

Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

REFERENCE:
OL OTH 202/2021

21 June 2021

Dear President Sassoli,
Dear Chairs,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolution 45/17.

In this connection, I would like to bring to your attention to the **practice by EU member states of exporting hazardous pesticides¹, which are prohibited for use in the European Union, to third countries.²**

Last year, this mandate, together with a number of other United Nations human rights experts, issued a statement calling on the EU and other wealthy States to end the deplorable practice of exporting domestically banned toxic chemicals, including pesticides.³ I thus commend the European Commission for including in its **Chemicals Strategy for Sustainability** that the EU will lead by example, and ensure that hazardous chemicals banned in the EU are not produced for export.⁴

The implementation of the policy goals in the EU Chemicals Strategy for Sustainability calls for concrete actions from the EU institutions. As highlighted during my recent statement at the European Parliament's Committee on Development (DEVE Committee), such concrete actions should include binding regulations prohibiting the export of hazardous chemicals, including pesticides, banned in the EU.

The importance of the EU Chemicals Strategy's pledge to ensure that hazardous chemicals banned in the EU are not produced for export has been officially recognized by several European countries. In order to reach the broader objectives of

¹ The term "pesticides" here refers to herbicides, fungicides, rodenticides and other chemicals used in agriculture and food processing to kill living organisms. For more information on pesticide trade, see Food and Agriculture Organization of the United Nations (FAO), FAOSTAT Pesticides Trade database (1961-2018), available at <http://www.fao.org/faostat/en/#data/RT>;

² European Commission, Chemicals Strategy for Sustainability Towards a Toxic-Free Environment, 2020, p. 24, available at <https://ec.europa.eu/environment/pdf/chemicals/2020/10/Strategy.pdf>
European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, "A Farm to Fork Strategy a fair, healthy and environmentally-friendly food system", 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0381>
DEVE Committee, European Parliament, Policy Department for External Relations Directorate General for External Policies of the Union PE 653.622, study on the use of pesticides in developing countries and their impact on health and the right to food, 2021, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653622/EXPO_STU\(2021\)653622_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653622/EXPO_STU(2021)653622_EN.pdf)

³ OHCHR, States must stop exporting unwanted toxic chemicals to poorer countries, says UN expert, 2020, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26063&LangID=E>

⁴ European Commission, Chemicals Strategy for Sustainability Towards a Toxic-Free Environment, 2020, p. 24, available at <https://ec.europa.eu/environment/pdf/chemicals/2020/10/Strategy.pdf>

the Strategy, the investment of EU resources in chemicals management and training in third countries is also critical. However, efforts at capacity building and chemical safety should not be considered by EU institutions as an alternative solution to the ban of the export of hazardous chemicals from the EU. It is not an either/or question of choice between capacity-building and the ban of prohibited pesticides; both sets of measures are indispensable to end the double-standards and discrimination, and to secure a toxic-free future for all.

The EU Chemicals Strategy for Sustainability represents a crucial step towards a zero pollution ambition for a toxic-free environment announced in the **European Green Deal**⁵ and the **Zero Pollution Action Plan**.⁶ I welcome the Commission's commitment included in the **Farm to Fork Strategy**⁷ to take action to reduce the use and risk of chemical pesticides and the use of more hazardous pesticides by 50% by 2030. In this connection, the Commission has stated that "the EU will use all its diplomacy, trade policy and development support instruments to promote the phasing out, as far as possible, of the use of pesticides no longer approved in the EU and to promote low-risk substances and alternatives to pesticides globally."⁸ The achievement of these goals would signal leadership on zero pollution targets at the global level, provide an important example of good practice to other regions of the world, and offer a new legal basis to protect the rights of consumers, workers, rural communities and indigenous peoples adversely impacted by dangerous pesticides.

I also welcome recent initiatives by civil society organizations⁹ urging the European Commission to ban the export to third countries of pesticides prohibited inside Europe - and stop the import of food produced with such pesticides from outside the Union.

