



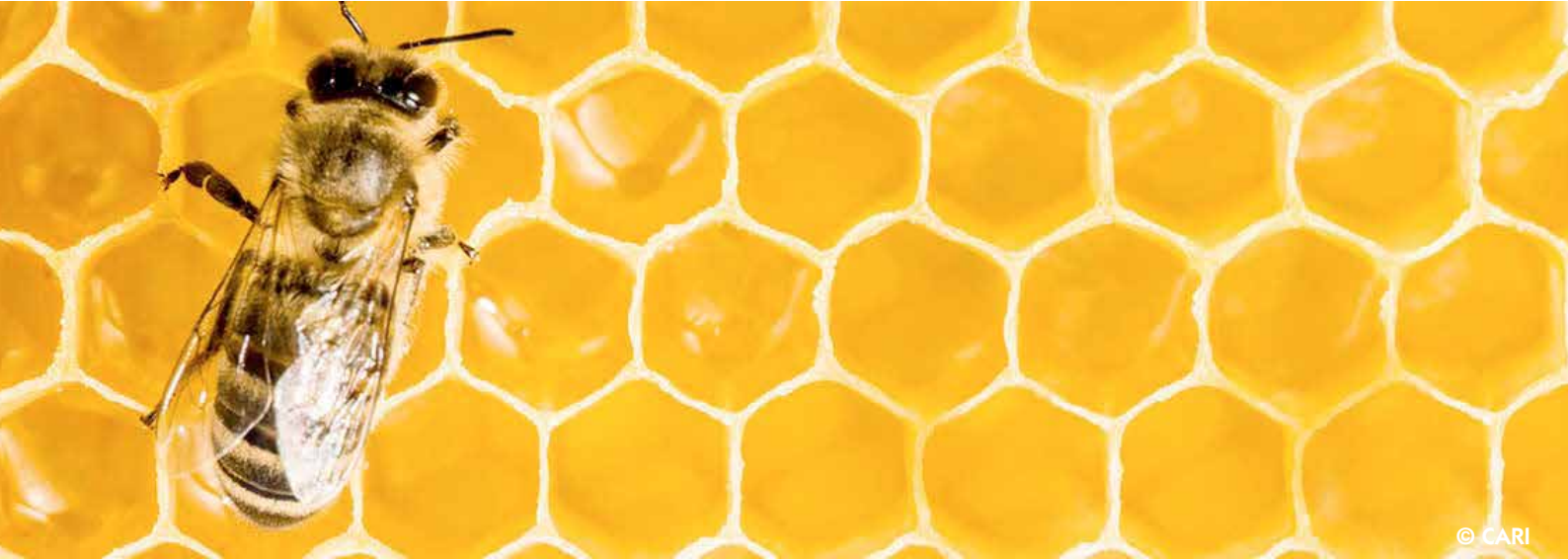
# BEE EMERGENCY CALL



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**February 2017**

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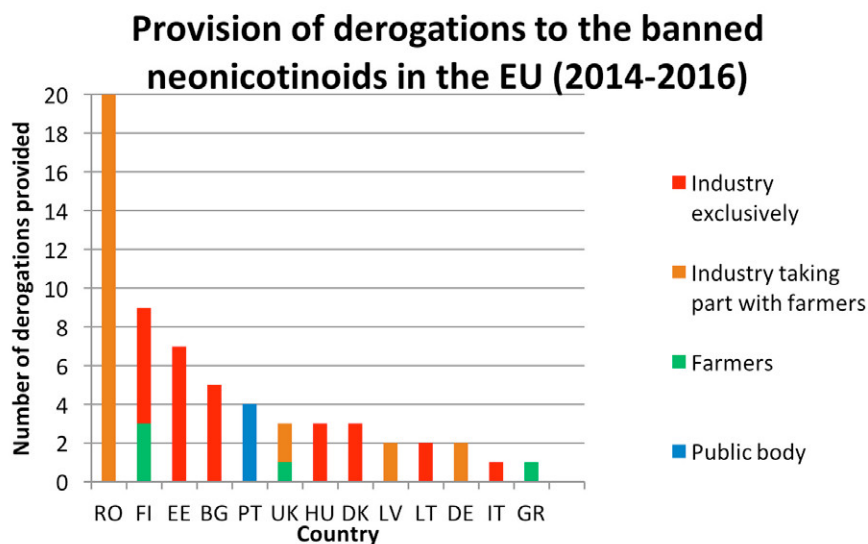
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## 1. Executive Summary

Bees are still under threat from abuse of pesticides. Four pesticides which are highly toxic to bees (including neonicotinoids and fipronil) were banned in 2013. However, the pesticide and seed industry, farmers and many EU Member States are continuing to use these pesticides. This is through a loophole in the Pesticides Regulation that allows for “emergency authorisations”.

“Emergency authorisations” for banned or non-approved pesticides can only be used in “exceptional circumstances”, for example, when a danger to crops or the environment leaves the farmer or Member State with no other choice other than to use the pesticide.

However, this mechanism is being abused. Between 2013 and 2016, over 1,100 emergency authorisations were granted by Member States. In this period, at least 62 emergency authorisations were granted by Member States allowing the use of these bee-harming pesticides.



Although the European Commission is aware of such abuse, it has never used its powers to stop or limit the harm to bees.

Beelife, ClientEarth and PAN Europe obtained the notifications that Member States submitted to the Commission. These should detail the reason for the emergency authorisation. These documents reveal that:

1. Member States are granting emergency authorisations without demonstrating that an emergency even exists. The conditions for granting an emergency authorisation for bee harming pesticides under the law are not satisfied. For example:

- a. The majority of Member State notifications do not provide the necessary information that a *"danger"* or *"threat"* exists. For example, 82% do not provide economic evidence of the threat. Emergency authorisations should only be granted in *"special"* or *"exceptional"* situations where there is a *"danger or threat to plant production or ecosystems."*

- b. 79% of notifications did not list any alternative means of control of pests. Emergency uses of unauthorised products can only be allowed where there is a danger that *"cannot be contained by any other reasonable means."*

- c. The majority of Member State notifications fail to provide any information to prove that the banned pesticides will be used in a *"limited and controlled"* way. Emergency authorisations can only be granted where Member States demonstrate that this criterion is satisfied.

2. The Commission is failing to use its powers to halt, reduce or limit the abuse of the emergency authorisation provisions.

3. 44% of requests for derogations are submitted solely by business (pesticides industry, seeds industry, trade associations). The majority of applications for emergency uses of bee-harming pesticides are promoted by these industries (86% of applications are applied for with industry involvement). This is contrary to the aim of the "emergency authorisation" procedure, which is to help farmers protect their crops in an unforeseen event and Member States to protect threats to ecosystems from exotic pests.

The "business as usual" approach, taken by the Commission and Member States, is further threatening bee populations as they continue to be exposed to these highly toxic pesticides.

Bee Life, ClientEarth and PAN Europe call on the Commission to properly implement the provisions of the Pesticides Regulation:

1. The Commission should update its guidance on Article 53 and develop clear and predictable procedures to minimise the use of emergency authorisations.

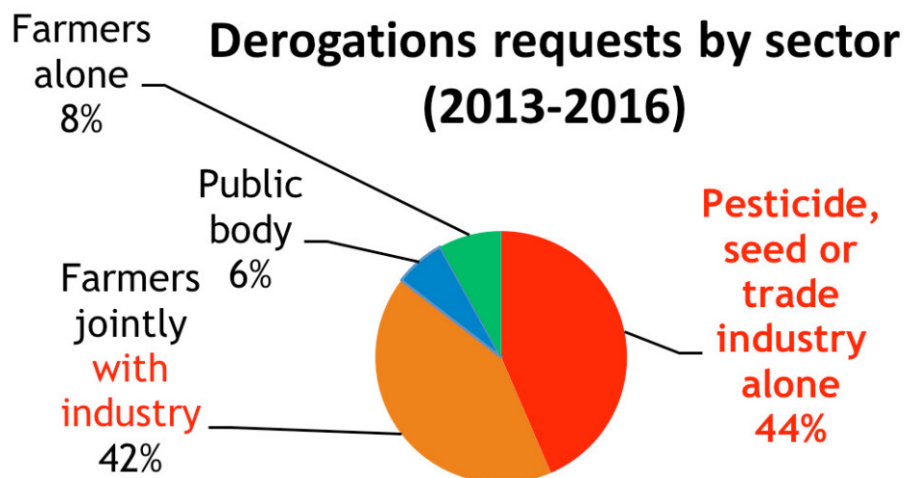
2. The Commission should systematically publish notifications as soon as they are notified, so that Member States are subject to public scrutiny, and are therefore incentivised to promote greater environmental protection.

