European Parliament
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Committee on Petitions

14.11.2022

NOTICE TO MEMBERS

Subject: Petition No 0328/2016 by Serge Le Quéau (French), bearing 12 signatures, on the exposure of agricultural workers to pesticides

1. Summary of petition

The petitioners, employees, former employees or close relations of employees of a company producing processed agricultural goods, both those who have passed away and those who are ill, were exposed to dangerous chemical products over a period of time without being duly informed by the employer and without adequate protection. They are calling for the resulting health problems (leading to a total or partial work disability and even death) to be recognised, and dispute their mutual health insurance organisation's refusal to pay compensation. They ask that France's compliance with Directive 2009/128/EC on the use of pesticides, Regulation (EC) 882/2004 on animal feed and Directives 98/24/EC and 2004/37/EC on the protection of health and safety of workers be examined.

2. Admissibility

Declared admissible on 31 August 2016. Information requested from Commission under Rule 216(6).

3. **Commission reply**, received on 21 December 2016

Regulation (EC) No 1107/2009[1] provides the legal framework for the authorisation and control of plant protection products (also called "pesticides"). Active substances, contained in plant protection products, undergo a comprehensive evaluation and peer review at EU level, where all relevant aspects are covered, including protection of human and animal health and the environment. In this process, the European Commission, the European Food Safety Authority (EFSA) and the Member States are involved, and their responsibilities are clearly

[1] 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. OJ L 309, 24.11.2009, p. 1–50

defined in the aforementioned Regulation. Before an active substance can be used in a product in the EU, it must be approved at EU level. The EU authorisation system can be practically considered as the strictest regulatory system in the world in terms of data requirements**.**

The authorisation of plant protection products is the responsibility of individual Member States and it is a process which takes place at national level. Following the approval of an active substance at EU level, Member States could grant, refuse or restrict the use of a specific product(s), containing this active substance. Before any plant protection product can be placed on the market or used, it must be authorised in the Member State(s) concerned.
Member States are responsible for authorising plant protection products and authorisation holders are responsible for labelling their products in accordance with the conditions of authorisation. Plant protection products are chemicals that can have hazardous properties. For this reason, products are labelled with hazard phrases and precautionary statements pertinent to the specific product in order to inform users of the risks associated with the use of these products, and provide instructions for safe use, for example the use of personal protective equipment (protective gloves, respiratory masks). Compliance with these instructions is necessary to protect the health of the user, the environment and the health of the wider population.

In addition, Directive **2009/128/EC**[1] provides a framework for the sustainable use of pesticides. The implementation of the Directive is the responsibility of the Members States taking into account their national agricultural characteristics. The Directive requires Member States to adopt National Action Plans to set up their national objectives, targets, measures and timetables to reduce the risks and impacts of pesticide use on human health and the environment. Specific requirements deal with the handling and storage of pesticides, the treatment of their packaging and remnants, the disposal of tank mixtures remaining after application and the cleaning of the equipment used.

The Commission has been carrying out audits regarding the implementation of pesticides rules. The audits are followed by published reports including recommendations to the competent authorities to address any deficiencies identified. The two most recent pesticides audits performed in France took place in 2012[2] and 2015[3]. The audits did not visit the regions mentioned by the petitioners. These audits look at the national control systems, and normally visit two regions in order to verify how official controls are implemented on the spot. During the mentioned audits certain shortcomings were identified regarding controls of marketing and use of pesticides. France submitted Action Plans to address these shortcomings. Most recommendations have already been addressed and some corrective actions are in progress.

As regards dichlorvos, the Commission decided not to approve this substance in 2007[4]. Member States could grant a period of grace to use up the existing stock of pesticides containing dichlorvos which had to be as short as possible and expiring at the latest on 6 December 2008.

Furthermore, Directive 98/24/EC[5] and Directive 2004/37/EC[6] apply in the case where workers are exposed to pesticides which are "hazardous chemical agents" or "carcinogens"

[1] 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 OJ L 309, 24.11.2009, p.71

[2] http://ec.europa.eu/food/audits-analysis/audit_reports/details.cfm?rep_id=2980
[3] http://ec.europa.eu/food/audits-analysis/audit_reports/details.cfm?rep_id=3535
[4] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007D0387

and/or "mutagens" in the sense of these Directives. The Regulation (EC) No 1107/2009 should apply without prejudice to these directives[1].

The scope of the aforementioned Directives is broad. Directive 98/24/EC lays down minimum requirements for workers' health and safety protection applicable where "hazardous chemical agents" are present or may be present at the workplace. The term "hazardous chemical agent" is defined broadly to mean any chemical agent which meets the criteria for classification as hazardous within any physical and/or health hazard classes laid down in Regulation (EC) No 1272/2008[2], as well as any chemical agent which, whilst not meeting the criteria for classification may, because of its physico-chemical, chemical or toxicological properties and the way it is used or is present in the workplace, present a risk to the safety and health of workers. Directive 2004/37/EC lays down minimum requirements for workers' health and safety protection applicable to all activities in which workers are or are likely to be exposed to carcinogens or mutagens as a result of their work. The term "carcinogen" is defined to mean a substance or mixture which meets the criteria for classification as a category 1A or 1B carcinogen set out in Annex I to Regulation (EC) No 1272/2008, as well as a substance, mixture or process referred to in Annex I to the directive, as well as a substance or mixture released by a process referred to in Annex I to the directive. The term "mutagen" is defined to mean a substance or mixture which meets the criteria for classification as a category 1A or 1B germ cell mutagen set out in Annex I to Regulation (EC) No 1272/2008.