Furthermore, recent motions¹⁰ at the national level in EU Members states have been introduced to ban the export of dangerous pesticides, to strengthen the implementation of international conventions to protect against the adverse

⁵ European Commission (2019), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM(2019) 640 final, 2019, available at: https://ec.europa.eu/info/sites/default/files/european-green-deal-communication_en.pdf; Institute for European Environmental Policy, What role for R&I in reducing the dependency on pesticides and fertilising products in the EU agriculture? How to align the European Green Deal's pesticide and fertiliser reduction targets with Europe's research and innovation needs, 2020, available at: [https://ieep.eu/uploads/articles/attachments/f4347295-f7fe-4db8-86de-0a9c89855d0f/IEEP%20\(2020\)%20Role%20of%20R&I%20in%20reducing%20pesticides%20and%20fertilisers.pdf?v=63770421465](https://ieep.eu/uploads/articles/attachments/f4347295-f7fe-4db8-86de-0a9c89855d0f/IEEP%20(2020)%20Role%20of%20R&I%20in%20reducing%20pesticides%20and%20fertilisers.pdf?v=63770421465)

⁶ European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil', 2021, available at: https://ec.europa.eu/environment/pdf/zero-pollution-action-plan/communication_en.pdf

⁷ European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, "A Farm to Fork Strategy a fair, healthy and environmentally-friendly food system", 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0381>

⁸ European Commission, Report to the European Parliament and the Council, Evaluation of Regulation (EC) No 1107/2009 on the placing of plant protection products on the market and of Regulation (EC) No 396/2005 on maximum residue levels of pesticides, 2020, p. 15, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0208&from=EN>.

⁹ NGOs network, Open Letter on Prohibiting the export of banned pesticides and the import of food produced with these chemicals, addressed to First Executive Vice-President Frans Timmermans, Health & Food Safety Commissioner Stella Kyriakides, Agriculture Commissioner Janusz Wojciechowski, Environment, Oceans & Fisheries Commissioner Virginijus Sinkevičius, 2020, available at: https://www.pan-europe.info/sites/pan-europe.info/files/public/resources/other/Open%20Letter_Double%20standards%20Final_05112020.pdf

¹⁰ Drucksache 19/23988, 2020, Gefährliche Pestizidexporte stoppen – Internationale Abkommen zum Schutz vor Pestizidfolgen stärken, available at <https://dip21.bundestag.de/dip21/btd/19/239/1923988.pdf>

consequences of pesticides, and to make binding the provisions of the International Code of Conduct on Pesticide Management. Such initiatives have also called upon the EU institutions to adopt concrete and urgent actions to implement the EU Green Deal and the EU Chemicals Strategy for Sustainability. Some EU countries have already approved laws prohibiting the production, storage and export of pesticides that are banned in the EU for environmental and health reasons. The rationales that support these measures are compelling and include the notion that restrictions to entrepreneurial freedom are justifiable given the damage to human health and the environment.

The practice by other EU member states of exporting pesticides, which are banned for use in the EU due to environmental or health reasons, creates double standards that externalise the health and environmental impacts of these hazardous substances on the most vulnerable.¹¹ As highlighted on various occasions by this mandate, pesticides present serious risks for human health and environment at local and global scales.¹² Pesticide residues often remain in food, drinking water, air, dust and rain, posing additional health and environmental risks.

Despite the relative strength of the EU regulatory system for pesticides, some of these prohibited pesticides return to Europe in the form of residues in imported food for the European customers. It is important to note that countries that are the key destinations for the EU's exports of banned pesticides are also the EU's most important sources of imported agri-food products.¹³ As highlighted by the study requested by the DEVE Committee, "Developing countries in particular lack the resources and expertise to enforce legislation on pesticide residues. Therefore, the potential for food imported by EU Member States to be contaminated with pesticides banned within the bloc is high."¹⁴

The EU has long been at the forefront of strengthening environmental protection to protect human rights against the irresponsible conduct of some business actors that exported hazardous substances and wastes to developing countries lacking the capacity to ensure their sound management and disposal. At the global level, the EU has also played a leading role in advancing a strategic vision on environmental policies, including on chemicals and wastes policy.

