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REGULATORY SCRUTINY BOARD OPINION

Revision of Directive 2009/128/EC
on the sustainable use of pesticides

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Revision of Directive 2009/128/EC on the sustainable use of pesticides

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Pesticides are used against plant pests, plant diseases and for weed control, mainly in agriculture but also in forestry and green urban areas. Since pesticides can have harmful effects on the environment and on human health, they are regulated at EU level.

The Sustainable Use of Pesticides Directive (SUD) was adopted in 2009 with the aim of reducing the risk and impacts of the use of pesticides on human health and the environment. Integrated pest management is a key concept of the SUD and includes actions like crop rotation, pest monitoring and adoption of non-chemical pest control techniques and less hazardous pesticides. The SUD covers the use of pesticides. It complements EU legislation on placing pesticides on the market, on pesticide residues and on pesticide statistics.

As part of the European Green Deal, the Commission's Farm-to-Fork strategy highlights the need to transition to a fair, healthy and environmentally-friendly food system. It also stresses the importance of improving the position of farmers in the value chain. It proposes targets to reduce the use and risk of chemical pesticides and to reduce the use of more hazardous pesticides by 2030. The SUD is a key tool to achieve the targets.

(B) Summary of findings

The Board notes some improvements in the revised report responding to the Board's previous opinion.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not explain clearly the lack of evidence on pesticide sales and use and the corresponding limitations for the problem definition, option formulation and impact analysis.

(2) The report does not sufficiently justify the choice for the twin 50% binding reduction targets and how they articulate.

This opinion concerns a draft impact assessment which may differ from the final version.

(3) The report does not specify what level of progress from individual Member States is 'sufficient' to be compliant with the twin binding EU reduction targets, how this will be measured or allocated or result in a fair burden sharing. It is not clear what benchmark level and reference period the twin EU reduction targets and Member State reductions will be compared to and how binding national targets will be ultimately established.

(4) The report is not clear on which flanking initiatives are included in the baseline, and whether their current design is appropriate for supporting the objectives of this initiative. The report uses different baselines without explaining how they fit together coherently.

(5) The report does not set out a credible basis and timeframe for the evaluation of the initiative.

(C) What to improve

(1) The report should explain better upfront how the lack of concrete evidence on pesticide sales and use limits the analysis underpinning the problem definition, formulation of options and analysis of impacts.

(2) The report should justify better its choice for the twin 50% reduction binding targets, based on evidence. This analysis should also justify the choice within the 40-60% reduction range, which is considered optimal. It should better explain the relationship between the targets and why the target on the reduction of the most harmful pesticides is not more ambitious.

(3) The report should set out clearly how the process of monitoring and issuing recommendations can guarantee that the individual Member States' efforts will ensure that the twin EU binding reduction targets are met. It should be clearer on the common criteria that would set the limit factors and the process that ultimately leads to binding national targets. It should explain how the process would ensure that targets for individual Member States take their different national conditions (such as land-use, crops, type of users) into account and how overall a fair burden sharing between different Member States would be ensured. It should also specify how historically incomplete implementation of the current SUD would be taken into account for future national targets. The report should explain in more detail how the flanking policies (such as the Common Agricultural Policy) can become sufficiently effective to foster and guarantee compliance at EU level.

(4) The report should present the options identified in a clear and easy to understand way to bring out more clearly the available key policy choices (e.g. targets, use limits). It should better explain why the particular measures are combined in the different options.

(5) The report should use a coherent baseline clearly reflecting future developments. It should explain how the reference year or period (corresponding to coefficient 100) are defined. The report should improve the narrative on the role of the flanking initiatives in the baseline, and strengthen the justification of the assumed decrease of the most harmful pesticides in the baseline (in view of the increase over the period 2010-2018). As the impact analysis added the additional estimates compared to a separate baseline (from the JRC study), the report should explain the relationship between the two baselines used and any resulting effect on the robustness of the estimates.

(6) The report should analyse the added options on the choice of legal instrument and integrate the outcome of this analysis in the comparison of options.

(7) The evaluation concluded that the current approach led to a high implementation discrepancy across Member States affecting the internal market for pesticide users and others. The report should explain how the current design of the preferred option will remediate this uneven implementation, given the flexibility that is left to Member States.