3. When notifications are of poor quality and not detailed enough the Commission should ask Member States to resend complete and detailed notifications as provided by Article 53.

4. The Commission should utilise its power to systematically scrutinise the

notifications submitted by Member States for every emergency authorisation that is granted by a Member State more than once.

5. Where the authorisation does not comply with the conditions of Article 53,



the Commission should propose to withdraw the relevant emergency authorisation and establish strict conditions to allow emergency authorisations.

6. The Commission should require applicants to demonstrate that they are complying with the principles of Integrated Pest Management (IPM) before an emergency authorisation is granted.

7. The Commission should clarify that emergency authorisation requests from industry must be rejected by Member States.

8. Member States should no longer be able to provide derogations more than once without a decision by the Commission providing the conditions for repeating the emergency authorisation or providing for the withdrawal of the authorisation (as foreseen under Article 53(3)).



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## 2. Introduction

The intensive use of pesticides in conventional farming is a well-studied cause of biodiversity loss.<sup>1</sup> The 2015 mid-term review of the “EU biodiversity strategy to 2020” shows that there has been no significant progress towards the target of increasing the contribution of agriculture to maintaining and enhancing biodiversity.<sup>2</sup> On the contrary, the review has shown that there is a continuing decline in the status of species and habitats of EU importance. This decline is largely associated with intensive agriculture and pesticide use.

Fruit, vegetable or seed production from 87 of the leading global food crops is dependent upon animal pollination.<sup>3</sup> Worldwide, honeybees have a major role in pollinating most of these crops. 25 000 species of bees exist and are crucial for the survival and evolution of about 80 % of the flowering plant species that depend on animal pollination.<sup>4</sup> These pollination services are in steep decline across the EU.<sup>5</sup>

Furthermore, honey production and production of bee products such as pollen or propolis is an activity that is part of European tradition. Be it as a hobby or as an economic activity, the beekeeping sector has been suffering from the massive honey bee colony losses in which the generalization of the use of pesticide-treated seeds across

<sup>1</sup> Flavia Geiger and others, ‘Persistent negative effects of pesticides on biodiversity and biological control potential on European farmland’ (2010) 11(2) Basic and Applied Ecology <<http://www.sciencedirect.com/science/article/pii/S1439179109001388>> accessed 11 January 2017.

<sup>2</sup> EEA and European Commission, ‘Mid-term review of the EU biodiversity strategy to 2020’ (EEA, 2015) <<http://www.eea.europa.eu/themes/biodiversity/mid-term-review-of-the-view>> accessed 11 January 2017.

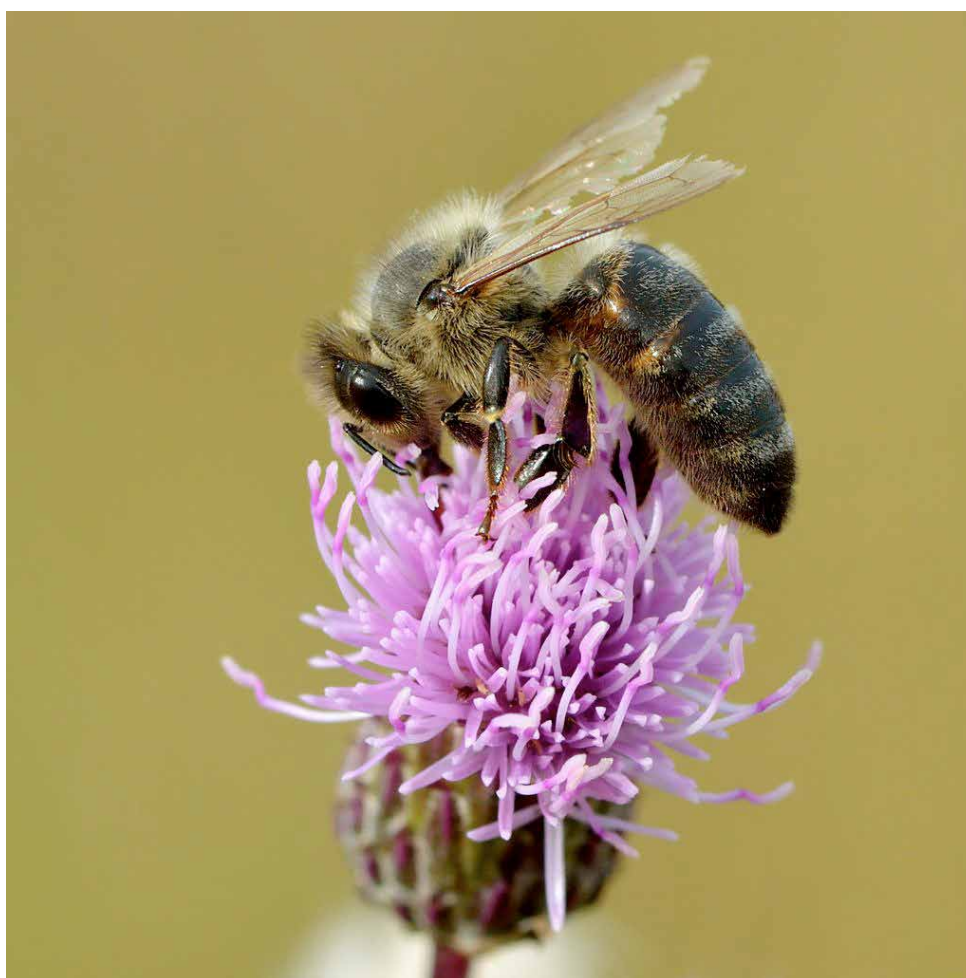
<sup>3</sup> Alexandra-Maria Klein and others, ‘Importance of pollinators in changing landscapes for world crops’ (2007) 274 Proceedings of the Royal Society. <<http://rspb.royalsocietypublishing.org/content/royprsb/274/1608/303.full.pdf>> accessed 11 January 2017.

<sup>4</sup> Food and Agriculture Organisation of the United Nations (FAO), ‘AGP Pollination’ (FAO) <<http://www.fao.org/agriculture/crops/core-themes/theme/biodiversity/pollination/en/>> accessed 11 January 2017.

<sup>5</sup> Joachim Maes and others, JRC Science and Policy Report: Mapping and Assessment of Ecosystems and their Services - trends in ecosystem services in the European Union between 2000 and 2010 (Publications Office of the European Union 2015) <<https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/mapping-and-assessment-ecosystems-and-their-services-trends-ecosystems-and-ecosystem>> accessed 11 January 2017.

Europe has played an important role. The EU is currently importing nearly half the honey that is consumed. Intoxication of honey bee colonies is hampering the possibility to increase honey production.

The considerable loss of pollinators and their diversity across large areas in Europe gives rise to serious concerns. Pollination decline would lead to a reduction in the pollination of many wild plants and agricultural crops with potentially severe socio-economic consequences, including loss in agricultural productivity. Therefore the European Commission and Member States must prioritise efforts to eliminate threats to pollinators deriving from the use and abuse of pesticides.





### 3. EU-wide ban on bee-harming pesticides

The high honeybee colony mortality rate since the 1990s across the EU has been repeatedly linked to pesticide use, particularly neonicotinoid insecticides. A recent study showed that in the UK, the decline in wild bees was linked to the increase in neonicotinoid use on oil seed rape.<sup>6</sup>

Neonicotinoids are a class of systemic pesticides that are taken up by plants and transported to all tissues, consequently making all parts of the plant poisonous to whatever animal comes in contact with them. Non-target insects, including bees, which feed on the treated plants, are also exposed to these harmful chemicals as the nectar and pollen is contaminated.

From 2008 to 2012 a number of Member States, including Italy, France, Slovenia and Germany began independently suspending the use of neonicotinoids to counter the high losses of honeybees in their own territories.<sup>7</sup>

In 2013, on the basis of a risk assessment by the European Food Safety Authority ("EFSA")<sup>8</sup> the European Commission adopted two Regulations that ban the use of four pesticides known to cause harm to bees on bee-attractive crops ("the bans"):

1. The first Regulation bans the use of three neonicotinoid products, clothianidin, thiamethoxam and imidacloprid, on crops attractive to bees and a list of cereals. These products may still be used in greenhouses and for winter cereals (when bees are not active).<sup>9</sup>

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<sup>6</sup> Ben A Woodcock and others, 'Impacts of neonicotinoid use on long-term population changes in wild bees in England' (2016) 7(12459) Nature Communications <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4990702/>> accessed 11 January 2017.