In this regard, the practice of exporting banned pesticides undermine EU's leadership in the chemicals and waste cluster as well as the effectiveness of its efforts at international cooperation. As highlighted in a recent study requested by the DEVE

¹¹ UN experts, Special Procedures, States must stop exporting unwanted toxic chemicals to poorer countries, 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26063&LangID=E>;

¹² See, for example, Special Rapporteur on toxics and human rights, General Assembly report A/74/480 on State's duty to prevent exposure, 2019, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/304/14/PDF/N1930414.pdf?OpenElement> ; Special Rapporteur on food, Special Rapporteur on toxics and human rights, Pesticides are "global human rights concern, 2017, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21306>. See also, Special Rapporteur on right to food, A/HRC/34/48, 2017 available at: <https://daccess-ods.un.org/TMP/977296.829223633.html>

¹³ NGOs network, Open Letter on Prohibiting the export of banned pesticides and the import of food produced with these chemicals, addressed to First Executive Vice-President Frans Timmermans, Health & Food Safety Commissioner Stella Kyriakides, Agriculture Commissioner Janusz Wojciechowski, Environment, Oceans & Fisheries Commissioner Virginijus Sinkevičius, 2020, available at: https://www.pan-europe.info/sites/pan-europe.info/files/public/resources/other/Open%20Letter_Double%20standards%20Final_05112020.pdf

¹⁴ DEVE Committee, European Parliament, Policy Department for External Relations Directorate General for External Policies of the Union PE 653.622, study on the use of pesticides in developing countries and their impact on health and the right to food, 2021, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653622/EXPO_STU\(2021\)653622_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653622/EXPO_STU(2021)653622_EN.pdf)

Committee, “it is recommended that products that can potentially cause harm, and are therefore banned in the EU, should not be sold outside the EU. Besides upholding this basic ethical principle, the EU should also consider such a ban because permitting such exports to continue damages the reputation of the EU. Halting these exports would increase the acceptance of the EU’s approach to proper chemical regulations in developing countries.”¹⁵

The introduction of legislation banning the export of prohibited pesticides is also covered by the legal basis of the EU acquis. The EU legal framework governing hazardous chemicals, including hazardous pesticides, appears well suited for imposing restrictions on exports of pesticides that are considered illegal at the EU level. In particular, the Treaty on the Functioning of the European Union specifies that “Community policy on the environment shall aim at a high level of protection and...shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”¹⁶ In addition, the proportionality principle further requires “tailoring measures to the chosen level of protection” and that, in certain cases, a total ban represents the sole possible response to a given risk”.¹⁷

The importance of the precautionary principle’s role in ending the double standards involved in the export of prohibited pesticides cannot be overstated. As the Commission has explained, “Countries that impose a prior approval (marketing authorization) requirement on products that they deem dangerous a priori reverse the burden of proving injury, by treating them as dangerous unless and until businesses do the scientific work necessary to demonstrate that they are safe.”¹⁸

The EU legal framework in this area incorporates the Rotterdam Convention.¹⁹ This instrument explicitly allows the EU and its Member States to implement more stringent action than that called for in the Convention.²⁰ Accordingly, the Rotterdam Convention poses no obstacle for the EU to play a leading role and ban the export of

¹⁵ DEVE Committee, European Parliament, Policy Department for External Relations Directorate General for External Policies of the Union PE 653.622, study on the use of pesticides in developing countries and their impact on health and the right to food, 2021, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653622/EXPO_STU\(2021\)653622_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653622/EXPO_STU(2021)653622_EN.pdf)

