

THE EU 'PESTICIDES PACKAGE'

1. Current Legislation

Currently plant protection products are regulated under the authorisation directive 91/414/EEC. The directive harmonises the regulation of plant protection products by considering the safety of the active substances and the safety and effectiveness of the products in which they are used¹. The Directive establishes a two-stage assessment process:

- The process for evaluating the safety of active substances at EU level is itself harmonised which allows the safety of the active substance to be established; and
- Using this harmonised approach, allowing the consideration of the authorisation of products to be taken at national level.

1.1 Key Points of Directive²

The Directive:

- Establishes a positive list of active substances that have been shown to be without unacceptable risk to people or the environment.
- Establishes a mechanism by which active substances can be added to this list as they are reviewed or new ones authorised.
- Provides an authorisation process for the marketing and use of plant protection products by Member States after an active substance is included on the list.

2. Review of Directive

The Directive was first reviewed in 2001. The Commission subsequently adopted a Communication in 2002 "Towards a Thematic Strategy on the Sustainable Use of Pesticides" COM (2002) 349. Then, in 2006, the Commission presented a 'pesticides package' with the aim to protect human health and the environment from their dangerous or excessive use in agriculture³. This consists of a [Regulation](#) concerning

¹ <http://www.pesticides.gov.uk/approvals.asp?id=2310>

² Ibid

³ <http://www.euractiv.com/en/sustainability/pesticides-tough-negotiations-ahead-meps-back-bans/article-176936>

the placing of plant protection products on the market and a [Framework Directive](#) on the sustainable use on pesticides.

3. Recent Developments

The ENVI Committee of the European Parliament adopted the draft recommendations for 2nd reading on the '*Framework Directive on the sustainable use of pesticides*' and '*Placing of plant protection products on the market*' at its meeting on the 4-6th November 2008. The 2nd reading is scheduled to take place on 13th January 2009 with the legislation possibly entering into force in mid-2010.

3.1 Main Points of the Regulation on the Authorisation of New Plant Protection Products

Aim: The new legislation will govern the production, licensing and use of pesticides.

A positive list of "active substances" will be drawn up at EU level. The licensing of pesticides at National level will then be based on this list.

3.1.1 Highly Toxic Chemicals Banned

Certain toxic substances will also be banned except where there is a serious danger to plant health. These substances include those that are:

- Endocrine-disrupting (affect hormones)
- Genotoxic (cause damage to genetic material)
- Carcinogenic (cancer-causing)
- Toxic to reproduction

Neurotoxic (affects nervous system) and immunotoxic (harmful to the immune system) substances will also be banned where they pose a significant risk. However where a substance is needed to combat serious risk to plant health it can be approved for up to four years even if the safety criteria is not reached.

There have been claims that the new rules would result in a wide range of pesticides being removed from the market. The UK's Pesticides Safety Directorate (PSD) for example considered the Parliament's first reading report and concluded that this would result in a withdrawal of up to 85% of conventional chemical substances if all the amendments were incorporated, and would consequently impact on crop yield and food quality resulting in increased food prices⁴. This view was echoed by the UK farming sector with Peter Kendall, the NFU President, stating that "*a great number of vital products could be lost which will threaten the viability of some sectors of the industry*"⁵.

However, the Directorate in a revised assessment of nearly 300 substances, published on December 2nd, acknowledged that only up to 15% of these substances might be removed. It did maintain however that there could be a loss of up to 85% of

⁴ [http://www.pesticides.gov.uk/uploadedfiles/Web_Assets/PSD/Impact_report_final_\(May_2008\).pdf](http://www.pesticides.gov.uk/uploadedfiles/Web_Assets/PSD/Impact_report_final_(May_2008).pdf)

⁵ EU pesticide crisis takes a turn for the worse
<http://www.farmbusiness.cc/cogcms/default.aspx?Page=7&Article=3360>

conventional chemical substances *after* the agreed 5 year approval period for those substances, that are candidates for substitution, ends⁶.

However the EU Commission rejected such claims arguing that only 4% of substances would be withdrawn because they are endocrine disruptors and only 2% because they are carcinogenic, mutagenic or toxic to reproduction⁷.