(8) The report should set out a clear framework for and indicators to evaluate the implementation and success of the initiative. This should be based on a timeline that is coherent with the data requirements needed for any revision of the 2030 target. The report should further enhance the coherence between the different data initiatives (e.g. Article 67 of Regulation 1107/2009 in regard to the other initiatives). The monitoring table should identify which indicators can be derived from other initiatives (such as the statistics on agricultural inputs and outputs, SAIO), and which will be required by this revision of the SUD. It should explain why the monitoring will have an annual cycle.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Revision of Directive 2009/128/EC on the sustainable use of pesticides
Reference number	PLAN/2020/6975
Submitted to RSB on	17 December 2021
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct and indirect benefits Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together). The comments column indicates which stakeholder group is the main recipient of the benefit.		
SUD reflects ambition of Farm to Fork Strategy		
a) Mandatory targets at EU and Member State levels	Possible reduction of compliance costs / economic benefits	Professional pesticide users: Potential reduction of costs for pesticides (up to 25%), health benefit National Authorities: N/A Other stakeholders: Increased sales of biocontrol and alternative methods (industry) Reduced costs for water providers –indirect benefit Society as a whole: health and environmental benefits
b) Prohibit the use of all chemical pesticides in sensitive areas	Reduction of compliance costs (water) Increased income for farmers (uncertain) Direct regulatory benefit in the form of improved health and wellbeing for citizens, improved environment indicators; Indirect benefit in the form cost savings for chemical pesticides and assumingly incremental reduction of public health costs.	Professional pesticide users: Health benefits and higher prices on produce Other stakeholders: Reduced costs for water providers Society as a whole: health and environmental benefits
c) Restrict purchases of more hazardous pesticides to trained professional users	Reduction of compliance costs (water) Direct regulatory benefit in the form of better compliance with health and safety requirements, Direct regulatory benefit – a) reduced use of pesticides as a result of more professional and	Other stakeholders: Potential economic benefit to training providers Reduced costs for water providers Society as a whole: health and environmental benefits

	effective application of the suitable pesticides b) Cost saving incurred by the reduction of the pesticides used Indirect benefit – Member States optimise their monitoring costs for pesticides use	
Strengthen SUD provisions		
a) Electronic IPM record keeping by professional pesticide users	Reduction of compliance costs Increased quality of collected data – timely, real time reporting, Direct regulatory - acts as an incentive for PPP users and farmers - level of granularity allows to make analysis of the effectiveness of IPM, documents the diligence of IPM application Reduction in pesticide use as a result of effective IPM application	Professional pesticide users: Potential reduction of costs for pesticides (up to 25%), health benefits Other stakeholders: Potential market for decision making software and application Increased sales of biocontrol and alternative methods
b) Development of crop-specific IPM rules	Reduction of compliance costs Improves effectiveness and efficiency of IPM application Reduces risk for potential losses for farmers' crops Direct benefit: Cost savings for farmers in the form of reduced quantities of pesticides Change in the mindset of agricultural producers – effective IPM guidelines incentivises farmers to use alternative pest reduction techniques, **possibly reduces enforcement and compliance cost for Member States** Indirect health and environmental benefits as a result of reduced pesticide use and sustainable production techniques	Professional pesticide users: Potential reduction of costs for pesticides (up to 25%), health benefits Other stakeholders: Consultancies and research institutes would receive funding and resources for development and revision of guidelines
c) Use mandatory crop-specific IPM rules as a basis for controls and enforcement	Reduction of compliance costs Cost savings for enforcement and compliance – clear rules will reduce the cost of audits and minimise compliance costs for pesticide users Indirect health and environmental benefits in the form of reduced PPP use.	Professional pesticide users: Potential reduction of costs for pesticides (up to 25%), health benefits Other stakeholders: Increased sales of biocontrol and alternative methods
d) Strengthened role for independent advisory system		

e) Promotion harmonised standards for PAE testing	Reduced compliance costs? Indirect economic benefit – uniform standards reduce defragmentation of the internal market (all equipment characteristics will be standardised) and help PAE producers reduce production costs and increase sales	Professional pesticide users: Health benefits, less spillage of pesticides Other stakeholders: Better harmonisation of testing standards contributing to functioning internal market
f) More specific on NAPs and links to CAP	Reduced regulatory and enforcement costs? better effectiveness and efficiency of enforcement actions – clear and measurable objectives facilitates compliance, CAP financing targets specific actions and measures in the NAP Reduction of compliance costs for pesticide users Reduction of production costs for farmers, CAP financing can help mitigate loss of income from higher production costs and higher risks of reduction in output and substandard quality of produce	National authorities: Better policy implementation and follow up
Adapting new technology		
a) Allow more targeted pesticide application as part of precision agriculture, for example with drones, (also taking into account if such aerial spraying is permitted in individual Member States) by trained operators	Reduced compliance costs Direct health and environmental benefits as a result of reduced use of pesticides due to application of precision farming Reduction in enforcement costs for Member States – digital records of pesticide use can reduce the need of audits as real time reporting may become available	Professional pesticide users: Health benefits through less exposure and safer treatment in hard to reach areas Potentially less labour costs Potential reduction in pesticide use, due to spot treatments Other Stakeholders: Economic benefit to producers of drones and potential service providers
Indirect benefits		
Improved monitoring		
a) Member States to establish a register of PAE	- cost savings for enforcement for Member States - reduced health and environmental risk resulting from the application of tested PAE - increased sales potential for PAE producers – easier to foresee which and when PAE is nearing the end of life.	Other stakeholders: Environmental and social benefits, however only indirectly since this policy option is mainly related to improving knowledge base

