Why EFSA's assessments of Member States' 120-days derogations on pesticides are flawed: FACTSHEET

Introduction

For the second time, the European Food Safety Authority (EFSA) has produced a flawed assessment on derogations provided by Member States for the use of neonicotinoids, based on article 53 of the pesticide regulation 1107/2009/EC.

The use of 120 days derogations based on article 53 is common practice in Member States. This is done to either speed up the availability of new active substances on the market, while regular authorisations are under evaluation by the competent authority or to keep using substances that have been banned in the EU because of their toxicity to human health or the environment. While in the first case, a societal interest can be found when it comes to replacing hazardous pesticides by substances that present a lower risk profile, the latter scenario is much more problematic.

Following the pressure from civil society, the European Commission sent a first mandate to the EFSA to assess derogations provided by EU Member States for the use of neonicotinoids in 2017. In 2020, a new mandate was sent to assess derogations provide in 2020 and 2021 for the use of neonicotinoids on sugar beet crops.

In both cases, PAN Europe considers the EFSA has carried out a non-scientific piece of work and acted as a secretariat rather than a scientific advisor to the European Commission. Secondly, the EFSA has based its work on a flawed methodology that gives priority to chemical solutions rather than to non-chemical alternatives.

1. A flawed evaluation protocol

In its mandate to EFSA[1], the European Commission mentions the possibility to make use of the "protocol for the evaluation of data concerning the necessity of the application of insecticide active substances to control a serious danger to plant health". Such derogation type, based on article 4.7 of pesticide regulation 1107/2009/EC is different compared to derogations based on article 53 of this regulation. Below, PAN Europe highlights some major differences.

Article 4.7 derogations	**Article 53 derogations**
Provided at EU-level, following an EFSA assessment	Provided at Member States level, no involvement of the EFSA
May derogate to article 4 (safety criteria)	May not derogate to article 4
Long-term plant health issue (up to 5 years)	Short-term (120 days)
Rarely used by the European Commission	Dozens of cases every year

[1] https://open.efsa.europa.eu/study-inventory/EFSA-Q-2020-00816

Not used by the Commission despite several applications	Constantly used by Member States

Furthermore, this evaluation protocol bases itself on the risk of pests to develop resistances to pesticides. According to the EFSA protocol, this can be defined as a serious danger to plant health. Therefore, the risk of development of pest resistance to insecticides is considered a cause of provision of derogation. The EFSA considers, following the pesticide industry rhetoric, that to avoid pest resistance, a diversity of pesticide families with different mode of actions are needed.

This simplistic approach constitutes a lock-in to support continuous derogations. Indeed more and more families of active substances are banned to protect people's health and the environment. Some classes of pesticides have been entirely or almost entirely banned, like organochlorines, organophosphates or neonicotinoids. The approach taken by EFSA, with the support of the European Commission, annuls the positive impact of pesticide bans and put peoples' health and the environment at risk. This is in complete contradiction with the pesticide regulation 1107/2009/EC itself that gives precedence to people's health and the environment.

In Integrated Pest Management (IPM) and agroecological practices, a series of non-chemical alternatives are put in place to prevent the necessity to use (bio-)pesticides. Pest resistance does not become an issue as pesticides are used as a last resort and not systematically every year. By playing the "resistance" game, the EFSA supports the maintenance of a model of agriculture that does not implement real IPM and keeps destroying our biodiversity and damaging people's health.

2. Member States not respecting the rules

Applicants requesting derogations under article 53 are requested to provide the necessary evidence underpinning the request. Evidence on the danger posed by the pest, on the inefficiency or unavailability of chemical and non-chemical alternatives. Applicants are also to put in place research to develop alternatives to avoid the repetition of the derogations over time. Member States are then to assess the request based on a completeness check of the application and Member States are to assess the agronomic rationale behind the request.

In the frame of the mandate from the Commission, the EFSA was requested to assess the derogations provided by Member States. To do so, the EFSA would have needed scientific data assessing the presence of the pests, their eventual resistance to pesticides as well as scientific data on the efficacy of chemical and non-chemical alternatives.

From the derogations dossiers made available by the Member States on the European Commission portal, it is evident that in most cases, the document sent is a simple copy-paste of the application from the industry. Very often, it is not the farmers themselves but the sugar industry asking for the derogation, in order to maximize their own profit. Sometimes, it is even the pesticide industry asking for the derogation!

Furthermore, from the available information, there is no evidence whatsoever that Member States properly do their job: there is no agronomic assessment of the real danger: no pest count, no assessment of potential chemical/non-chemical alternatives, no assessment of the research programmes to avoid repetitive derogations etc. In many cases, Member States make scientific

statements that are not underpinned by scientific evidence and the EFSA does not even ask for them.

