

Remarks on Commission's Roadmap on Pesticides Legislation REFIT

The Roadmap for the REFIT Evaluation of the legislation on pesticides and pesticides residues, raises concerns. If the roadmap will not be changed ClientEarth fears that the evaluation will be biased, incomplete, and inconsistent with other Commission's actions.

The objectives of the REFIT

The purpose of the Roadmap on the Pesticides Legislation states that the evaluation should assess in particular the accomplishment of the objectives, the efficacy of the enforcement as well as the effectiveness of the pesticides legislation. However the seems biased towards a negative evaluation of the legislation.

First, the Roadmap puts a greater emphasis on costs of implementing this legislation rather than on its benefits. Out of the four questions under the "efficiency" heading, only one covers the benefits achieved from the implementation of this legislation, while the remaining three focus on the potential negative impact of the pesticides legislation on businesses and on the administration.

Similarly, the ongoing **studies** referred to in the Roadmap do not seem to cover the benefits achieved by the pesticides legislation. In particular, the Commission's study launched in January 2016 on the cumulative health and environmental benefits of the body of chemicals legislation is not mentioned. The ongoing study on cumulative costs is, by contrast, listed in the Roadmap.

Also, the Commission invites stakeholders to question no less than "*the objectives of the Regulations*" by asking whether they are "*pertinent to the evolving needs, problems and issues in field of placing on the market of PPPs and pesticides residues today*" (section C.2). This goes too far. With this question, the Commission questions the legal basis of the Regulation: it is the guardian of the Treaty, and the REFIT process cannot question the legal basis of the Regulation it is evaluating. EU secondary legislation is meant to achieve treaty objectives. By questioning the legal basis the Commission is questioning if Treaty objectives are legitimate. This is unacceptable.

Missing elements

The Regulation on pesticides aims at achieving a high level of protection of human health and the environment. The provisions of this regulation are underpinned by the precautionary principle. However the roadmap does not mention the precautionary principle and its implementation as an element worth being evaluated. Crucially, the European Ombudsman found that the Commission has been disregarding the precautionary principle in implementing this Regulation. The Ombudsman Decision in case 12/2013/MDC found that "*by using the confirmatory data procedure for the approval of active substances for pesticides, the*

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Commission breached the provisions of Article 5[4] of Directive 91/414 and infringed the precautionary principle. The Commission should stop using the confirmatory data procedure with respect to both approvals of active substances for PPPs granted under Directive 91/414 and future approvals granted under Regulation 1107/2009".

Regarding the scope of the evaluation, first, we wonder why Directive 2009/128 on the **sustainable use of pesticides** is subject to a separate evaluation. This Directive is complementary to Regulation 1107/2009 as it shares the aim of protecting human health and the environment put at risk due to the use of pesticides. Evaluating the functioning of the placing of pesticides without considering their use would make the evaluation incomplete at best.

Also, the list of topics covered is incomplete and does not include all the issues for which, the Commission shall report to the European Parliament and the Council for example, the roadmap ignores Article 67 of Regulation 1107/2009 (which also states that "*By 14 December 2012, the Commission shall present a report to the European Parliament and the Council on the costs and benefits of the traceability of information [...]*").

Inconsistencies with other Commission initiatives

This REFIT partially overlaps with an on-going Refit on chemical legislation. However, the Pesticides REFIT roadmap uses an incorrect and biased terminology to describe the risk management measure foreseen by Regulation 1107/2009. The Roadmap on chemicals legislation (excluding REACH) describes how **risks arising from chemicals** are managed under EU legislation: there are two ways to assess risks under EU legislation an assessment based on generic risk considerations and an assessment based on specific risk considerations. This terminology is not used in the Roadmap on pesticides legislation which refers instead to hazard-based versus risk-based assessment (section B.3).

This creates confusion and inconsistency between the evaluation of pesticides legislation and the evaluation on chemicals legislation which does not sit comfortably with one of the objectives of the REFIT evaluation process, i.e. ensure coherence between actions.

Finally, the Roadmap excludes from the scope of the evaluation the criteria to identify endocrine disruptors but includes an assessment of the "**cut-off" criteria for approval**, i.e. the approval of endocrine disruptors if exposure is negligible. This raises questions since the draft proposal of the Commission setting out the criteria for the identification of endocrine disruptors modifies the "cut-off" criteria. There is therefore an obvious inconsistency between the scope of this Roadmap and the current draft proposal of the Commission regarding endocrine disruptors in pesticides. For the sake of consistency (at least), the Commission must amend its draft proposal on endocrine disruptors and withdraw any amendment to the "cut-off" criteria for approval.

We therefore request the Commission to revise and update the roadmap to ensure a complete and unbiased evaluation of the functioning of the pesticides legislation.

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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