<sup>7</sup> EEA Austria, 'Existing Scientific Evidence of the Effects of Neonicotinoid Pesticides on Bees' (Note) IP/A/ENV/NT/2012-09, 2 <[http://www.europarl.europa.eu/RegData/etudes/note/join/2012/492465/IPOL-ENVI\\_NT%282012%29492465\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/492465/IPOL-ENVI_NT%282012%29492465_EN.pdf)> accessed 11 January 2017.

<sup>8</sup> EFSA, 'EFSA identifies risks to bees from neonicotinoids' (EFSA, 16 January 2013) <<http://www.efsa.europa.eu/en/press/news/130116>> accessed 11 January 2017; EFSA, 'EFSA assesses risks to bees from fipronil' (EFSA, 27 May 2013) <<http://www.efsa.europa.eu/en/press/news/130527>> accessed 11 January 2017.



2. The second Regulation bans the use of the insecticide fipronil other than in greenhouses and on crops which are harvested before flowering (as they are not considered attractive to bees).<sup>10</sup>

The Commission partially banned the use of these four substances (“the bee-harming pesticides”) because their negative impact on bees meant that they no longer satisfied the “approval criteria” under the pesticides Regulation.<sup>11</sup>

The bans aim to “*minimise exposure* [of the bee-harming pesticides] *to bees*”<sup>12</sup> and they are crucial to assist the recovery of bee populations across Europe in the face of dramatic declines. The bans are a minimum measure to limit the exposure to pollinators. A recent scientific review showed in fact that pollinators are still under severe threats from permitted uses of neonicotinoids.<sup>13</sup> BASF,<sup>14</sup> Bayer<sup>15</sup> and Syngenta<sup>16</sup> have been fighting against these bans in the Court of Justice of the EU since 2013.

The conditions for the authorisation of a pesticide are laid down in the Pesticides Regulation.<sup>17</sup> Article 53 of the Pesticides Regulation (“Article 53”) outlines a process that allows Member States, in emergency situations, to authorise the use of a product that is not allowed under the regulation (“emergency authorisation”). In the context of the bans, this means that bee-harming pesticides may be authorised only when there is a danger to plant production or ecosystems that cannot be contained by any other means.<sup>18</sup>

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<sup>9</sup> Commission Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances Text with EEA relevance [2011] OJ L153/1, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances (‘Clothianidin, Thiamethoxam and Imidacloprid Ban Regulation 485/2014’).

<sup>10</sup> Commission Implementing Regulation (EU) No 781/2013 of 14 August 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substance fipronil, and prohibiting the use and sale of seeds treated with plant protection products containing this active substance [2013] OJ L219/22 (‘Fipronil Ban Regulation 781/2013’).

<sup>11</sup> In order for a plant protection product (a pesticide) to be placed in on the market, it must satisfy the ‘approval criteria’ set out in Article 4 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC [2009] OJ L309/1 (‘the Pesticides Regulation 1107/2009’).

<sup>12</sup> Recital (11) of Clothianidin, Thiamethoxam and Imidacloprid Ban Regulation 485/2014; Recital (11) of Fipronil Ban Regulation 781/2013.

<sup>13</sup> Greenpeace, ‘The Environmental Risks of Neonicotinoid Pesticides: a review of the evidence post-2013’ January 2017.

<sup>14</sup> Case T-584/13 BASF v. European Commission.

<sup>15</sup> Case T-429/13 Bayer CropScience AG v. European Commission

<sup>16</sup> Case T-451/13, Syngenta v. European Commission

<sup>17</sup> Pesticides Regulation 1107/2009.

<sup>18</sup> Ibid Recital 32.



#### **4. Emergency authorisations: a threat to bees**

An emergency is defined by all dictionaries as an unforeseen or unexpected event that causes a danger and requires immediate action. When Member States adopt an emergency authorisation they must notify it both to the European Commission and to all other EU Member States (“notifications”). However, there is no obligation for the Member States to make the notifications public. Bee Life, ClientEarth and PAN Europe obtained the notification dossiers through access to document requests.<sup>19</sup>

The documents revealed that between 2013, when the bans were introduced, and November 2016, at least 62 emergency authorisations have been granted by Member States for the use of these bee-harming pesticides in circumstances when their use would not normally be permitted.

The information contained in the notifications reveals that:

1. Member States are granting emergency authorisations without providing the appropriate information to the Commission and other Member States that demonstrates the statutory conditions for granting an emergency authorisation have been satisfied;
2. The Commission is not scrutinising or reacting to the notifications in the face of extensive non-compliance by Member States; and
3. The vast majority of applications for emergency uses of bee-harming pesticides are promoted by the pesticides industry. This is contrary to the aim of the “emergency authorisation” procedure, which is to help farmers protect their crops in an unforeseen event and Member States to protect threats to ecosystems from exotic pests.

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<sup>19</sup> Each of these notifications can be made available on request, including all notifications referred to in this briefing.

The EU prides itself on having “one of the strictest regulatory systems in the world concerning the approval of pesticides.” However, as a result of the Commission’s leniency, the continued emergency authorisation of bee-harming pesticides is making a mockery of the Commission’s decision to ban these products. Additionally, in many cases, it is the pesticide, seed or trade industry themselves that circumvent the ban on neonicotinoids through emergency authorisation requests. The “business as usual” approach, taken by the Commission and Member States, is threatening the efficacy of the bans, by exposing bee populations across Europe to further harm. It is important to note, however, that many other highly toxic pesticides are continually authorised under the Article 53 process, not only bee-harming pesticides.<sup>20</sup>

In addition to outlining the current situation in relation to emergency authorisations, this report also provides recommendations for how Article 53 must be implemented in order to ensure that the purpose of the Pesticides Regulation is not jeopardised. This is the only way that we can ensure that the environment is protected and bee-harming pesticides are only used when an actual danger to plant production exists.

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<sup>20</sup> An access to document request obtained on 2 December 2016 revealed that approximately 230 emergency authorisations were notified in 2013, approximately 385 in 2014 and approximately 425 in 2015.



## **5. Article 53 of the Pesticides Regulation**

### **5.1 Background**

The Pesticides Regulation allows Member States to grant farmers a 120 day emergency authorisation for substances that are either not approved or are banned at EU-level. The aim of this exception is to allow conventional farmers to make use of non-approved pesticides in emergencies, for example when a newly arrived exotic pest cannot be controlled by other means. The intention is to provide an exceptional tool, when an unforeseen event occurs and such unforeseen event cannot be contained by other reasonable means. It is the intention of the legislator that the possibility of this occurring would be rare or “exceptional”.

Member States may only use Article 53 once they are certain the criteria for an emergency authorisation, set out by Article 53, are met.



Article 53 provides that:

1. In special circumstances Member States may authorise, for a period not exceeding 120 days, the placing on the market of plant protection products, for limited and controlled use, where such a measure appears necessary because of a danger which cannot be contained by any other reasonable means.<sup>21</sup>

In such situations, Member State must immediately inform other Member States and the Commission of the measure taken, providing detailed information about the situation and any measures taken to ensure consumer safety.<sup>22</sup>

2. Where an emergency authorisation is requested, the Commission may ask the EFSA for an opinion, or for scientific or technical assistance. If so, the EFSA's advice must be provided within one month of the request.<sup>23</sup>

3. If necessary, a decision shall be taken, in accordance with the regulatory procedure referred to in Article 79(3) [the Standing Committee on the Food Chain and Animal Health], as to when and under what conditions the Member State:

- (a) may or may not extend the duration of the measure or repeat it; or
- (b) shall withdraw or amend its measure.<sup>24</sup>

4. Paragraphs 1 to 3 shall not apply to plant protection products containing or composed of genetically modified organisms unless such release has been accepted in accordance with Directive 2001/18/EC.

Guidance issued by the Commission to Member States on compliance with Article 53 ("the Commission's Guidance"), says that the granting of an emergency authorisation must not jeopardise the purpose of the Pesticides Regulation, which is to *"ensure a high level of protection of both human and animal health and the environment and to improve the functioning of the internal market through the harmonisation of the rules on the placing on the market of plant protection products, while improving agricultural production."*<sup>25</sup>

Also, emergency authorisations must be granted in line with the precautionary principle, as set out in Article 1 of the Pesticides Regulation.<sup>26</sup>

## 5.2 Requirements for granting an emergency authorisation

Where Member States authorise an emergency use of a bee-harming pesticide, they must provide *"detailed information"* to the Commission and other Member States. To ensure that the emergency authorisation is justified, the information included in the notification must, according to pesticide regulation, demonstrate that:

<sup>21</sup> Article 53(1) Pesticides Regulation 1107/2009.

<sup>22</sup> Ibid Article 52(1).