3.1.2 Alternatives

Depending on their toxicity chemicals will be approved for differing periods of time. Some currently available products will be defined as "candidates for substitution" and will be replaced by safer alternatives where these are available. The maximum replacement deadline has been reduced from 5 years to 2.

3.1.3 No to Zonation of Europe

Both the Council and the Commission wished to divide Europe into three zones for the purpose of licensing pesticide products but the Parliament rejected this proposal and instead opted for a single EU-wide zone. However, individual states would still be allowed to ban pesticides if they could substantiate their case.

4. Sustainable Use of Pesticides

4.1 Reduction

MEPs voted to establish quantitative targets for reducing the volumes of pesticide used. For "active substances of very high concern" and those classified as "toxic or very toxic" the target will be "a minimum 50% reduction". The details for taking this forward will be the responsibility of Member States and will be drawn up in National Action Plans.

Again, this has not been well received in some quarters. The European Crop Protection Association (ECPA) stated that⁸:

"fixing arbitrary use reduction targets does not work...Pesticide use responds to real, local pest management needs, not to targets. Hence, the way forward is through improving practices."

The Directive on the Sustainable use of pesticides already states that aerial crop spraying will in general be banned although some exceptions will be allowed subject to approval. In addition, MEPs accepted the Commission's proposal that authorisations of products may include in the conditions of use an obligation to warn neighbours who could be exposed to spray drift before the product is used and who have requested to be informed⁹.

In a recent court case in the UK¹⁰ a campaigner won a legal victory against the government over Defra's policy on the use of pesticides. The campaigner was granted application for a judicial review of the policy. The judge referred to "defects"

⁶ [http://www.pesticides.gov.uk/uploadedfiles/Web_Assets/PSD/Impact_report_final_\(May_2008\).pdf](http://www.pesticides.gov.uk/uploadedfiles/Web_Assets/PSD/Impact_report_final_(May_2008).pdf)
(revised)

⁷ Safety First for Pesticides. European Parliament Press Release 05-11-2008
http://www.europarl.europa.eu/news/expert/infopress_page/064-41253-308-11-45-911-20081103IPR41252-03-11-2008-2008-false/default_en.htm

⁸ <http://www.ecpa.eu/website/page.asp?mi=1&cust=3&lang=en&news=18087>

⁹ Press Release EU Parliament votes at first reading on pesticides package

¹⁰ Campaigner wins pesticide victory <http://news.bbc.co.uk/1/hi/england/sussex/7729112.stm>

in Defra's approach to pesticide safety which the judge said contravened the current authorisation directive 91/414/EEC. The implications if the campaigner's judicial review is successful are difficult to discern but it could be expected that Defra's approach to implementation of the current directive will certainly have to be reviewed as will its approach to any new measures contained in the 'pesticides package'.

4.2 Buffer Zones

In order to protect watercourse from pesticides MEPs restated their desire for buffer zones to be established around waterways. Indeed, should the Member State want to it could establish pesticide-free zones that cover the entire Member State.

4.3 No-Spray Zones

Lastly, a number of specific areas were highlighted for protection against pesticides by keeping their use in these areas to a minimum. These areas included parks and playgrounds as well as public healthcare facilities. These would be defined as "substantial no-spray zones".

5. Conclusion

The new pesticides package is comprised of two elements:

- A new regulation relating to the authorisation of new plant protection products; and
- A framework directive on the sustainable use of pesticides.

The first relates to *what* pesticides will be available for use and the second to *how* these products will be used. There is however another fundamental point to be considered and that is the apparent change from assessing pesticides on the basis of *risk*, to their assessment on the basis of *hazard*. Hazard and risk are two different concepts. The principal link between the two is *exposure* as pointed out by Dr James Gilmour, former director of Agricultural Advisory Service for Scotland¹¹. Although a hazard may be high there is no risk if there is no exposure. This change may have significant consequences, as suggested in some quarters, for not only the number and type of pesticides available for use but also how they are used. However, it will become clearer in January 2009 if there are to be further amendments to the proposed legislation. If not, then only time will tell just how significant the impact of this legislation on agriculture and associated industries will be.

December 8th 2008

¹¹ Risk not hazard good for pesticide regulation. Letter to Euractiv.com
<http://euractiv.blogactiv.eu/2008/10/16/risk-not-hazard-for-good-regulation/>