b) Electronic data collection of pesticide use data held by professional users	- cost savings for compliance and enforcement actions for Member States -	National administration: Better evidence for base for policy actions Other stakeholders: Environmental and social benefits, however only indirectly since this policy option is mainly related to improving knowledge base

II. Overview of costs – Preferred option *Estimates provided with respect to the baseline.*								
		Citizens/Consumers		Businesses			Administrations	
		One-off	Recurrent	One-off		Recurrent	One-off	Recurrent
SUD reflects ambition of Farm to Fork Strategy								
a) Mandatory targets at EU and Member State levels	Direct costs	n/a	n/a	n/a		Professional pesticide users: Potential costs related to IPM measures Other stakeholders: Reduced sales of pesticides	n/a	Not possible to estimate
	Indirect costs	n/a	n/a	n/a		n/a	n/a	n/a
b) Prohibit the use of all chemical pesticides in sensitive areas	Direct costs	n/a		n/a	n/a	Professional pesticide users: Costs for farmers in protected areas to transform to organic farming Potential lower yields Other stakeholders: Reduced sales of chemical pesticides	n/a	Potential increased costs for alternative methods to pest control in sensitive areas
	Indirect costs	n/a		n/a	n/a	n/a	n/a	n/a
c) Restrict	Direct	n/a	n/a	n/a		Other stakeholders:	n/a	cost control /

purchases of more hazardous pesticides to trained professional users	costs				reduced sales of chemical pesticides Costs for non-professional users to become trained		enforcement of rules
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Strengthen SUD provisions							
a) Electronic IPM record keeping by professional pesticide users	Direct costs	n/a	n/a	Professional pesticide users: 278 million investment costs (27 Euro per farmer) 742 million per year (74 Euro per farmer and year on average) [i]	n/a	800,000 Euro, if linked to Farm Sustainability Data Network (FSDN)	n/a
	Indirect costs	n/a	n/a	n/a	Other stakeholders: Reduced sales of pesticides	n/a	n/a
b) Development of crop-specific IPM rules	Direct costs	n/a	n/a	n/a	Professional pesticide users: potential costs related to IPM measures	n/a	Costs for revising and developing guidance (depends on baseline in each country)
	Indirect costs	n/a	n/a	n/a	Other stakeholders: Reduced sales of pesticides	n/a	n/a
c) Use mandatory crop-specific IPM rules as a basis for controls and enforcement	Direct costs	n/a	n/a	n/a	Professional pesticide users: potential costs related to IPM measures	n/a	1,3 million Euro per year (enforcement costs)
	Indirect costs	n/a	n/a	n/a	Other stakeholders: Reduced sales of pesticides	n/a	n/a
d) Strengthened role for independent advisory system	Direct costs	n/a	n/a	n/a	Professional pesticide users: obligatory strategic advice: large farms 540 Euro per year; small farms: 180 Euro per year	n/a	530,000 Euro annually for control and administration costs to establish independent advisory

					Other stakeholders: Costs to establish independent advice		system
	Indirect costs	n/a	n/a	n/a	Other stakeholders: Reduced sales of chemical pesticides	n/a	n/a
e) Promotion harmonised standards for PAE testing	Direct costs	n/a	n/a	n/a	n/a	n/a	n/a
	Indirect costs	n/a	n/a	n/a	Professional pesticide users: Potential additional costs for mandatory repairs Other stakeholders: Potential costs to adapt to harmonised standards	n/a	n/a
f) More specificity on NAPs and links to CAP	Direct costs	n/a	n/a	n/a	n/a	Minor costs	n/a
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Adapting new technology							
a) Allow more targeted pesticide application as part of precision agriculture, for example spraying with drones (also taking into account if such aerial spraying is permitted if in individual Member States) by trained operators	Direct costs	n/a	n/a	no additional costs	No additional costs	Cost to develop and implement electronic data collection	Cost to develop and implement electronic data collection
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Improved monitoring							
a) Member States to	Direct costs	n/a	n/a	Almost no costs for professional pesticide	Almost no costs for professional pesticide users	Almost no cost for those Member	Almost no cost for those Member States already having