<sup>23</sup> Ibid Article 53(2).

<sup>24</sup> Ibid Article 53(3).

<sup>25</sup> Ibid Article 1(3).

<sup>26</sup> Ibid Recital 1.

1. a “special circumstance” exists;
2. there is “a danger which cannot be contained by any other reasonable means”;
3. the authorised use will be “limited and controlled” and only for a maximum of 120 days; and
4. consumers’ safety must be guaranteed.

The above elements are not specifically defined in either the Pesticides Regulation or in case law. However, through looking at Article 53, taking into consideration the wider context and purpose of the Pesticides Regulation, as well as the formulation of the Commission’s Guidance, the scope of these elements can be clearly established.

The Commission’s Guidance, although not legally binding, includes details of what information should be provided to the Commission and to other Member States to comply with Article 53. Specifically, the Commission’s Guidance annexes a template outlining the minimum information that Member States should provide when notifying an emergency authorisation.

Almost all Member States use this template when submitting notifications to the Commission. However, as summarised below, most of the notifications seen by Bee Life, ClientEarth and PAN Europe fail to provide the “detailed information” (or in some cases any information at all) required by Article 53 to prove that the use of bee-harming pesticides is “necessary”.

### **5.3 Most authorisations are illegally driven by the pesticides and seeds industry**

The emergency authorisation has the purpose of protecting plant production and ecosystems. It is a public interest tool that farmers or public authorities can activate in the public interest. The Commission’s Guidance clarifies that “*derogations for emergency use are meant solely to be in the interest of agriculture, environment and governments. Applications solely based on industry interests should be refused.*”<sup>27</sup>

Since the ban on neonicotinoids and fipronil was introduced, pesticide companies, seed producers’ associations or trade companies alone requested 44% of the notified emergency authorisations. As the use of this authorisation process is conditional on protecting the public interest (ecosystems) and farmers’ interests (plant health), and industry cannot represent such interests considering their financial imperatives, the granting of these emergency authorisations is illegal.

Another 42% of applications were joint applications between farmer’s organisations and seed or pesticide companies. Together, 86% of emergency authorisation applications for bee-harming pesticides in the EU were made with the participation of (and possibly driven by) industry interests (see table A below).

Only 14% of emergency authorisations for the use of bee-harming pesticides were independent from any pesticide company, seed association or trade company’s interests. For instance, only 9 out of 62 emergency authorisation applications were carried out either by farmer’s associations or public authorities.

In light of the involvement of the pesticide, seed and trade industries in the exercise

<sup>27</sup> Ibid.

Table A

MS	Farmers	Seed association (S.A)	Pest. Company	Both farmers and S.A	Trading company	Public body	Total
			(P.C)				
DE				2			2
FI	3				6		9
EE		5	2				7
IT			1				1
RO				20			20
EL	1						1
UK	1			2			3
BG			5				5
LT			2				2
LV				2			2
DK			3				3
HU		3					3
PT						4	4
<b>Total</b>	<b>5</b>	<b>8</b>	<b>13</b>	<b>26</b>	<b>6</b>	<b>4</b>	<b>62</b>
<b>Statistics</b>	<b>8 (%)</b>	<b>13 (%)</b>	<b>21 (%)</b>	<b>42 (%)</b>	<b>10 (%)</b>	<b>6 (%)</b>	

of this provision, the Commission should take further and more specific regulatory action to ensure that its intentions, as expressed in the Guidance, are realised. Applications should only be made in the sole interests of agriculture and the environment and must be completely independent from industry's interests.

### 5.3.1 "Special circumstances"

Article 53(1) requires that the emergency authorisations should only be granted in "special circumstances" where a "danger...cannot be controlled by any other reasonable means". Recital 32 gives some context to these terms, saying that cases of emergency authorisations must be "exceptional...because of a danger or threat to plant production or ecosystems."

In order for Member States to prove that a circumstance is "special" the Commission's Guidance asks them to describe the "size and effect of the danger". Member States are told to describe the area affected, the development over time of the infestation, and the agronomic and economic effect.<sup>28</sup> In providing these descriptions, the Commission will be able to assess how severe the "threat" is and whether it qualifies as a "special circumstance" so as to warrant the use of a banned pesticide.

In describing the "effect of the danger", 82% of notifications reviewed did not provide any economic evidence of the threat to plant production, in that they did not provide any economic reasoning in terms of calculating the potential economic loss to the country or economic loss to farmers if their crops were not treated. In describing the "size of the danger", 62% of notifications did not provide any indication of the area projected to be infested by the pest.

To give an example, 3 notifications submitted by Finland in 2014 describe the "danger" as follows: "**Type of danger to plant production or ecosystem:** Serious damage caused by flea beetles. **Size and effect of danger:** Rape seed or turnip rape is yearly cultivated on app. 50 00 ha in Finland. It can be very difficult or impossible to cultivate

<sup>28</sup> European Commission, 'Working Document on Emergency Situations According to Article 53 of Regulation (EC) No 1107/2009' SANCO/10087/2013rev.0, 8.

*these crops without effective chemical control of flea beetles.* This description is an example of an inadequate response. It does not quantify the threat in economic terms or in geographical terms, other than stating how many hectares the crop is cultivated in Finland, an irrelevant fact. If a banned substance can be used simply when a Member State says it is “difficult” to cultivate without it, then the rationale for the bans existence is removed.

The “*threat to plant production*” is the reason the emergency use provision exists. However, Member States are clearly not providing the Commission with the requisite economic and geographic information to verify that a threat exists. Because the notifications did not articulate a “*danger*” to plant production, the Commission would have had no information in front of it to justify whether the risk was an emergency, or a “*special circumstance*”.



### 5.3.2 “Special Circumstances” and Research

The emergency authorisation must represent a “*special*” or “*exceptional*” situation. However, if solutions are not found to the type of “*danger*” or “*threat*” to plant production, the danger will likely continue for an unlimited time and the situation will remain.

As stated above, the special circumstances must be unforeseen to be eligible for an emergency authorisation. Indeed, the Commission guidance clarifies that an emergency authorisation should not be granted as a routine alternative to extensions of use or other forms of standard authorisation.

The Commission’s Guidance envisages this scenario and asks Member States to “*provide details of research undertaken to solve the danger in a sustainable way. This is verifiable evidence of an application for a use, or an existing research programme...fo-*



*cussing on non-chemical, chemical, combined, or other solutions.”*<sup>29</sup> Research, it says, will “*limit the use of plant protection products under Article 53 to special circumstances in the long term.*”<sup>30</sup> Without research initiatives, alternative methods of prevention or treatment of the pest will not be developed. Member States will thus not be able to avoid emergency use of unauthorized pesticides.

Research ensures that Member States are working towards a high level of protection of human and animal health and the environment in accordance with the purpose of the Pesticides Regulation. Researching alternative methods of control would also help Member States implement each of the principles of Integrated Pest Management laid down in the Sustainable Use Directive (explained further below).<sup>31</sup> This would contribute to an EU wide coherent approach to pesticides.

Out of 62 notifications reviewed, 89% do not provide any information on research.

For example, since the bans were introduced, Romania has submitted 20 notifications to the Commission, none of which provide any evidence of research being undertaken. Romania’s notifications either fail to provide an answer to this section of the notification, or they provide the response “no alternative products or methods have been found until now.”

In the case of Finland, each notification (totalling 9) referenced research carried out to “*investigate[e] how neonicotinoid seed treatment...affect[s] bees in Finland*”, concluding that “*the results do not show any negative effect on vitality or wintering of bee hive.*” This research is not attempting to solve the danger in any way. In doing so it conflicts with the bans themselves, which are based on the fact that bee-harming pesticides cannot be authorised because they pose a high risk to bee populations. The Finnish notifications demonstrate a complete disregard for the bans and should be rejected.

A lack of research can be linked to emergency authorisations being granted repeatedly, each year, for the same product for use on the same pest. Repeat emergency authorisations notifications, submitted by Finland, Estonia, Romania and Portugal provide no information on research into other means of control.

### **5.3.3 “Danger cannot be controlled by any other reasonable means”**

Article 53(1) specifically states that emergency uses of unauthorised products can only be allowed where the danger “*cannot be contained by any other reasonable means.*” It is therefore essential for Member States to satisfy themselves and the Commission that other reasonable means cannot contain the danger.

In a direct application of the above criteria, the Commission’s Guidance asks Member States to describe “*alternative control measures (chemical, non-chemical and cultural) and indicate why they do not suffice.*”<sup>32</sup> Therefore, Member States must provide such information in order to show that they have complied with Article 53.

<sup>29</sup> Ibid 8 and 9.

