



**Pesticide  
Action  
Network**  
Europe

Brussels, 23 September 2022

Ms. Kyriakides  
European Commissioner for Health and Consumer Policy  
European Commission  
B-1049 Brussels - Belgium

**Subject:** Request for access to documents related to the position of Member States on sulfoxaflor and cypermethrin insecticides

Dear Madam,

A recent judgement<sup>1</sup> from the General Court of the EU (cases T-371/20 and T-554/20) has given right to a long-standing request by the civil society for more transparency in the frame of the Standing Committee on Plant, Animals, Food and Feed (SCOPAFF). The General Court (GC) has clarified a series of important legal points. Firstly, the GC clarified that the European Commission is not entitled to implement stricter rules in the SCOPAFF than those laid down in regulation 1049/2001/EC (§96). Secondly, the GC clearly concludes that the Commission is not entitled to systematically dismiss a request on the position of Member States in the frame of a comitology procedure (§99). To do so, the Commission would need to duly justify and prove that disclosing Member State's position would undermine the decision-making process. We are in the view that more transparency would, on the contrary, speed up the decision-making process, enhancing the EU's democratic dynamic. Finally, the GC also indicated that documents sent from one Member State to others in the frame of the SCOPAFF must be made public (105).

We feel that the judgment of the GC will help the Commission in the sense that more transparency in Scopaff will certainly prevent many Member States to support the (re-)approval of highly toxic substances, while claiming to their voters they do their best to protect citizens' health and the environment. This will support the objectives of the European Green Deal, for a less polluted EU.

In light of this recent judgment, and in accordance with Regulation (EC) No 1049/2001 and Regulation (EC) No 1367/2006, Pesticide Action Network (PAN) Europe requests to receive the following documents, in relation with cypermethrin (re-approved recently in SCOPAFF), and sulfoxaflor (banned in the appeal committee) pesticides. For cypermethrin, we request the documents since 1 August 2018. For sulfoxaflor, we request the documents since 1 March 2020.

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<sup>1</sup><https://curia.europa.eu/juris/document/document.jsf?text=&docid=265442&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=133414>

- All communications between Member States and the European Commission presenting Member States' position concerning a renewal, non-renewal, withdrawal or non-withdrawal of approval
- All communications between Member States on these substances, within the SCOPAFF.

The decision-making process for these substances is finalised. The GC highlighted (§60) that *“Once the decision is adopted, the requirements for protecting the decision-making process are less acute”*. Indeed, PAN Europe considers that disclosing these documents will not harm the general decision-making process of the SCOPAFF: according to the Aarhus regulation 1367/2006/EC, EU citizens are entitled to know the position of their Member States, be it through an Access to Information request at national level, or at EU-level. Some Member States provide this information in a transparent way and, to our knowledge, the European Commission has never complained that this leads to a dysfunction of the decision-making process. Furthermore, there is an overriding public interest for citizens that the European Commission discloses this information. Firstly, because even though the Aarhus regulation 1367/2006 grants access to the information and to participation in the decision-making process, it is often difficult for citizens and some of our member organisations, to obtain the position of their own country in the SCOPAFF. Providing the positions in a centralised way will increase transparency for all EU citizens. Furthermore, many politicians claim they are bee-friendly. Sulfoxaflor and cypermethrin being highly toxic to bees, we would like to check the coherence of the decisions from our decision-makers. On top of that, for cypermethrin, the EFSA has identified 4 critical areas of concerns, meaning, 4 scientific and legal reasons justifying that the pesticide cannot be used safely. We consider that citizens have the right to know if their minister responsible for pesticides supported the re-approval of such a substance that should, in our view, have been banned. Finally, the decision from the European Commission to propose a withdrawal of approval for Sulfoxaflor, while proposing a renewal of approval for cypermethrin seems incoherent. Much more scientific evidence, including the EFSA's own conclusions, point at the toxicity of cypermethrin towards human health, aquatic ecosystems, earthworms, etc. while in the case of Sulfoxaflor, a much more recent substance (firstly approved only in 2015), research has mostly focused on the toxicity on pollinators and much less is known on human health or other compartments of the environment. Therefore, there is an important interest in understanding the rationale behind this re-approval of cypermethrin vs. the ban on sulfoxaflor.

With this application we respectfully request access to the requested documents within the deadline foreseen by Article 7(1) of Regulation (EC) No 1049/2001.

Sincerely yours,

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