the Member State concerned, and where

– the Commission failed to ask that Member State whether that communication must be treated as the official provision of information under Article 71(1) of that regulation.

The second question

59 By its second question, the referring court asks, in essence, whether Article 71(1) of Regulation No 1107/2009 must be interpreted as meaning that Implementing Regulations 2018/783, 2018/784 and 2018/785 can be regarded as measures taken by the Commission in response to the French Republic's communication of 2 February 2017.

60 Article 71(1) of Regulation No 1107/2009 states that, after officially informing the Commission of the need to take emergency measures, a Member State may adopt interim protective measures if 'no action has been taken in accordance with Article 69 or Article 70' of that regulation.

61 It is therefore apparent from the very wording of Article 71(1) that only the adoption, by the Commission, of measures based on Articles 69 or 70 of that regulation can preclude any possibility of the Member State concerned adopting emergency measures.

62 That conclusion is supported by the general scheme of that regulation.

63 In that regard, it should be noted that, as is apparent from paragraph 39 of the present judgment, the purpose of a Member State officially informing the Commission under Article 71(1) of Regulation No 1107/2009 is to set in motion a procedure intended to ensure the adoption of emergency measures by the Commission or, failing that, by the Member State concerned.

64 The EU legislature thus established a specific emergency procedure that is closely linked to the emergency procedures laid down in Articles 69 and 70 of that regulation, which, like Article 71, form part of Chapter IX of that regulation. On the other hand, the provisions establishing those emergency procedures do not refer to the other procedures provided for by that regulation and must, therefore, be regarded as independent of the other procedures.

65 The procedure laid down in Article 71 of Regulation No 1107/2009 differs, in particular, from the procedure for the review of the approval of an active substance provided for in Article 21 of that regulation, which may also be initiated following a request from a Member State for that review.

66 Implementing Regulations 2018/783, 2018/784 and 2018/785 were not adopted on the basis of Article 69 or 70 of Regulation No 1107/2009, but on the basis of other provisions of that regulation.

67 Accordingly, the answer to the second question is that Article 71(1) of Regulation No 1107/2009 must be interpreted as meaning that Implementing Regulations 2018/783, 2018/784 and 2018/785 cannot be regarded as measures taken by the Commission in response to the French Republic's communication of 2 February 2017.

The third question

68 In view of the answer to the second question, there is no need to answer the third question.

Costs

69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 5 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, and Article 71(1) 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 must be interpreted as meaning that the communication, under Article 5 of that directive, of a national measure prohibiting the use of certain active substances falling within the scope of that regulation must be regarded as the official provision of information on the need to take emergency measures within the meaning of Article 71(1) of that regulation, where:**

   – **that communication contains a clear presentation of the evidence showing, first, that those active substances are likely to constitute a serious risk to human or animal health or to the environment and, second, that that risk cannot be satisfactorily controlled without the adoption, as a matter of urgency, of the measures taken by the Member State concerned, and where**

   – **the European Commission failed to ask that Member State whether that communication must be treated as the official provision of information under Article 71(1) of that regulation.**

2. **Article 71(1) of Regulation No 1107/2009 must be interpreted as meaning that Commission Implementing Regulation (EU) 2018/783 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance imidacloprid, Commission Implementing Regulation (EU) 2018/784 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance clothianidin, and Commission Implementing Regulation (EU) 2018/785 of 29 May 2018 amending Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance thiamethoxam cannot be regarded as measures taken by the European Commission in response to the French Republic's communication of 2 February 2017.**

[Signatures]