<sup>30</sup> Ibid 2.

<sup>31</sup> Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides [2009] OJ L309/71, Annex III (‘Sustainable Use Directive 2009/128’).

<sup>32</sup> European Commission, ‘Working Document on Emergency Situations According to Article 53’ (n 29) 8.

Of the 62 notifications reviewed, 79% did not list any alternative means of control, thus totally disregarding the provisions of Article 53.

All 9 notifications submitted by Finland, some of them for repeat uses, only provided the comment *“no compensatory products available.”* The same reasoning was also provided in 6 notifications submitted by Estonia. Twelve notifications submitted by Romania said simply, *“no alternative control measures available.”*

The requirement of demonstrating that the danger cannot be controlled by any other means is not burdensome. It simply requires an applicant or a Member State to list alternative means and explain why they do not suffice.

There are no details provided in the majority of notifications that could reasonably satisfy the Commission that the emergency authorisations of bee-harming pesticides are necessary because a danger cannot be controlled by any other reasonable means.

#### 5.3.4 Integrated pest management

The approach taken by Member States in failing to prove that the danger posed to their respective crops *“cannot be controlled by any other means”* demonstrates a disregard not only for the requirements of Article 53 but also the *“principles of integrated pest management”* (“IPM”) set out in the Sustainable Use of Pesticides Directive.<sup>33</sup> Emergency authorisations are being granted because the provisions on IPM from the Sustainable Use Directive are not being implemented.

Implementation of IPM is needed so that *“professional users of pesticides switch to practices and products with the lowest risk to human health and the environment among those available for the same pest problem.”*<sup>34</sup>

The principles of IPM have direct relevance to Article 53, as they require Member States *“to take all necessary measures to promote low pesticide input pest management, giving wherever possible priority to non-chemical methods.”*<sup>35</sup> As explained above, Article 53 requires Member States to establish that other means of control are not available.

If Member States are not properly implementing IPM, the circumstances for granting an emergency authorisation, particularly for bee-harming pesticides, cannot be considered as “special”. For example, principle (1) of IPM provides for the prevention of harmful organisms through crop rotation, as planting a lot of similar crops close to each other or repeatedly in the same field can substantially increase the risk of pest infestation. Employing this technique would result in decreased need for emergency authorisations, especially in cases where Member States do not diversify their crops.

The Commission’s Guidance anticipates the direct relevance of IPM to emergency authorisations, explaining that *“emergency situations indicate the imminent need to make better use of alternatives already in place, e.g. those covered in Annex III of Directive 128/2009, and to develop solutions and alternatives.”*<sup>36</sup>

<sup>33</sup> Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides [2009] OJ L309/71, Annex III (‘Sustainable Use of Pesticides Directive 2009/128’).

<sup>34</sup> Ibid Article 14.1.

<sup>35</sup> Ibid Article 14.

<sup>36</sup> European Commission, ‘Working Document on Emergency Situations According to Article 53’ (n 29) 2.

Member States were required to implement the principles of IPM by 1 January 2014.<sup>37</sup> After which, the principles are to apply to relevant Community legislation, this includes the Pesticides Regulation.<sup>38</sup> The Sustainable Use of Pesticides Directive is the baseline against which an assessment of “exceptional circumstances” (circumstances that require the use of a banned pesticides) needs to be made. IPM is compulsory and cannot be ignored in any Member State when they make use of Article 53. A “danger” that stems from the misapplication of existing legislation cannot be considered an emergency and thus such an authorisation should not be considered under the scope of Article 53.

The Commission must ensure that Member States demonstrate that they are adhering to the principles of IPM before an emergency authorisation can be granted under Article 53.

Further, only 8% of emergency authorisation applications are carried out by farmers on their own behalf, while 42% are carried out by farmers jointly with seed associations, the pesticide industry or trading companies. These figures are indicative of the influence that industry exerts on the agricultural sector, and the resulting lack of appetite for changes in farming practices. If IPM is to be implemented properly, pesticide use must be significantly reduced. Reducing pesticide use is not in the interests of the pesticide and seed industries. Therefore, industry should not be authorised to make emergency authorisation requests either jointly or solely.

### 5.3.5 “Limited and controlled use”

Article 53(1) provides that emergency use of a product must be “*limited and controlled*”. However, the majority of Member State notifications did not provide any detail regarding how the use of bee-harming pesticides would be “limited” or “controlled”.

The Commission’s Guidance provides some interpretation surrounding what is



<sup>37</sup> Article 14(4) Sustainable Use Directive 2009/128.

<sup>38</sup> Ibid Article 2(2).

meant by “limited and controlled use.” For example, it asks Member States to outline mitigation measures that will be taken when using the product, asking them to “describe what measures are taken to limit and control use.” It also instructs Member States to list mitigation measures “if needed for minimising risk to humans, animals, and the environment, [and] attach [a] summary risk assessment.”<sup>39</sup>

The purpose of bans on bee-harming pesticides was to minimise harmful impacts on bees. It would be logical to conclude that, in circumstances where emergency authorisation is required, careful mitigation measures, including a risk assessment, will be needed in order to reduce, or ideally avoid completely, the harmful impacts of these substances on bees. In this way, the impact of using these substances can be “limited and controlled”, as required by the legislation.

Firstly, no emergency notification attached a “summary risk assessment” as requested in the Commission’s Guidance.

Further, the majority of Member State notifications failed to provide details of mitigation measures aimed at minimising the risk to bees. Only two notifications, one by Bulgaria and one by the UK, mention mitigation measures for “bees”. One other notification, submitted by Denmark, mentions mitigation for “pollinators.”

One Italian notification mentions “bees”; however, it only states that “the product contains an active substance highly toxic to bees” (a conclusion already established by the bans), without providing any mitigation measures. The same Italian notification even provides some basic mitigation measures for birds and wild mammals, for instance “To protect birds/wild mammals the product must be entirely incorporated in the soil [and] fully incorporated at the bottom of the furrow” while completely failing to address the potential negative impacts on bees specifically.

Most Member State notifications provide generic mitigation measures that are seemingly unrelated to bee protection. For example, they state that the seed treatment will be performed only in “professional seed treatment facilities” by “qualified personnel,” and that labelling will be “according to regulation” and sowing will be performed following “best agricultural practices.” However, these are simply a generic enforcement of the current EU legislation and do not add any extra safety for bees.

Limitation of use can also take the form of area limitations, in terms of the area (in hectares) over which the product will be applied. Of the 62 notifications reviewed, 63% did not provide any evidence of area limitation.

The majority of Member State notifications do not describe how the use will be controlled and limited and therefore do not comply with Article 53.

#### **5.4 The Commission’s responsibility in the emergency authorisation process**

If a Member State’s notification does not comply with Article 53, the Commission has many tools it can use to challenge such an authorisation. The Commission can, for example, ask the Member State for more information, ask an opinion from EFSA, revoke or impose conditions on a Member State’s emergency authorisation or launch an infringement procedure.

<sup>39</sup> European Commission, ‘Working Document on Emergency Situations According to Article 53’ (n 29) 8.

Firstly, the Commission can follow the administrative procedure envisaged by Article 53(2) and (3). The Commission may ask the EFSA for an opinion on, or for scientific or technical assistance with, an emergency authorisation. Presumably this is on a case-by-case basis, depending on the information provided by Member States in their notifications.

This report has demonstrated serious shortcomings and the severe abuse of the emergency authorisation system. Despite this, there is no public evidence that the Commission has ever asked EFSA for its scientific or technical opinion on any aspect of an emergency authorisation for the use of bee-harming pesticides since the bans were introduced in 2013 (nor for any other emergency authorisation). However, as the large numbers of emergency authorisations prove,<sup>40</sup> Member States seem to rely more and more on emergency authorisations to ignore the bans of harmful pesticides, jeopardising the protection goals set by the legislation and the integrity of the authorisation system. Member States are only able to do so because of the Commission's oversight.

In addition, the Commission has to present a proposal to the Standing Committee on the Food Chain and Animal Health for a Member State to establish the conditions for extending or repeating an emergency authorisation under Article 53(3) when such decision is necessary. Such decision can also establish when and under which conditions the emergency authorisation must be withdrawn. Although Article 53(3) does not clarify when the decision is "necessary", it is presumably when the notification from the Member State does not demonstrate that the conditions for granting an emergency authorisation are fulfilled.

However, the Standing Committee, being made up of Member State representatives,<sup>41</sup> is unlikely to hold another Member State to account for failing to comply with Article 53 given that all Member States make recurrent use of these emergency authorisations.<sup>42</sup> To do so would risk upsetting the status quo.