establish a register of PAE				users		States already having such a register. In other Member States, depending on mechanism chosen for register, there could be some costs)	such a register. In other Member States, depending on mechanism chosen for register, there could be some costs
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
b) Electronic data collection of pesticide use data held by professional users	Direct costs	n/a	n/a	n/a	Professional pesticide users: likely costs to report electronically. Potentially similar to IPM reporting (see above)	Costs to develop and implement electronic data collection	Costs to develop and implement electronic data collection
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a

[i] Ramboll, Study supporting the evaluation of Directive 2009/128/ec on the sustainable use of pesticides and impact assessment of its possible revision, Final report – impact assessment part, p.101.

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Opinion

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Overall opinion: NEGATIVE

(A) Policy context

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As part of the European Green Deal, the Commission's Farm-to-Fork strategy highlights the need to transition to a fair, healthy and environmentally-friendly food system. It also stresses the importance of improving the position of farmers in the value chain. It proposes targets to reduce the use and risk of chemical pesticides and to reduce the use of more hazardous pesticides by 2030. The SUD is a key tool to achieve the targets.

(B) Summary of findings

The Board notes the additional information provided in advance of and during the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) It is not clear what the available data and evidence is for the initiative.

(2) There is no robust analysis or narrative that underpins the choice of the twin 50% reduction targets or how they articulate with each other. It is not clear how the twin targets will be allocated among Member States, or how the common EU targets will be implemented, enforced and monitored. A mandatory pesticide reduction target on Member States is not justified and does not respect the subsidiarity principle.

(3) The report is not clear on the availability and affordability of precision farming and of less hazardous alternatives to chemical pesticides.

(4) The impact analysis is underdeveloped. The report does not clearly identify or analyse the impacts and trade-offs of the initiative for the environment, health and the economy.

(C) What to improve

(1) The report should explain in more detail the limitations of data availability on pesticides sales and use for the initiative. It should present the shortcomings to be addressed, what the initiative will do to correct them, and how coherence and efficiency can be guaranteed with other parallel initiatives (in particular limiting administrative costs).

(2) The report should be clearer on the scope and scale of the problem. In particular, it should strengthen the presentation of available evidence on the environmental and health effects of pesticide use. It should clarify that the issues of illegal import and use of EU-banned pesticides from abroad, and levels of residues of EU-banned pesticides in imported foodstuff is dealt with in related initiatives.

(3) The common mandatory reduction targets at EU and Member State levels for the use of pesticides and the use of hazardous pesticides and how they interact should be better justified. This justification should fully respect the subsidiarity principle and reflect the significant variations in pesticide use and past reduction efforts in the Member States. The report should consider a broader range of possible values above and below 50%, explain why 50% is the appropriate level, and what the trade-offs are for higher or lower target levels.

(4) The report should assess how the common EU targets can be disaggregated into Member State targets. It should explain how national efforts will contribute towards the common EU targets, how national targets will be agreed and implemented and what mechanism will be used to enforce and monitor them.

(5) The report should present evidence on the current and future availability, feasibility and affordability of precision farming and alternatives to chemical pesticide use. The options should explore how to best stimulate innovation without opening the possibility for abuse (e.g. drone use effectively enabling aerial spraying).

(6) The report should further develop the impact analysis. It should include the assessment of all significant impacts and clearly show the costs and benefits for all affected groups. It should complete the analysis of the economic impacts and strengthen the presentation of the environmental and health impacts expected from this initiative. It should identify (and quantify – if possible) the trade-offs between the environmental and health benefits and the reduction in agricultural output (and income) and risks posed by third country agricultural imports. It should also discuss possible mitigating or compensatory measures. It should explain how the foresight study has informed the analysis.

(7) The report should specify when and how the initiative will be evaluated.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

DG SANTE must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Revision of Directive 2009/128/EC on the sustainable use of pesticides

Reference number	PLAN/2020/6975
Submitted to RSB on	27 October 2021
Date of RSB meeting	24 November 2021

Electronically signed on 26/01/2022 12:09 (UTC+01) in accordance with article 11 of Commission Decision C(2020) 4482