¹⁶ Document 12002E174, Treaty establishing the European Community (Nice consolidated version) - Part Three: Community policies - Title XIX: Environment - Article 174 - Article 130r - EC Treaty (Maastricht consolidated version) - Official Journal C 325 , 24/12/2002 P. 0107 – 0108, Official Journal C 340 , 10/11/1997 P. 0254 - Consolidated version, Official Journal C 224 , 31/08/1992 P. 0052 - Consolidated version. See Article 174 (2), available at: http://data.europa.eu/eli/treaty/tec_1997/art_174/oj

¹⁷ European Commission, 2000DC0001, Communication from the Commission on the precautionary principle /* COM/2000/0001 final */ , summary, p.6, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52000DC0001&from=LT>,

¹⁸ *Id.* See also, pg.6 “Subject to review in the light of new scientific data, means measures based on the precautionary principle should be maintained so long as scientific information is incomplete or inconclusive, and the risk is still considered too high to be imposed on society, in view of chosen level of protection. Measures should be periodically reviewed in the light of scientific progress, and amended as necessary.”

¹⁹ Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Sept. 10, 1998, 2244 U.N.T.S. 337.

²⁰ Article 15 (4) Implementation of the Convention: “Nothing in this Convention shall be interpreted as restricting the right of the Parties to take action that is more stringently protective of human health and the environment than that called for in this Convention, provided that such action is consistent with the provisions of this Convention and is in accordance with international law.”

pesticides prohibited in the EU. In addition, the Convention's science-policy interface mechanism, established to translate scientific evidence into actual measures of protection, is failing. It is well-known that the Conference of the Parties of the Rotterdam Convention has repeatedly failed to act on the recommendations of its Chemical Review Committee and adopt the controls necessary to prevent harm to human health and the environment from several hazardous substances, including paraquat dichloride, a highly hazardous pesticide.²¹

I note with interest that some EU countries' efforts at international cooperation in this area include the promotion of integrated pest management. There can be no doubt that these efforts at cooperation will be more effective and productive if accompanied by a ban on the export of pesticides that are prohibited in the EU. It is also remarkable that the Commission strongly encouraged member states to support commitments and investments aimed at implementing the methods and practices targeting the reduction of pesticides use and the use of alternative methods.²²

Based on these considerations and the positive dynamics which has been achieved so far, I believe time is ripe for the EU to strengthen its leading role in the global chemicals and wastes management. This is reflected in the important steps that the European Commission is taking to reduce the use of pesticides and prohibit the export of banned pesticides. In order to promote EU's commitment towards a toxic free environment, it is mandatory that the EU urgently adopts a ban of the export of dangerous pesticides which are banned in the EU. In this regard, binding legislation is necessary, both to promote safety and sustainability standards also outside the EU, as well as to avoid shifting and imposing serious health and environmental problems to other parts of the world.

I would like to underline that the exports of pesticides or other toxic substances which are banned in their country of origin exacerbate environmental injustice and constitute discriminatory practices. Such practices prevent the full and equal enjoyment of the human rights of everyone. In particular, these discriminatory practices undermine the right to life, the right to the highest attainable standard of health, the right to bodily integrity, the right to information, the right to science, and the right to a healthy environment, the rights to food and clean water. They also constitute a threat for the EU's commitment towards international human rights and environmental responsibilities.

In this regard, this mandate's latest thematic report to the General Assembly (A/75/290) highlighted that the practice of wealthy States exporting banned toxic chemicals to poorer nations lacking the capacity to control the risks is a deplorable example of environmental injustice and racism.²³ It further stated that "the ability to manufacture and export toxic substances banned from use domestically is one, albeit large, element of how States have institutionalized externalities through

²¹ Paraquat dichloride formulations, available at: <http://www.pic.int/TheConvention/Chemicals/Recommendedforlisting/Paraquatdichloride/tabid/2396/language/en-US/Default.aspx>

²² European Commission, Report to the European Parliament and the Council, Evaluation of Regulation (EC) No 1107/2009 on the placing of plant protection products on the market and of Regulation (EC) No 396/2005 on maximum residue levels of pesticides, 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0208&from=EN>.