3. **EFSA acting as a secretariat rather than a scientific agency**

While Member States do a poor job in terms of agronomic evaluation, EFSA's assessments lack a critical agronomic perspective. The EFSA acts exclusively on the information provided by Member States. As mentioned in their report, the EFSA relied exclusively on the data provided by the Member States[2]. This situation led the EFSA to be fouled by the Member States.

Indeed, in the example of the Belgian derogations[3], it is very clear that Belgium did not provide EFSA with the information that other derogations were also provided to the farmers for the same pests (sulfoxaflor and spirotetramate). In practice, less than 20% of the sugar beet are treated with neonicotinoids in Belgium and farmers rely on the alternatives.

Furthermore, the EFSA is not conducting a proper self-investigation on the possible alternatives. Otherwise, they would, themselves have indicated that alternative derogations that potentially had a lower impact on the environment could be used. Indeed, when providing a derogation for the use of neonicotinoid-treated seeds, a Member States bets on the presence of a pest in the void. Crops are preventatively treated even though there is no evidence of the presence of the pest. This is in total contradiction with Integrated Pest Management. On the contrary, when providing a derogation for a substance that can be sprayed, such as sulfoxaflor or spirotetramate, when implementing Integrated Pest Management, farmers will use the substance as a last resort, if economically needed.

4. **EFSA contradicting itself from one country assessment to another**

Evidence shows that the EFSA is working in silos. Indeed, in the Belgian case, for the "sugar beet/wireworm" combination it says, "Crop rotation is considered as highly effective and feasible and is used on a large scale". Conversely, for the same crop/pest combination in Croatia, based on information provided by Croatian authorities, it concludes[4], "*the possible non-insecticide alternative methods listed to control sugar beet insects in Croatia are crop rotation, well-balanced fertilisation and soil tillage. These practices are applied in more than 50% of the acreage of the crop and are only moderately effective against pests.*"

This would mean that crop rotation is highly effective in some countries but not in others. From an agronomic perspective, these contradictory conclusions make no sense and show the complete lack of critical analysis from the Authority.

5. **Conclusion**

[2] E.g. in the report on the derogations from Belgium, EFSA states "*Therefore,EFSA considered the information provided by Belgium,such as the list of authorised insecticideactive substancesfor each crop/pest combination, the evaluation of risk of resistance of pests, the evaluation of risk of resistance of insecticides and the evaluation of non-insecticide alternatives as fully reliable and no further research was conductedto validate these data. Thus, Belgiumhas the full responsibility for the accuracy and correctness of the data provided to EFSA to perform the assessment.*"

[3] https://efsa.onlinelibrary.wiley.com/doi/pdf/10.2903/sp.efsa.2021.EN-6961

[4] https://efsa.onlinelibrary.wiley.com/doi/pdf/10.2903/sp.efsa.2021.EN-6961

For the second time, the EFSA has carried out a flawed and unscientific assessment of the derogations provided by Member States to their farmers for the use of neonicotinoid insecticides. The very low quality of the assessments carried out by the EFSA is in complete contradiction with the objectives of the EU Green Deal. Indeed, restoring biodiversity while maintaining insecticides so toxic as neonicotinoids on the market is impossible.

The evident lack of will from the Authority must be corrected so that derogations provided by Member States under article 53 finally respect the rules laid down in regulation 1107/2009/EC.

PAN Europe recommends that:

1. EFSA must focus on the scientific evidence behind the notion of "emergency". The demonstration should be made that the harm caused by the pest is leading to major yield losses. The presence of the pest must be evidenced and not just remain a hypothesis.

2. Assess the available alternatives to the use of neonicotinoids in seed treatment to fight the pests (in this case, aphids). Indeed, Member States could provide derogations to alternatives that are more compatible with Integrated Pest Management (thus more in line with the Sustainable Use of Pesticides Directive 128/2009) and that are not, contrary to neonicotinoids, banned for environmental reasons. The efficiency of alternatives, or any allegation on their lack of efficiency should be documented scientifically, not just by statements from the applicant or the Member State that are not underpinned by evidence.

3. Make its own scientific research on the practices carried out in the organic sector. Indeed, from the information we have obtained from Austrian and French organic sugar beet growers, the main issue in organic sugar beet growing is not insects but rather weeds. In France, an organic sugar beet industry is developing and the French organic technical centre Bio Hauts de France publicly stated that aphids are not a problem in organic sugar beets because they use different agronomic practices (non-chemical alternatives). We believe such information should be included in the work from EFSA as a non-chemical approach.

4. Evaluate the programme put in place at Member State level to avoid the necessity for repetitive derogations. The elaboration of such research programmes is a part of the Guidance Document on derogations validated by all EU Member States in 2021[5]. It is clear from the dossiers we have consulted that Member States do not play the game and do not make sure that such programmes are carried out in an efficient and scientific way. The EFSA should make sure that such practices are effectively put in place to avoid repetitive derogations as observed in many Member States.

[5] https://ec.europa.eu/food/system/files/2021-03/pesticides_aas_guidance_wd_emergency_authorisations_article53_post-210301.pdf