Pesticide Action Network Europe

Brussels, 19 July 2023

Subject: EU Court of Justice ruling C-162/21 on emergency authorisations not implemented

Dear Commissioner Kyriakides,

Six months ago, the Court of Justice of the EU published a ruling in case C-162/21 in which the Court provides important clarifications on the limits for Member States to provide emergency authorisations for pesticides, according to article 53 from the pesticide regulation (EC) 1107/2009. This ruling follows more than a decade of unlimited use and abuse of the derogation system by a majority of Member States, at the expense of citizens' health and the environment. This ruling also contradicts the position of DG Sante that many times defended the use of highly toxic chemicals under article 53, including during the procedure in Court. This ruling also contradicts the update, carried out in 2021 by your administration, of the Guidance Document (GD) on Emergency Authorisations[1], giving more space to the provision of derogations to EU-banned pesticides.

Six months after the ruling, the European Commission has still not officially published an official reaction. DG Santé provided a preliminary interpretation of the ruling in a meeting of the Environment Committee from the European Parliament on 6 March 2023 and in a letter sent to PAN Europe on 13 March. But no official interpretation was made public by the European Commission. This situation is not acceptable. Following this absence of reaction from the European Commission, a series of Member States keep issuing derogations for EU-banned pesticides. Citizens and the environment are harmed because of the non-application of the ruling by Member States and because the European Commission does not ensure that the rule of law is respected in the EU.

Since the beginning of the year, PAN Europe has identified that, from the derogations disclosed on the Commission database[2], no less than 29 derogations for EU-banned pesticides[3] have been provided by 14 EU countries[4]. Pesticides that are highly toxic to human health, like diquat or 1,3-dichloropropene as well as substances highly toxic to the environment such as neonicotinoids kept being massively used in these countries. The non-respect of the ruling in these Member States puts citizens' health and the environment at risk and it prevents farmers in the EU to work in a level playing field.

[1] https://food.ec.europa.eu/system/files/2023-01/pesticides_aas_guidance_wd_emergency_authorisations_article53_post-210301.pdf

[2] https://ec.europa.eu/food/plant/pesticides/eu-pesticides-database/ppp/

[3] In this classification, PAN Europe also included substances for which an approval request has been rejected for environmental and health reasons, as well as substances for which the applicant did not ask for renewal of approval

[4] AT, BE, CZ, DK, EE, EL, ES, FI, IT, LT, LV, PL RO, SK

Following the ruling of the Court, it is urgent that the Commission adapts the GD to clarify that derogations cannot be given to EU-banned pesticides. PAN Europe would like to stress that pesticides whose application was rejected due to health and environmental concerns, such as 1,3-dichloropropene, should be considered as EU-banned substances as they do not meet the criteria to ensure a high level of protection of citizens' health and the environment as foreseen in the pesticide regulation.

Furthermore, we are of the opinion that the adaptation of the GD should follow the opinion of the Advocate General (AG): an emergency authorisation should only be given in exceptional circumstances, not to pests that occur every year. The AG further considers that an emergency authorisation should be given only if strong evidence demonstrates that food safety is put at risk. Finally, Member States should carry out an independent assessment of the evidence and not only rely on the evidence from the application and copy-paste it in the template from the Commission. All these practices are extremely common and should be corrected accordingly to ensure a high level of safety for human health, animal health and the environment, as planned in the regulation.

PAN Europe would also like to stress the regular lack of compliance of Member States with the current GD regarding the provision of the requested data. According to the documents available on the database, fields are regularly left empty or nearly empty, others are simply copy-pasted from the request from the applicant (which seems to be, in some cases, the pesticide industry itself), while it is evident that there is no serious and independent assessment of the necessity to provide the derogation in most cases.

In particular, the Austrian derogation given to abamectin, including in open field, lasts from March to October[5]. This goes farm beyond the 120 days.

Since the implementation of regulation (EC) 1107/2009 in 2011, many Member States have taken the habit to abuse the system. The ruling of the Court of Justice of the EU, as well as the opinion of the Advocate General, give you the opportunity to clarify the rules with Member States, in order to better protect health and the environment, in line with the pesticide regulation. The slowness of DG Sante to adapt the Guidance Document to the ruling is not acceptable. Already two European Citizens Initiatives, Eurobarometers, the Conference for the Future of Europe and numerous petitions ask public authorities to take more action to protect health and the environment against pesticides. The inaction of your services to implement the ruling can only reduce the trust from citizens in public authorities.

When will the Commission publish a new Guidance Document, in line with the ruling and the opinion of the Advocate General? How is the Commission planning to make sure Member States fulfil their duty and properly assess the derogations requests and not only copy-pasts the demands from the farming sector or the pesticide industry? What are your services planning to do with the Member States that did not respect the ruling up to now? What are your services going to do with Member States that provide derogations longer than 120 days?

Wishing you a nice summer break, I thank you in advance for your consideration and your answer.

With kind regards,

Martin Dermine, PAN Europe

[5] https://webgate.ec.europa.eu/fscap-dossier-data/public/resource/33811/PPP-2023-15576-authorisation.pdf

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MS		Entry into force	Expiry date
1,3-Dichloropropene	ES	01-04-2023	20-05-2023
Asulam sodium	DK	10-03-2023	04-07-2023
Abamectin (avermectin)	EE	10-05-2023	06-09-2023
Abamectin (avermectin)	AT	14-03-2023	15-10-2023
Beta-Cyfluthrin, Clothianidin	CZ	01-02-2023	31-05-2023
Clothianidin, Beta-Cyfluthrin	RO	01-03-2023	30-05-2023
Cyromazine	PL	15-06-2023	10-07-2023
Diquat	LT	05-07-2023	01-11-2023
Diquat	CZ	29-05-2023	25-09-2023
Diquat	DK	30-06-2023	19-10-2023
Ethametsulfuron-methyl	LV	02-07-2023	30-10-2023
Imidacloprid	RO	23-01-2023	22-05-2023
Imidacloprid	RO	23-01-2023	22-05-2023
Indoxacarb	BE	01-05-2023	28-08-2023
Pretilachlor	GR	11-04-2023	08-08-2023
Pretilachlor	GR	11-04-2023	08-08-2023
Profoxydim	GR	17-05-2023	31-07-2023
Profoxydim	IT	24-04-2023	31-07-2023
Quinclorac	GR	11-05-2023	07-09-2023
Sulfoxaflor	GR	20-05-2023	16-09-2023
Sulfoxaflor	GR	20-05-2023	16-09-2023
Sulfoxaflor	ES	01-06-2023	28-09-2023
Thiamethoxam	CZ	20-04-2023	16-07-2023
Thiamethoxam	SK	15-02-2023	14-06-2023
Thiamethoxam	CZ	01-02-2023	31-05-2023
Thiamethoxam	RO	01-03-2023	30-05-2023
Thiamethoxam	RO	23-01-2023	22-05-2023
Thiamethoxam	FI	16-02-2023	15-06-2023
Thiamethoxam, Tefluthrin	LT	20-02-2023	19-06-2023