

# Prohibition of debated herbicide

November 07 2016 | Contributed by [Advokatfirman Lindahl](#)

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## Introduction

On May 20 2016 the Environmental Court rejected a farmers' organisation's appeal. The court refused to grant the organisation new emergency authorisation for the use of Stomp SC in Sweden in the commercial production of onions, among other crops. According to the appellant, the decision may jeopardise the competitiveness of certain Swedish crops on the European market, since Stomp SC is allowed in most other EU member states and no equally effective alternatives are available in Sweden.

## EU regulations

In the European Union plant protection products are subject to EU Regulation 1107/2009, which concerns the placing of such products on the market. Plant protection products (ie, pesticides) consist of or contain active substances, safeners or synergists intended to destroy, check or prevent undesired plants. The purpose of the regulation is to ensure a high level of protection for the environment and human and animal health, while simultaneously safeguarding the competitiveness of EU agriculture (Recital 8 of the preamble to the regulation).

According to the regulation, the member states concerned must authorise any plant protection products before they can be placed on the market or used. In order to facilitate mutual recognition of authorisations of plant protection products within the European Union, all member states are divided into three climate zones. Sweden is one of the states included in the northern zone, along with Denmark, Estonia, Latvia, Lithuania and Finland. The Swedish farmers' organisation, among others, has pointed out that the northern zone is not economically favourable for pesticide producers to invest in. Further, the market is small in comparison to the central and southern zones.

Stomp SC is a plant protection product (more specifically a herbicide) used to control grass and weeds in many arable and special crops. For years it has been one of the basic products included in a pesticide strategy against weeds in Swedish onion production. The active substance in Stomp SC is pendimethalin, an accredited substance for plant protection products. Pursuant to EU Regulation 823/2012, the approval of pendimethalin expired on July 31 2016.

## Swedish policy

Historically, Sweden has had a relatively strict policy on chemicals in comparison with other member states. Even though pendimethalin was an accredited substance at EU level, approval for Stomp SC expired in Sweden on December 31 2008. Due to the substance's environmental effects, especially in terms of marine pollution, it was banned from use on December 31 2010 (KIFS 2009:1).

In October 2010, the farmers' organisation applied for an exemption (ie, an emergency authorisation), according to Article 53 of the regulation, to use the herbicide in the commercial

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production of onions and other crops. The application was rejected by the Chemicals Agency. The farmers' organisation appealed to the Environmental Court, where the exemption was approved for a limited period. Since then, Stomp SC was approved through new emergency decisions by the Chemicals Agency, but was once again rejected on March 31 2016.

### **Exemptions instead of authorisation?**

The farmers' organisation appealed the Chemicals Agency decision to the Environmental Court again. The appellant argued that prohibiting Stomp SC would result in a substantial increase in production costs, which would jeopardise the competitiveness of Swedish crops on the European market, especially since the plant protection product was authorised in all other member states. To meet the demand for crops, the suppliers were compelled to import onions and other crops from member states where, in many cases, plant protection products containing pendimethalin would still be in use. Further, the appellant argued that alternative plant protection products caused damage to crops when used in effective doses. According to the appellant, there was no incentive to apply for mutual recognition for Stomp SC, since the expiration date for the approval of pendimethalin in the European Union was July 31 2016. The appellant added that an application for mutual recognition is expensive, time consuming and not useful should approval of the substance in the European Union soon expire.

The Chemicals Agency argued that several applications can be submitted to ensure the availability of plant protection products in the European Union and, since pendimethalin was approved in other member states, the farmers' organisation could have applied for mutual recognition instead of applying for multiple emergency exemptions. The agency also argued that repeated exemptions would risk undermining the regulation by diminishing incentives to apply for authorisation and negatively affecting the competitiveness of EU agriculture. Further, according to the agency, it is sufficient that there are plant protection products or methods that serve as alternatives to Stomp SC, and the fact that the alternatives might not be as efficient as Stomp SC is not a valid reason to authorise a new exemption as requested by the farmers' organisation.

On May 20 2016 the Environmental Court stated (M 2151-16) that Article 53 of the regulation provides for derogations where member states may authorise a plant protection product without it being authorised according to Article 28, if such a measure appears necessary due to dangers which cannot be contained by any other reasonable means. The court also stated that the derogation should apply to emergency dangers or threats that arise infrequently and therefore cannot be foreseen. Since the farmers' organisation had applied for an exemption for the sixth consecutive year, the court ruled that the dangers or threats had been possible to foresee. Therefore, the situation no longer constituted an emergency, as referred to in Article 53, and a new exemption could not be granted. Subsequently, the court rejected the appeal and did not grant the farmers' organisation new emergency authorisation for the use of Stomp SC in Sweden.

On June 15 2016 (ie, after the ruling), the expiration date for the approval of pendimethalin was extended until July 31 2017 (Regulation 2016/950). The extension was caused by the delayed assessment.

### **Comment**

The use and prohibition of Stomp SC have provoked much debate in Sweden and, according to the farmers' organisation, the Environmental Court's ruling could jeopardise the competitiveness of certain Swedish crops on the European market (eg, onion production). The producers face multiple challenges, especially in the northern zone, in order to find available alternatives to Stomp SC in the cultivation of onions and other crops. Further, according to the regulation, since the future of pendimethalin is uncertain, producers are hesitating to apply for authorisation or mutual recognition.

The fact that the European Commission has extended authorisation until July 31 2017 will not make it easier for producers to determine how to proceed. It might not be advantageous to invest in an application for mutual approval of Stomp SC if the last and final approval date for pendimethalin at EU level remains July 31 2017. However, it might not be effective to invest in research and development of a less effective substance if pendimethalin approval will be extended for a longer

period. Hence, the economic and competitive risks are considerable.

There is an ongoing review regarding pendimethalin renewal at EU level. The decision will determine Stomp SC's future and is likely to affect the competitiveness of certain parts of Community agriculture in Europe. While the future use of pendimethalin and Stomp SC is being reviewed, Swedish producers must prepare for production without Stomp SC. The biggest concern is that Swedish onion producers might suffer severe financial difficulties due to competition from European producers still using pendimethalin-based herbicides. However, Swedish prohibition of Stomp SC might limit pollution of domestic waters. Irrespective of whether approval will expire in 2017, a long-term decision from the European Commission is desirable, since it will increase opportunities to compete on equal terms.

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