



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva



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Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to submit herewith a response by the Federal Republic of Germany in reply to the Communication of the Special Rapporteur on the implication for human rights of the environmentally sound management and disposal of hazardous substances and wastes on the regulation of pesticide exports (OL DEU 2/2021), dated 9 February 2021.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 12 April 2021



To the
Office of the High Commissioner for Human Rights
Palais Wilson
Geneva

Response by the Federal Republic of Germany to the Communication of the Special Rapporteur on the implication for human rights of the environmentally sound management and disposal of hazardous substances and wastes on the regulation of pesticide exports (OL DEU 2/2021):

The Government of the Federal Republic of Germany herewith provides, as requested by the Special Rapporteur, the following observations.

The Federal Government recognises the fundamental importance of a functioning global regulatory system addressing the environmental and health risks posed by plant protection products and will support developments in this area at international level. However, any regulatory changes should take account of key aspects of national sovereignty and of the differing and highly specific regulations for the approval of active substances and the authorisation of plant protection products.

European Union law on the authorisation of plant protection products applies to the placing of products on the market within the EU. The EU takes an extremely rigorous approach to the approval of active substances. The assessment of substance properties within the European Union involves a classification in accordance with the EU chemicals legislation framework. In cases where substances are classified as carcinogenic, genotoxic or toxic for reproduction, and this has been demonstrated in humans or in animal studies, these substances are as a rule no longer eligible for approval as an active substance in a plant protection product. Authorisation as a plant protection product based on risk management measures is not possible. The above-mentioned classifications are deemed cut-off criteria. If a cut-off criterion is met, the substance will not be approved, regardless of the type of use. This will similarly be the case for active substances in plant protection products which are deemed to be endocrine disruptors, or which are deemed to be at once persistent, bioaccumulative and toxic, or which are deemed to be both very persistent and very bioaccumulative. In all other cases, the decision on whether or not to approve an active substance is based on a risk assessment in accordance with international standards.

Many countries outside the EU also use a risk-based approach and focus on the presence of a risk as a result of a specific type of use. The fundamental hazard created by a substance is considered in conjunction with risk management measures. Risk assessments of this nature may lead to different outcomes than the EU approach based on the precautionary principle, in particular when agricultural and climatic conditions and the nature of pest infestations are different.

At the same time, all assessments of active substances which have been examined in the European Union, whether or not they have been approved, are available to the public on the website of the European Food Safety Authority (EFSA). EFSA holds public consultations as part of the assessment of active substances and takes these into account in the opinions that it provides to the European Commission and the member states. As such, any country can make use of the European Union's assessment and any authority in a third country can easily comprehend the EU decision and, if desired, use this to support its own decision. Any organisation can submit comments to EFSA regarding the risk assessments for individual active substances. The European Union's decisions are additionally published on the European Commission's website together with a report on the procedure.

Furthermore, third countries can take advantage of capacity-building assistance with a focus on the European approach and on preventing risks to health and the environment. For example, Germany's Federal Institute for Risk Assessment (BfR) holds events to provide expert information to stakeholders including official bodies in other countries. International participants are expressly invited to attend these events as part of the BfR-Summer Academy. Meanwhile, the Federal Office of

Consumer Protection and Food Safety (BVL) offers the course International Training for Safer Food, which is aimed at experts from around the world and has been held yearly since 2018.

As part of its development cooperation work, Germany pursues the approach of integrated pest management (IPM). This focuses on cultivating a healthy plant by encouraging natural control mechanisms. Chemical methods are used as little as possible and in an environmentally responsible manner. Through the use of local resources, the reduction of input and the preservation of soil health, water and biodiversity, this strategy can contribute to productive and healthy agroecological food systems. Measures are implemented to this end and advice is provided to stakeholders in partner countries.

Plant protection products containing active substances which are approved in the European Union are authorised as a complete product in the EU's member states via a national authorisation procedure. Each member state decides whether to authorise plant protection products based on a procedure which takes into account ecological and agricultural conditions in the country in question and the specific zone within the EU. Banning the export of all plant protection products which are not authorised in a given member state thus fails to account for this nuanced approach based on specific ecological and agricultural conditions.

In accordance with the German Plant Protection Act (*Pflanzenschutzgesetz*), the Federal Ministry of Food and Agriculture is authorised to ban or restrict the export of particular plant protection products to countries outside the European Union in agreement with the Federal Ministry for Economic Affairs and Energy, the Federal Ministry of Labour and Social Affairs, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, and the Federal Ministry for Economic Cooperation and Development. Pursuant to the wording of the Plant Protection Act, this is conditional on the presence of a significant hazard which cannot be eliminated in any other way. This hazard must be specifically demonstrated. It is very difficult to specifically demonstrate a hazard and, in particular, to demonstrate that it is impossible to eliminate this hazard in any other way.

The Federal Government has not yet adopted a position on a ban on exporting plant protection products which are prohibited in the EU. A national export ban would lead to the displacement of trade flows and would not affect the availability of plant protection products. Restrictions should therefore only be introduced at EU level and should be thoroughly reviewed based on all relevant considerations, in particular existing international agreements. In this regard, it is necessary to wait for the European Commission to submit proposals for a suitable approach. The Federal Government is in principle open to Commission proposals for a common European approach. At EU level, the European Commission has already spent several years working on the issue of exports of plant protection products which are no longer authorised. Among other outcomes, it has thus already incorporated this issue into its chemicals strategy, a step which Germany expressly welcomes.

Existing supranational agreements and EU regulations governing the procedure for hazardous chemicals (including plant protection products) appear well suited for imposing restrictions on exports. Regarding the international trade in active substances and plant protection products, the Federal Government refers in particular to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals. The international community decides on the inclusion of particular substances under the terms of the Convention. Its provisions were implemented in Regulation (EU) No. 649/2012 (EU PIC Regulation), which also bans the export of certain substances on the basis of the Rotterdam Convention. The purpose of this Regulation is to govern the import and export of certain hazardous chemicals and lay down obligations for businesses wishing to export these chemicals to countries outside the EU. It aims to foster shared responsibility and cooperation in the international trade in hazardous chemicals and to protect human health and the environment

by ensuring that other countries are provided with information on how to safely store, transport, use and dispose of hazardous chemicals.

In particular, the EU PIC Regulation only permits the export of plant protection products which are prohibited in the EU when the importing country has been informed of this in advance and has given its consent. In this regard, it is important for each country to have the necessary institutional capacities to be able to make responsible decisions for its own territory. It is well known that there remains a significant need for action in this regard, and the Federal Government is working to ensure that this need is met and the remaining gaps are closed, in particular within the scope of Germany's Presidency of ICCM5 and the decisions to be made there concerning the future of SAICM and international chemical management.

The European Chemicals Agency (ECHA) provides information about the PIC procedure on its website. The PIC Regulation is regularly amended, most recently in the late summer of 2020. It is possible to add further substances to the list provided the parties to the Convention agree. Furthermore, the European Commission intends to promote the European approach to active substance approval, as described above, in talks with third countries. Germany supports the European Commission in its efforts to make the export of chemicals, including plant protection products, safer. The Federal Government has not yet adopted a position on a ban on exporting plant protection products which are prohibited in the European Union, as the European Commission has not yet put forward specific proposals. However, in general terms, the Federal Government welcomes efforts to prevent the production for export of harmful chemicals which are not authorised in the European Union.

Furthermore, it should be noted that the Stockholm Convention on Persistent Organic Pollutants (POPs) lists substances which are as a rule banned from being imported or exported. The Stockholm Convention is implemented in the EU by Regulation (EU) No. 1021/2019.