²³ SR on toxics and human rights, Human rights approach to toxic waste 'more pressing than ever', 2020, available at: <https://undocs.org/en/A/75/290>; <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26438&LangID=E>

discriminatory national laws and an outdated system of global governance for chemicals and wastes. Wealthier nations often create double standards that allow the trade and use of prohibited substances in parts of the world where regulations are less stringent, externalizing the health and environmental impacts on the most vulnerable. The racialized nature of such standards cannot be ignored.”

The fact that the people who suffer from exposure to the exported highly hazardous pesticides live outside the exporting State’s borders is no excuse for its failure to take adequate measures of protection of their human rights, including a ban on the export of domestically banned pesticides. The UN Committee on the Economic, Social and Cultural Rights pointed out that the “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control,²⁴ especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective” (General Comment 24 (2017)).²⁵

Many of the individuals that suffer the exploitation and discrimination resulting from exposure to highly hazardous pesticides work in the fields of the Global South. The Human Rights Council has recognized, in its resolution A/HRC/RES/42/21,²⁶ the duty of States to prevent exposure of workers to hazardous substances. The best way to prevent such exposure is to eliminate the hazard posed by highly hazardous pesticides. This duty extends across borders.

At the same time, it is a myth that pesticides are necessary to feed the world and that their adverse effects on health and biodiversity are somehow a cost that modern society has to bear.²⁷ In this regard, a ban on prohibited pesticides would also contribute to reaching the objectives of the EU Biodiversity Strategy for 2030, helping to halt and reverse the alarming decline of biodiversity and ecosystem services upon which our shared civilization depends.²⁸ Healthy ecosystems and biodiversity are vital elements of the right to a healthy environment;²⁹ and the export of banned pesticides undermine the effective enjoyment of this right worldwide.

In light of these considerations, it is my responsibility, in accordance with the mandate given to me by the Human Rights Council, to address the information brought to my attention. In this regard and in light of the considerations expressed

²⁴ This includes human rights abuses abroad by enterprises domiciled in their territory and/or subject to their jurisdiction (i.e., enterprises incorporated under their laws or having their registered office, central administration or principal place of business within their territory).

²⁵ International Covenant on Economic, Social and Cultural Rights, article 12; Committee on Economic, Social and Cultural Rights, general comment No. 24 para. 11, para. 51.

²⁶ See also Human Rights Council report on Principles on human rights and the protection of workers from exposure to toxic substances, Special Rapporteur on toxics and Human Rights, A/HRC/42/41, 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/217/70/PDF/G1921770.pdf?OpenElement>

²⁷ Special Rapporteur on right to food, A/HRC/34/48, para. 2, 2017 available at: <https://daccess-ods.un.org/TMP/977296.829223633.html>, cited in A/74/480, para. 70 (“Dependence on hazardous pesticides is a short-term solution that undermines the right to food”), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/304/14/PDF/N1930414.pdf?OpenElement>

²⁸ Special Rapporteur on human rights and the environment, Human Rights Council Report A/HRC/34/49 on biodiversity and human rights, 2017, available at: <https://daccess-ods.un.org/TMP/6219556.33163452.html>

²⁹ Special Rapporteur on human rights and the environment, General Assembly Report, A/75/161 on a healthy biosphere and the right to a healthy environment, 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/184/48/PDF/N2018448.pdf?OpenElement>

above, I respectfully urge European Institutions to ban the export of hazardous pesticides, which are prohibited for use in the European Union, to third countries, and to provide my mandate with information on progress achieved in this regard:

1. To transform the goals included in the EU Chemicals Strategy into binding regulations and to ban the export of pesticides and all hazardous substances considered illegal at the EU level;
2. To actively promote the implementation of similarly binding measures at the global level;
3. To pursue stricter regulation at the global level, such as an international agreement on the life cycle management of pesticides, including highly hazardous pesticides;

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from the European Parliament will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on the same subject has also been sent to the President and Vice-President of the European Commission and relevant Directorates-General (DGs) and to the EU presidency.

Please accept, President Sassoli, Chairs, the assurances of my highest consideration.

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes