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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115

{COM(2022) 305 final} - {SEC(2022) 257 final} - {SWD(2022) 170 final} -
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Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
EU competence to act in the area of the sustainable use of pesticides ¹ stems from Article 192(1) of the Treaty on the Functioning of the European Union (TFEU) which transfers powers to the EU institutions to take actions for preserving, protecting and improving the quality of the environment and protecting human health.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
The Union's competence in the field of environment mentioned in section 1.1 above is shared.
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU². It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU³ sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU⁴ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁵:
- Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
There has been a wide consultation before proposing the act. A combined evaluation roadmap-inception impact assessment was published and was open for public feedback from 29 May to 7 August 2020. In total, 360 responses were received (2 identified as being from public authorities). Member State competent authorities (Sustainable Use of pesticides Directive (SUD) working group members) were consulted on possible future policy options at a Better Training for Safer Food workshop in November 2020 and by a written consultation in December 2020. The online public consultation ran from 18 January to 12 April 2021 and received a total of 1699 responses (35 public authority identified respondents). Feedback received represented a wide spectrum of views, as outlined in the stakeholder consultation synopsis report annexed to the impact assessment accompanying the proposal. The Commission organised public remote stakeholder events on this initiative on 19 January, 25 June and 5 October 2021 with the support of the Portuguese and Slovenian Council Presidencies. Member States have been regularly updated and consulted via the SUD working group and Standing Committee on Plants, Animals, Food and Feed. Several technical discussion meetings on

¹ Pesticides, used synonymously with the term plant protection products for the purpose of this proposal, are mixtures of one or more formulated active substances and other co-formulants that are widely used to protect plants by repelling, mitigating or destroying harmful organisms, mainly in agriculture but also in forestry and green urban areas.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

specific possible policy options were organised with national competent authorities.

Targeted surveys, workshops and case studies were also carried out in a Commission-contracted external study supporting the evaluation and impact assessment and a supplementary foresight study on future vision scenarios on the sustainable use of pesticides. As part of the external study supporting the evaluation and impact assessment, 12 in-depth interviews and 19 case study interviews were organised with Member State national authorities and 2 case study interviews with Member State regional authorities. The evidence collection phase deployed three targeted survey questionnaires to three core stakeholder groups: [1] Member States, Iceland and Norway SUD competent public authorities and related authorities, [2] professional users of plant protection products and other industry stakeholders, and [3] environmental NGOs, consumer organisations and civil society organisations, with a total of 275 respondents, 55 from Member State SUD competent authorities and competent authorities from Norway and Iceland. Over the course of the study, several contributions and consultations were also provided/undertaken on an ad-hoc basis. This particularly applied to the case-based fact-finding work which was undertaken as part of the impact assessment supporting study. This included targeted questions, primarily to Member State authorities, on the costs for implementation of various provisions of the SUD.

From the different activities described above, triangulation of the data uncovered that the stakeholder views were largely divided across two broad points of view: [1] pesticide use should be reduced in line with risk reduction in a manner which works with plant protection product users, and [2] pesticide use should be reduced significantly, if not completely.

The explanatory memorandum of the proposal, and chapter 3 of the impact assessment, contain sections on the principle of subsidiarity that include qualitative indicators allowing an appraisal demonstrating that the action can best be achieved at Union level. The text of the explanatory memorandum and impact assessment on subsidiarity is summarised in answer to question 2.2 below.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The SUD established a framework to achieve a sustainable use of pesticides. A continued divergence of measures taken in Member States and varying and incomplete implementation of the SUD (as outlined in the evaluation accompanying the proposal and demonstrated in a Commission compliance monitoring index for specific legislative provisions detailed therein) will lead to different levels of protection of health and environment and diverging conditions for the main users of pesticides which would be against objectives of the Treaties. The threat to biodiversity and ecosystems linked to the use of pesticides crosses boundaries and necessitates a strong and EU-level action. Achievement of a more level playing field for pesticide users is hampered by current varying levels of action in different Member States.

Coordinated EU action can effectively supplement and reinforce national and local actions on the sustainable use of pesticides. The EU also possesses other key instruments in agricultural and food policies with which synergies exist. Linked to incentives and possible mitigation measures, it is expected that stronger action at EU level, including in association with related policies such as the Common Agricultural Policy (CAP), can help to reduce currently varying national approaches and contribute to a more homogenous approach in the future. These objectives cannot be set by the Member States acting in isolation: the scale of the action required means that this is better achieved at Union level. Uniform EU action is therefore justified and necessary.