Since the ban on bee-harming pesticides was introduced, the Commission has never undergone the above process. It has not even taken the step of asking EFSA for a scientific opinion on a notification.

Secondly, when a Member State's emergency authorisation does not provide "*detailed information about the situation and any measures taken to ensure consumer safety*",<sup>43</sup> the Commission should simply ask a Member States for more information. The seriously deficient notifications that were made available to Bee Life, ClientEarth and PAN show that the Commission is failing to systematically ensure that Member States provide the detailed information necessary to justify granting an emergency authorisation.

Member States providing notifications that do not comply with Article 53 are breaching EU law and the European Commission is responsible for ensuring that EU law is respected.

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<sup>40</sup> An access to document request obtained on 2 December 2016 revealed that approximately 230 emergency authorisations were notified in 2013, approximately 385 in 2014 and approximately 425 in 2015.

<sup>41</sup> Article 5(1) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1999] OJ L184/23.

<sup>42</sup> An access to document request revealed that all 28 Member States have granted emergency authorisations since 2011. The document also reveals that 12 Member States repeatedly use the emergency authorisation process to grant emergency authorisations for bee-harming pesticides (neonicotinoids and fipronil).

<sup>43</sup> Article 53(2) Pesticides Regulation 1107/2009.

In addition to use the procedure under Article 53, if a Member State is repeatedly submitting deficient notifications that do not comply with Article 53(1), the Commission has the option to launch infringement proceedings against that Member State.

Because the Commission has not undertaken any of the processes outlined above,<sup>44</sup> every notification, and as a result every emergency authorisation, has been submitted without any subsequent scrutiny or reaction on behalf of the European Commission as foreseen by Article 53.

### 5.5 Consequences of the deliberate inaction of the European Commission

There are consequences for the Commission's lack of oversight – if notifications do not undergo scrutiny at EU-level, there is no incentive for Member States to ensure the applications they receive comply with the requirements of Article 53. As a result, there is also less incentive for applicants to provide this information to Member States.

Because of the Commission's inaction, the emergency authorisation process is being abused by an important number of Member States in order to circumvent the bans on bee-harming pesticides. The examples we provide in this report represent the tip of the iceberg as many other highly toxic pesticides are being authorised under this procedure as well.<sup>45,46</sup>

Inaction is what best characterises the behaviour of the European Commission. Despite complaints from NGOs such as Bee Life and PAN Europe about these abuses the Commission has ignored the abuses from Member States and has never launched an infringement procedure. Article 53 foresees procedures for scrutinising and limiting the grant of emergency authorisations and obliges Member States to provide detailed information. Despite these provisions, the European Commission seems to prefer to turn a blind eye to Member States' practice. This undermines the Commission's work on implementing the objectives of the Pesticides Regulation.

The Commission's responsibility is to make sure that Member States do not abuse the system and that they uphold EU laws. A simple example of Member State abuse is the case of Romania (see Case Study: Romania, p.27 of this report).

Romania grants the most emergency authorisations for neonicotinoids: one third of the derogations provided since 2013. The Food and Veterinary Office (FVO) from the European Commission conducted an inspection in the country in 2015 in light of the derogations provided for neonicotinoids. The FVO report highlighted numerous breaches of the rules (e.g. treated seeds produced in illegal facilities; farmer testimony indicating that neonicotinoids were not necessary in their region as crop rotation would be an effective tool; official staff indicating that alternative control measures existed; no area restriction; etc). Despite this official report, the European Commission did not take any action foreseen by Article 53 of the Regulation to cor-

<sup>44</sup> The Commission sent a letter to the Romanian Minister of Agriculture, Mr Irimescu, on the 7th of November 2016. The letter expressed 'serious concern' about the continued use of emergency authorisations of bee-harming pesticides and asked Romania to 'review [their] approach to the application of these emergency authorisations'. The letter is the only evidence of the Commission reacting to the repeated use of emergency authorisation. However, the letter has no legal value and Romania may ignore it.

<sup>45</sup> An access to document request obtained on 2 December 2016 revealed that approximately 230 emergency authorisations were notified in 2013, approximately 385 in 2014 and approximately 425 in 2015

<sup>46</sup> See PAN Europe, "MEET (CHEMICAL) AGRICULTURE: The 120-day derogation - One year ahead, what happened?", July 2012, Accessible at <[http://www.pan-europe.info/old/Resources/Reports/PAN%20Europe%20-%202012%20-%20Meet%20\(chemical\)%20agriculture%20-%20The%20120-day%20derogation.pdf](http://www.pan-europe.info/old/Resources/Reports/PAN%20Europe%20-%202012%20-%20Meet%20(chemical)%20agriculture%20-%20The%20120-day%20derogation.pdf)>

rect the abuses from Romania. Only recently, in November 2016, did the Commission send an official letter of complaint to Romania. However, Romania submitted 20 deficient notifications to the Commission before it did so. Therefore, the Commission is failing to fulfil its role as “Guardian of the Treaties” as foreseen by Article 17 of the Treaty on the European Union.

### 5.6 Transparency

As explained above, Bee Life, ClientEarth and PAN Europe obtained the 62 notifications referred to in this report through an access to document request. None of these notifications were made public.

There is also evidence that emergency authorisations are relied on by Member States routinely to circumvent the 2013 ban on neonicotinoids and fipronil. Only in 2015, approximately 385 emergency authorisations (all pesticides included) were notified to the Commission.

According to Article 53(2), Member States must immediately inform other Member States and the Commission about emergency authorisations and provide them with detailed information about the situation.

Information about the use of pesticides in the EU, particularly pesticides that are banned is “environmental information” under the Aarhus Convention.<sup>47</sup> The EU Aarhus Regulation provides for ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. Also, the Regulation states that, for the right of public access to environmental information to be effective, environmental information of good quality is essential.

If Member States knew that their notifications were being subject to public scrutiny, and the Commission were to publish all notifications, the Member States would take their obligations more seriously. The Commission should systematically publish notifications with the aim of holding Member States to account when granting emergency authorisations.

Further, Member States do not publicly disclose emergency authorisations as soon as they are granted. The Commission generally publishes information on emergency authorisations after the 120 day period of the derogation has passed, and therefore it is not possible for civil society to challenge such authorisation.

This lack of transparency impedes civil society organisations from scrutinising the use of toxic pesticides (granted though emergency authorisation) and challenge these authorisations.

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<sup>47</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, Article 2



## 6. Recommendations

The Commission's Guidance recommends, *"it may be helpful to develop further on specific regulatory action to be taken within the Standing Committee in the light of experience with this guidance in the medium term."*<sup>48</sup> As demonstrated above, Member States are not complying with the minimum notification requirements under Article 53.

Considering that the vast majority of Member States make use of Article 53<sup>49</sup> and in light of its continued abuse over the years, it is clear that it is not used in cases of emergency by Member States but rather to maintain the current highly polluting conventional farming system. It is thus urgent to update its guidance and develop clear and predictable procedures to minimise the use of emergency authorisations.

Furthermore, Member States should no longer be able to provide derogations more than once without a decision by the Commission providing the conditions for repeating the emergency authorisation or providing for the withdrawal of the authorisation (as foreseen under Article 53(3)). The Commission cannot continue to ignore its obligation to do so when a flawed Member State authorisation makes it necessary.

The Commission should either revise its guidance to clarify the procedure it intends to follow in processing notifications for emergency authorisations or it should propose an implementing act as foreseen by Article 78(2). The implementing act would allow the Commission to adopt any further measures necessary for the implementation of the Pesticides Regulation. Bee Life, ClientEarth and PAN Europe make the following comments and recommendations:

1. The Commission should systematically publish notifications as soon as they

<sup>48</sup> European Commission, 'Working Document on Emergency Situations According to Article 53' (n 29)5.

<sup>49</sup> Only Luxembourg, Lithuania and Slovenia have not notified emergency authorisations between 2011 and 2015.





are notified, so that Member States are subject to public scrutiny, and are therefore incentivised to promote greater environmental protection.

2. When notifications are of poor quality and not detailed enough the Commission should ask Member States to resend complete and detailed notifications as provided by Article 53.
3. The Commission should utilise its power to systematically scrutinise the notifications submitted by Member States for every emergency authorisation that is granted by a Member State more than once.
4. Where the authorisation does not comply with the conditions of Article 53, the Commission should propose to withdraw the relevant emergency authorisation and establish strict conditions to allow emergency authorisations.
5. The Commission should require applicants to demonstrate that they are complying with the principles of IPM before an emergency authorisation is granted.
6. The Commission should clarify that emergency authorisation requests where industry takes part must be rejected by Member States.