A continued divergence of measures taken in Member States would lead to the maintenance of different levels of protection of health and environment and diverging conditions for the main users of pesticides. The threat to biodiversity and ecosystems crosses boundaries and necessitates a strong and

EU-level action. Achievement of a more level playing field for pesticide users is hampered by current varying levels of action in different Member States to reduce the risks for health and the environment linked to pesticide use. Moreover, pesticides pollution is transboundary and affects waters and the marine environment downstream in one Member State whilst the pesticide use may have taken place upstream in another Member State. Stakeholder views differ, but tend to call overall for a stronger EU action on the sustainable use of pesticides. The deficiencies in implementing the SUD in some Member States suggest that the previous approach of leaving the detailed rules to national transposition under a Directive has not worked. The European Court of Auditors found a need for clearer criteria and more specific requirements in relation to IPM to help ensure enforcement and assess compliance.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives of the proposed action cannot be sufficiently achieved by the Member States acting alone. EU action in this area is justified by the need to protect human health and the environment as part of EU environmental policy. The SUD established a framework to achieve a sustainable use of pesticides by reducing the risks and impacts of pesticide use on human health and the environment and improving the uptake of IPM. The deficiencies in implementing the SUD in some Member States suggest that the previous approach of leaving the detailed rules to national transposition under a directive has not worked. For example, the European Court of Auditors in a 2020 report on sustainable use of plant protection products found a need for clearer criteria and more specific requirements in relation to IPM to help ensure enforcement and assess compliance. A regulation would also have the advantage of ensuring a more level playing field for pesticide users across the Member States.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The threat to biodiversity and ecosystems crosses boundaries and necessitates a strong EU-level action. Pesticides pollution is transboundary and affects waters and the marine environment downstream in one Member State whilst the pesticide use may have taken place upstream in another Member State.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁶ or significantly damage the interests of other Member States?

A continued divergence of measures taken in Member States would lead to different levels of protection of health and environment and diverging conditions for the main users of pesticides which would be against the objectives of the Treaties.

The evaluation accompanying the impact assessment confirms the clear EU added value of action on the sustainable use of pesticides. A more level playing field across the Member States, for example for pesticide users, is hampered by current varying levels of action (uneven and incomplete implementation of existing rules) in different Member States to reduce the risks for health and the environment linked to pesticide use. This leads to an uneven playing field for pesticide users (primarily farmers) and the pesticide industry, which risks giving rise to unfair competition for economic actors in the EU. This variation means that the potential for harmonisation of rules is not fully realised and competitiveness distortions between pesticide users (especially farmers) in different Member States continue to exist.

⁶ https://europa.eu/european-union/about-eu/eu-in-brief_en

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Subsidiarity is respected throughout the legal text in providing Member States with the ability to judge the most appropriate measures in cases where local agricultural factors need to be taken into account. Thus, Member States have the ability to define the most appropriate level for national pesticide reduction targets within certain parameters. Similarly, Member States may adopt crop-specific rules that are appropriate to local agronomic conditions. The proposal also allows Member States to introduce stricter national rules, where justified by the need to protect public health and the environment as appropriate.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

National transposition and implementation of the SUD has differed substantially between Member States. In addition, climatic and agronomic factors, such as the types of crops grown in individual Member States, affect the challenges in relation to pest control by sustainable means.

(e) Is the problem widespread across the EU or limited to a few Member States?

Pesticides are used in all Member States. Environmental (e.g. pollinator decline, biodiversity loss) and health (potential exposure to pesticides) problems identified at the time of adopting the SUD in 2009 have remained unchanged or even been aggravated. These problems are widespread across the EU.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

The evaluation found that the burden on Member States in applying the current rules was not excessive, but that the effectiveness and efficiency of the existing SUD in achieving the sustainable use of pesticides was also limited. Consultations with Member State competent authorities (SUD working group members) did not identify significant legislative simplifications or reductions of administrative burdens that would not jeopardise the objectives of protecting health and the environment from the use of pesticides. Stakeholder consultation activities and European Citizens' Initiatives have confirmed strong demands for stricter and more effective rules to reduce the use and risk of pesticides. The impact assessment accompanying the legislative proposal concludes that the planned measures are proportionate to the objectives to be achieved of protecting health, biodiversity and the environment.

The impact assessment addresses who is affected by the initiative and how. National authorities would need to set up record keeping systems on pesticide use and application of IPM and registers of pesticide application equipment. It is not anticipated that the setting up of these systems will overstretch national administrations. Such electronic registers already exist in some Member States. In fact more effective IPM guidelines and better clarification of existing SUD requirements will possibly reduce enforcement and compliance costs for Member States. Existing training and certification schemes would need to be extended. Member States which do not yet have crop-specific guidelines in place will face costs in developing them, however these costs are proportionate to the objective of ensuring implementation of IPM which in turn is essential to reducing the risk and use of plant protection products. All options have been assessed in the impact assessment against the criteria of proportionality to ensure that measures are proportionate to the benefits that can be expected. Several stakeholders in various consultations expressed the view that the legal instrument of a regulation rather than the current directive might contribute to a more harmonised and effective approach in this policy area in the future. The evaluation accompanying this proposal also confirmed that the burdens and costs imposed on Member States were limited and proportionate to the overall objectives to be achieved.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU? The stakeholder consultations carried out, including via the SUD working group in particular, did not identify any particular or geographically consistent trend of differing views or preferred course of action among national, regional and local authorities across the EU.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
The evaluation confirmed that EU actions in this area have a clear EU added value in comparison to national or regional initiatives alone, in particular establishing a more level playing field and ensuring that all Member States have a policy framework in place for pesticide risk reduction. Coordinated EU action can effectively supplement and reinforce national and local actions on the sustainable use of pesticides. More effective EU policies in this area will improve biodiversity, water and soil quality, other environmental parameters and human health. Due to the cross-border and transboundary dimension of pollution, coordinated actions at EU level are appropriate. The EU also possesses other key instruments in agricultural and food policies with which synergies exist and that can be further improved, including by increasing legal and policy clarity and coherence, especially with the CAP. This proposal is also relevant to the development of organic farming and achieving the farm to fork strategy target of at least 25% of the EU's agricultural land under organic farming by 2030. Scale efficiencies arise from common standards across a number of areas, including general principles of IPM, training (of advisers, distributors and professional users), testing of application equipment, and record keeping.
(a) Are there clear benefits from EU level action?
EU action can more effectively achieve a sustainable use of pesticides, avoiding discrepancies due to different level of ambitions in the Member State which could hinder achieving the reduction of use of pesticides which have an EU-dimension. Besides the above mentioned advantages for human health and the environment, the reduction of current national differences in pesticide use policies could contribute to ensuring a more level playing field for pesticide users across the Member States and reduce competitiveness differences which are exacerbated by pesticide use policies varying at Member State levels. Insofar as the present initiative provides for clear, uniform rules on the sustainable use of pesticides, it will ensure a more harmonised and effective approach to the sustainable use of pesticides, thus protecting the environment and human health more effectively and also ensuring a more level playing field for pesticide users. Addressing the cross-boundary dimension is a matter that Member States cannot address in isolation.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
Scale efficiencies arise from common standards across a number of areas of the proposal aimed at ensuring the protection of human health and the environment, including general principles of IPM, training (of advisers, distributors and professional users), testing of pesticide application equipment, and record-keeping. The reduction of current national differences in pesticide use policies could contribute to ensuring a more level playing field and a reduction of competitiveness differences for pesticide users in different Member States which are exacerbated by pesticide use policies varying at Member State levels.

Efficiency is also improved because the EU also possesses other key instruments in agricultural and food policies with which synergies exist and can be further improved, including by increasing legal and policy clarity and coherence, especially with the CAP. Other initiatives foreseen under the farm to fork strategy are complementary, for example the organic farming action plan, research and innovation policies and Commission implementing acts revising the data requirements and assessment rules for pesticides containing active substances that are micro-organisms (as alternatives to chemical pesticides). These initiatives aim at facilitating the placing on the market of these products and increasing their availability to farmers.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
The legal instrument of a regulation will contribute to a more harmonised and effective reduction of pesticide use across the EU, to be achieved in line with the headline ambition of the EU Green Deal. This assessment was supported by stakeholders in various consultation activities.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
The Union's competence is shared with the Member States in the areas covered by this policy proposal. The benefits of EU-level action outweigh the loss of competence at national, local and regional levels because every effort has been made to ensure that the particular circumstances in individual Member States and regions have been taken into account, for example in relation to the setting of national pesticide reduction targets or the adoption of crop-specific rules.
(e) Will there be improved legal clarity for those having to implement the legislation?
The proposal provides greater legal clarity on a number of issues identified in the evaluation as hampering the implementation of sustainable pesticide use. IPM will be clarified through crop-specific rules that will make them easier to apply. The proposed regulation contains clear prescription on the quantitative objectives to be included in National Action Plans and the quantitative data to be included in Annual Progress and Implementation Reports.
3. Proportionality: How the EU should act
3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
This proposal complies with the proportionality principle because it does not go beyond what is necessary in order to ensure an adequate level of ambition and improved policy efficiency and effectiveness, taking into account the findings of the evaluation accompanying this proposal. The proposal provides for improved data, monitoring and implementation of measures to reduce the use and risk of pesticides. In relation to Member State targets, this proposal avoids fixing uniform mandatory targets on Member States given that the baseline of current use of pesticides varies widely between Member