## 7. Conclusions

The “emergency authorisations” process under Article 53 is being exploited by the pesticides industry to continue to promote the use of banned pesticides due to the lack of resistance by Member States. Current uses of Article 53 permit Member States to circumvent pesticide bans and maintain a model of agriculture that is outdated: highly polluting,<sup>1</sup> low energy efficiency<sup>50</sup> and producing lower quality food.<sup>51</sup>

The legislator has clearly foreseen in the Sustainable Use Directive that European agriculture should evolve toward more environmental friendly practices through a strong reduction in pesticide use. The current abuses of Article 53 demonstrate the lack of willingness from farmers and Member States to implement this necessary transition.

Against this background, the Commission is failing to address (in any meaningful way) the abuses from Member States that are also jeopardising the integrity of the process of authorising pesticides in the EU. The implementation of Article 53 must be strengthened to put in place strict rules to allow only exceptional and unforeseen dangers to plant health.

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<sup>50</sup> Laurence G. Smith and others ‘The energy efficiency of organic agriculture: A review. The energy efficiency of organic agriculture: A review’ (June 2015) Volume 30, Issue 3, pp. 280-301 ‘Renewable agriculture and food systems’.

<sup>51</sup> Barański M, Srednicka-Tober D and others ‘Higher antioxidant and lower cadmium concentrations and lower incidence of pesticide residues in organically grown crops: a systematic literature review and meta-analyses’ (Sep 2014) 112(5) pages 794-811. <<https://www.ncbi.nlm.nih.gov/pubmed/24968103>> accessed 11 January 2017.

## THE ROMANIAN CASE



### I. Introduction

Romania is a large country with a population of more than 16 million people. It is also a large agricultural country with over 13 million ha of utilised agricultural area (approx. 56 % of Romanian territory in 2010).

According to the 2014-2016 national honey programme, Romania has more than 1.2 million honey bee colonies registered and approximately 42,000 beekeepers. Romania has the fourth largest number of bee colonies in the EU, representing 10% of the EU census.

Since the 2013 ban of certain uses of neonicotinoid insecticides in Europe, the Romanian Agriculture Ministry has systematically issued 120 day emergency authorisations for neonicotinoid products. This means that despite the recognition of the damages these seed treatments may cause on bees, sunflower, maize and oilseed rape throughout Romania are continuing to be treated with these insecticides throughout extensive areas of the country.

## II. Romania, the EU champion of derogations for neonicotinoids

Since 2014, Romania has granted a total of 20 emergency authorisations for the use of neonicotinoid products. This represents one third of all EU derogations (62) on the same period.

In 2014, Romania granted emergency authorisations to use neonicotinoids on maize, sunflower seed crops and on rapeseed crops. In 2015, Romania again granted emergency authorisations for neonicotinoid use on maize, sunflower seed crops and for rape seed crops. Similar derogations were provided in 2016.

Figure 1 shows the distribution of oilseed rape crops in Romania that use neonicotinoid coated seeds. The maps were produced by the beekeepers, based on official data, to highlight the areas that are potentially at risk to bees. As can be seen on the maps, between 2014 (**Fig. 1 (a)**) and 2015 (**Fig. 1 (b)**), the number of regions with neonicotinoid-treated oilseed rape increased.

**Figure 1. Maps showing the distribution in the Romanian territory of the use of neonicotinoid coated seeds to oilseed rape (a) 2014; (b) 2015**

(a)



Map showing the regions in Romania planting oilseed rape seeds treated with neonicotinoids insecticides for the period 30.06.2014-30.10.2014 (period of derogation of EU regulation (EU) 485/2013 provided by the Ministry). Source: National Phytosanitary following the request of the federation ROMAPIS, on 23/04/2015.

Raw data available here: [http://polenizare.ro/index.php?id=neonice&tip\\_pagina=pastoral](http://polenizare.ro/index.php?id=neonice&tip_pagina=pastoral)

(b)



Map showing the regions in Romania planting oilseed rape seeds treated with neonicotinoids insecticides for the period 28.07.2015-30.10.2015 (period of derogation of EU regulation (EU) 485/2013 provided by the Ministry). Source: National Phytosanitary following the request of the federation ROMAPIS, on 23/04/2015.

Raw data available here: [http://polenizare.ro/index.php?id=neonice&tip\\_pagina=pastoral](http://polenizare.ro/index.php?id=neonice&tip_pagina=pastoral)

The Agricultural Ministry claimed to allow the use of neonicotinoid-treated seeds on oilseed rape crops, only in areas where an emergency was identified. According to official information, the areas that were most affected by high infestation of pests, and thus were considered 'necessary' for the emergency use of the pesticide, were the southern regions of Romania. Nevertheless several Transylvanian areas, which are not located in the southern regions of Romania, 'benefited' from the use



of neonicotinoids in 2016 (See table in [http://polenizare.ro/index.php?id=neonice\\_rapita\\_2015&tip\\_pagina=pastoral](http://polenizare.ro/index.php?id=neonice_rapita_2015&tip_pagina=pastoral))

**Figure 2. Maps with the distribution in the Romanian territory of neonicotinoid coated seeds of corn (a) and sunflower (b) in 2015.**

(a)



Map showing the regions in Romania planting corn seeds treated with neonicotinoids insecticides in 2015 (period of derogation of EU regulation (EU) 485/2013 provided by the Ministry). Source: National Phytosanitary following the request of the federation ROMAPIS, on 23/04/2015.

Raw data available here: [http://polenizare.ro/index.php?id=neonice&tip\\_pagina=pastoral](http://polenizare.ro/index.php?id=neonice&tip_pagina=pastoral)

Total maize surface treated with neonicotinoids: 248.195 ha

(b)



Map showing the regions in Romania planting sunflower seeds treated with neonicotinoids insecticides in 2015 (period of derogation of EU regulation (EU) 485/2013 provided by the Ministry). Source: National Phytosanitary following the request of the federation ROMAPIS, on 23/04/2015.

Raw data available here: [http://polenizare.ro/index.php?id=neonice&tip\\_pagina=pastoral](http://polenizare.ro/index.php?id=neonice&tip_pagina=pastoral)

Total sunflower surface treated with neonicotinoids: 151.308 ha

Based on official data, maize crops, which are visited by bees for the collection of pollen, were treated with neonicotinoids in 246,195 ha out of a total of 3,500,000 ha. Also, sunflower crops, another highly bee-attractive crop, were treated with neonicotinoids in 151,308 ha out of a total of 1,000,000 ha in 2015 in Romania (**Fig. 2**). In these cases neonicotinoids are used for the control of *Tanymecus dilaticollis* and *Agriotes* spp.

### **III. Romania criticized by the Health and Food Audits and Analysis from DG Sante**

It is the duty of the National Phytosanitary Authority to monitor the correct implementation of legislation linked to pesticide use. According to official controls carried out by the Health and Food Audits and Analysis (former Food and Veterinary Office, FVO) of the European Commission in 2014, Romania would not have fulfilled the requirements to issue the derogation : “[...] *Apart from one single use (maize/T. dilaticollis), no information was provided on the other uses in maize, sunflower or rape.*”



and “[...] the procedure in place for the authorisation of pesticides to be used in emergency situation is generally in line with the requirements of Article 53 of Regulation (EC) No 1107/2009. However, the notification submitted to the Commission did not contain all the relevant information, as required by Article 53(1) of the same Regulation.”



Later, in 2015, the FVO report included a number of alarming observations:

- State public servants recognise neonicotinoid seed coating as the only means to protect crops against the pest *T. dilaticollis*. However, the FVO team visited a Romanian farmer carrying out crop rotation as effective agronomical preventive measure to keep *T. dilaticollis* under control.
- Production of coated seeds in 2015 was not performed in certified facilities but in local and mobile facilities which do not respect the EU legislation in terms of dust reduction (directive 2010/21).
- No research was undertaken to identify alternative measures to control the problematic pests. As the FVO states: “[...] This means that there is no plan on how the emergency situation could be resolved.”
- There is no public disclosure of the derogation. The FVO report states: “The lack of transparency and of clear criteria for restriction of use of neonicotinoids hinders clear implementation of related risk mitigation measures.”
- There is no geographical limitation for the use of treated seeds and the authorisation certificate provided does not clarify what constitutes a ‘very high infestation’ and how it is assessed.
- As a result, there is evidence of use of treated seeds in Prahova county (visited by the FVO) by 19 farmers despite evidence of low pest infestation.

Additional field observations made by beekeepers (See box 1) confirm the observations of the FVO as far as the reality behind the official figures and the extent of illegal uses. However, no proof is publicly available due to the conflict the current situation is creating within the rural community.



**Photo 1. Location of Branesti**



**Photo 2. Treated corn seeds next to Branesti**



**Photo 3. Small corn plants**



**Figure 3. Sign installed by a farmer indicating neonicotinoid treated parcels.**



*Note. Placement of warning signs is conceived as a risk mitigation measure for the authorities and farmers with the objective of reducing damage to domestic bees. For example, encouraging beekeepers to move their hives away from these fields. It needs to be noted that these signs do not reduce the risk to the environment. Both stationary beekeepers and wild entomofauna can still be affected by exposure to neonicotinoids. Furthermore, as can be seen on the maps, the area of fields treated by neonicotinoids is very large, which means that transhumant beekeepers find little non-neonicotinoid treated areas in an area of 3 km around the apiaries.*



#### IV. Romania disregarding the disastrous consequences on bees

The consequences of neonicotinoid use have been obvious. In the summer of 2015, beekeepers witnessed a dramatic increase in the number of cases of acute intoxication of bees during the sunflower forage, resulting in high mortality at the entrance of the hives. Beekeepers have registered fields with masses of dead bees remaining in between the sunflower plants after the harvest. Others have registered the abnormal behaviour of bees following the intoxication of bees foraging on treated sunflowers. (<https://www.youtube.com/watch?v=VICPL8YRR6M>).

According to the national beekeepers organization, ROMAPIS, at least 10% of Romanian beekeepers suffered severe losses in July-August 2015. Practically, tens of thousands of colonies were affected.

As a result, beekeepers put in place a number of actions to rectify the situation. Such actions included:

1. Submitting simple petitions to the Ministry and organising street demonstrations (9th October 2015);
2. Requesting that the Ministry makes publicly available the location of the crops that had used seeds coated with neonicotinoids. Once obtained, they then posted the information on the internet for the acknowledgement of the beekeepers;
3. Requesting the Ministry to oblige farmers to identify the neonicotinoid treated fields (**Fig. 3**);
4. Proposing a protocol for sampling dead bees and plant tissue in case of high mortality during rapeseed and sunflower forage;
5. Campaigning to raise awareness on the problems they are experiencing.

##### PRACTICAL EXAMPLE FROM ROMANIA BOX 1

In 2015 some bee hives were used for rapeseed and acacia forage in the proximity of Branesti, Ilfov county (**see Photo 1**).

Close to the hives, a farmer sowed several hectares of corn. On 6 May the beekeeper checked the corn seed and saw that it was coated with something, although they did not know with what (**see Photo 2**). The hives remained in the same location for a few weeks until the end of acacia flowering.

On 27th May, the corn plants had developed. In this phase of plant development plants may profusely exudates water depending on the weather conditions (**see Photo 3**). If the corn seeds had been treated with neonicotinoids, the plant exudates would have been highly contaminated with substance.

When the beekeeper moved the hives, he that the colony had evolved slower in this location compared to other apiaries. He noticed less bees and a lower honey crop than normal, in spite of good forage conditions.

It is important to note that the Branesti locality (described in this case study) is not in the list of areas with neonicotinoid treated seed for 2015, as provided by the Agricultural Ministry for Ilfov county (**Fig. 2(a)**).

Conclusion: Although the beekeeper had no official confirmation on the seed treatment of the fields around the apiary, the behaviour of their hives make them strongly suspect that exposure to neonicotinoids might have occurred. As a result, what can be seen in the official figures may not reflect what could be a larger scale use of neonicotinoids.





## **V. Romania does not respect Regulation 1107/2009/EC and Directive 128/2009/EC**

As highlighted in the briefing, the Pesticide Regulation 1107/2009/EC outlines rules for how Member States can use the emergency authorisation system and the Commission issued guidance on how these rules should be followed. Romania does not respect these rules or the requirements in the guidance.<sup>1</sup>

Article 53 of the Pesticide Regulation 1107/2009/EC clearly indicates that emergency authorisations can only be granted where the pest cannot be contained by any other reasonable means of control. The Sustainable Use of Pesticides Directive 128/2009/EC (SUD) says that Member States must give priority to non-chemical alternatives over pesticides. As a non-chemical alternative to control a pest, the SUD requires Member States to prevent harmful organisms through crop rotation, because planting a lot of crops susceptible to the same pest close to each other can substantially increase pest damages.

Through Romania's notifications, it is clear that they are not implementing integrated pest management and are not using non-chemical alternatives. A vast 35% of Romanian arable land is dedicated to the cultivation of sunflower or maize.<sup>2</sup> Both crops are susceptible to a single pest, *T. Dilaticollis*. The Romanian Government has admitted that the country is particularly susceptible to this pest because of the high concentration of these crops. Therefore, Romania must implement integrated pest management and make use of a crop rotation to avoid the accumulation of single pests.

The pest *T. dilaticollis* is only a major problem because of the choice of crop that is sown. Ioan Maties, a farmer in Miresu Mare explains to us in a video that through a good crop rotation plan in Romania, it is not necessary to use neonicotinoids.<sup>3</sup>

Finally, protection with neonicotinoids does not seem to have a high efficiency in heavily infested areas. Toader et al. (2016) have studied the efficiency of plant protection of neonicotinoid treated maize in a crop highly infested by *T. dilaticollis*. They could demonstrate that neonicotinoids actually permit to save only 65% of the seedlings, which is quite low. *T. dilaticollis* being a soil-borne pest (the larvae of the insect eat the roots of the young plants), crop rotation is typically a good non-chemical alternative to neonicotinoids.

Furthermore, the authors of this study also indicate that beans are a good repellent for the pest. Beans margins could also be used in the IPM scheme.

## **VI. The European Commission very lenient toward Romania's misbehaviour**

Finland, Romania and Germany granted the first derogations to the neonicotinoid ban. On 20 March 2014, PAN Europe officially complained to the European Commission that these emergency authorisations had not complied with EU law.<sup>4</sup>

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<sup>1</sup> Working document SANCO/10087/2013

<sup>2</sup> Romanian 2014 notification for the emergency authorisation of Nuprid AI 600 FS

<sup>3</sup> <https://www.youtube.com/watch?v=61w7lwzYhB8>

<sup>4</sup> <http://bit.ly/2kZk4mc>



However, the Commission concluded that in order to launch an infringement procedure, a law needs to be systematically breached by a Member State.<sup>5,6</sup> It was not enough to launch an infringement procedure after the first derogations.

Two years later, on 18 March 2016, Bee Life sent a letter to the European Commission concerning the Romanian breach of EU law and providing examples of the consequences of the continued use of neonicotinoids.<sup>7</sup> The same day, the European Commission wrote to Romania to ask for explanations.<sup>8</sup>

On 1 April 2016, the Romanian Ministry of Agriculture sent an answer denying any consequence for beekeepers and insisted that neonicotinoid seed treatment was needed to preserve intensive maize and sunflower cultures, in contradiction with Integrated Pest Management.<sup>8</sup>

On 7 November 2016, the European Commission wrote to Romania to complain about the repeated grant of emergency authorisations. This was the first time the Commission had officially complained to a Member State on this process. They complained about the lack of information in the notification documents sent to the Commission and referred to the FVO report, which highlighted that the rules were not correctly enforced.<sup>9</sup> The Commission stated that *“it will become unjustifiable for the Commission not to react to repeated uses of emergency authorisations, in the absence of a solid justification”*. The Commission must use its powers to ensure that Member States do not use Article 53 as a loophole to the continued use of bee-harming pesticides.

## **VII. Conclusions**

The Romanian beekeepers are now suffering the same situation as their French, Italian and German colleagues faced in the nineties and early 2000's. The European Commission's official position is not to interfere with the derogations provided by Member States as they are supposedly in a better position to understand the alternatives available and the common practice in their own territory. However, the alternatives and practices are equally efficient everywhere and we have here concrete proofs that Romania does not properly implement the pesticide regulation as well as the sustainable use of pesticides directive.

The Romanian case study demonstrates how individual Member States are able to evade the ban on neonicotinoids and cause further harm to honeybees and the environment. It also indicates how slow the European Commission is to take action when a Member States abuses the system. Instead of reacting when it “becomes unjustifiable not to react” as they write, we consider that the European Commission should react when it is justified which means in nearly every case of provisions of a derogation to a neonicotinoid. Now that Romania has abused the derogation system 20 times, we consider that conditions are met to take action

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<sup>5</sup> <http://bit.ly/2l6LdWX>

<sup>6</sup> <http://bit.ly/2lGbjDh>

<sup>7</sup> <http://bit.ly/2lGhAbB>

<sup>8</sup> <http://bit.ly/2lG3yH2>

<sup>9</sup> <http://bit.ly/2l6EaNT>