States and the differences between the agricultural sectors in the Member States. The proportionality of the target-setting process has been ensured by providing for a legislative formula that allows differences between Member States to be taken into account.
3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
The proposed action is an appropriate way to achieve the intended objectives. The initiative is limited to those aspects that the Member States cannot achieve as effectively on their own and where divergent national measures risk distorting competition for pesticide users across the Member States. The legal instrument of a regulation was chosen to ensure direct applicability, uniform application and uniform enforcement throughout the EU. The generally looser language of a directive has been insufficiently precise to ensure an adequate level of compliance, as demonstrated in the accompanying evaluation of the present directive.
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
The initiative is limited to those aspects that the Member States cannot achieve as effectively on their own and where divergent national measures risk distorting competition for pesticide users across the Member States. For example, in order to ensure an effort-sharing approach in line with the ambition in the farm to fork strategy, a Union-wide approach is needed in relation to targets. In order to better achieve the objects of the proposal, achieve economies of scale, prevent transboundary pollution or distortion of the level playing field for farmers, a degree of harmonisation of the rules is required in relation to issues such as IPM, training of professional users, distributors and advisors and inspection of pesticide application equipment. At the same time, Member States are recognized to have better expertise in relation to local conditions affecting crop-specific rules and derogations for both aerial application and use of chemical pesticides in sensitive areas.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The legal instrument of a regulation was chosen to ensure direct applicability, uniform application and uniform enforcement throughout the EU. The approach of leaving detailed rules to national transposition of the SUD has yielded inadequate results in many cases. The generally looser language of a directive has been insufficiently precise to ensure an adequate level of compliance, as demonstrated in the accompanying evaluation of the present directive, the SUD. Where national adaptation is still needed, as for example with IPM, the European Court of Auditors found in their 2020 report on sustainable use of plant protection products a need for clearer criteria and more specific requirements to help ensure enforcement and assess compliance. In the case of IPM, while it is impossible to provide for sufficiently specific rules for each local crop and region in one text, given the numerous geographic, climatic and crop-specific variables across the EU, an obligation for Member States to adopt crop-specific localized binding rules can provide clarity together with flexibility. Clarity arises from the fact that localised crop-specific rules are required to convert the general principles of IPM into verifiable criteria for crops while taking into account relevant agronomic conditions. A regulation is the policy intervention that is as simple as possible bearing in mind the objectives to be achieved. It is expected to reduce enforcement and compliance costs as compared to a directive. It is also proportional and effective in achieving the policy objectives of this

project.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
As noted above, every effort has been made to ensure that the particular circumstances in individual Member States and regions have been taken into account, for example in relation to the setting of national pesticide reduction targets or the adoption of crop-specific rules. This has occurred within the parameters necessary to protect human health and the environment and avoid competitive distortions. Thus, Member State national targets may be set in a manner that takes account of national circumstances such as intensity of pesticide use and historical progress, within certain parameters. Similarly, Member States are required to adopt crop-specific rules that are appropriate to local agronomic conditions.
d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
While there will be administrative costs both for the Union and for national governments, regional or local authorities, and economic operators, the costs are commensurate with the objectives to be achieved and must also be compared to the cost of a decline in biodiversity due to inaction. The evaluation of the existing directive did not identify significant possible legislative simplifications or reductions of regulatory burden which would not undermine achieving the objectives of the SUD or this proposal.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
The setting of national pesticide reduction targets allow Member States to take local conditions into account. Similarly, crop-specific rules will be appropriate to the region and crop they relate to.