Directive 98/24/EC applies as general law in relation to the area covered by Directive 2004/37/EC without prejudice to more stringent and/or specific measures laid down in the latter directive. It sets forth a number of general minimum requirements to eliminate or reduce exposure to chemical agents falling under its scope, supplemented by substance-specific provisions in the form notably of indicative and binding occupational exposure limit values, as well as biological limit values. In particular, these Directives establish that the employer must determine whether any hazardous chemical agents are present at the workplace, assess any risk to the workers' safety and health and take all the necessary measures to eliminate or reduce workers' exposure to a minimum. The employer must inform workers of the results of the risk assessment and provide training on the appropriate precautions and on the personal and collective protection measures that are to be taken.

Similarly, Directive 2004/37/EC sets a number of general minimum requirements to eliminate or reduce exposure to carcinogens and mutagens, supplemented by substance-specific provisions in the form of binding occupational exposure limit values. Employers must identify and assess risks to workers' health and safety associated with exposure to specific carcinogens and mutagens, and must prevent exposure where risks occur. Substitution to a non or less-hazardous process or substance/mixture is required where this is technically possible. Where substitution is not technically possible chemical carcinogens must, as far as it

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[5] Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 131, 5.5.1998, p.11.

[6] Directive 2004/37/EC of the European Parliament and the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens and mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC), OJ L 158, 30.4.2004, p. 50-76.

[1] Recital 47 of Regulation (EC) No 1107/2009.

[2] Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (Text with EEA relevance)
OJ L 353, 31.12.2008, p. 1.

is technically possible, be manufactured and used in a closed system to prevent exposure. Where this is not technically possible, worker exposure must be reduced to as low a level as is technically possible. This is the minimisation obligation under Article 5(2) and Article 5 (3) of the Directive. The Directive also sets forth the obligation of the employer to take appropriate measures to ensure that workers and/or their representatives in the undertaking/establishment receive sufficient and appropriate training, in particular in the form of information and instructions concerning potential risks to health, precautions to prevent exposure, hygiene requirements, wearing and use of protective equipment and clothing and management and prevention of incidents.

At this point, it is worth underlining that Directives must be transposed by the Member States into their national legislations and that France has notified the Commission of the national measures transposing the above-mentioned Directives.

It is primarily the responsibility of the national competent authorities (normally the national Labour Inspectorate) to enforce the national provisions transposing the EU Directives on occupational health and safety. It is therefore the administrative and/or judicial bodies of the Member States who are primarily responsible for monitoring compliance with EU law.

It should also be noted that the failure by a Member State to fulfil the above-mentioned obligation *"(...)can be established only by means of sufficiently documented and detailed proof of the alleged practice of the national administration and/or courts, for which the Member State concerned is answerable*"[1].

In this regard, the Commission observes that, in the present case, there is no indication suggesting that the petitioners have addressed the competent administrative and/or judicial authorities of the Member State concerned.

In the light of the foregoing, the petitioners are advised to consider bringing the issue before the relevant national authorities, in order to address the question of whether French health and safety legislation transposing the above-mentioned EU Directives has been respected in the case at stake.

Secondly, as regards the issue of the liability of France for failure to take measures to ensure employers' compliance with the obligations set forth in the aforementioned Directives, it can be said that the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law is inherent in the system of the Treaty[2] and its scope covers any violation of EU law[3]. The Commission would recall that the right to reparation in this case exists where the rule of EU law breached is intended to confer rights upon the individuals that suffered damage or loss, the breach is sufficiently serious and there is a direct causal link between the breach and the damage sustained by the individuals[4]. Subject to these conditions, the Member State concerned must make good the consequences of the loss or damage caused by the breach of EU law attributable to it, in accordance with its national law on liability.

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[1] ECJ, 12 May 2005, *Commission/Belgium*, C-287/03, ECR 2005 p. I-3761, para 28.
[2] ECJ, 19 November 1991, *Francovich and Bonifaci / Italy*, C-6/90 and C-9/90, ECR 1991 p. I-5357.
[3] ECJ, 5 March 1996, *Brasserie du pêcheur / Bundesrepublik Deutschland and The Queen / Secretary of State for Transport, ex parte Factortame and others*, C-46/93 and C-48/93, ECR 1996 p. I-1029.
[4] Ibidem.

It follows that actions for the reparation of damage caused to workers exposed to pesticides as a result of breaches of EU occupational health and safety Directives attributable to national authorities should be brought before the competent national judicial bodies.

Finally, as regards the issue of recognition and compensation of occupational diseases, mentioned by the petitioners, it is worth noting that this matter falls under the competence of Member States that are free to decide which benefits are granted and under which conditions. The Commission issued a recommendation concerning the European schedule of occupational diseases[1] , which invites the Member States inter alia to:

- introduce the European schedule as soon as possible into their national laws, regulations or administrative provisions concerning scientifically recognized occupational diseases liable for compensation and subject to preventive measures, and
- take steps to introduce into their national laws, regulations or administrative provisions the right of the worker to compensation in respect of those occupational diseases.

It should however be noted that the recommendation is not binding, and consequently it cannot create rights upon which an individual may rely before a national court. However, national courts are bound to take recommendations into consideration in order to decide disputes submitted to them, in particular where they cast light on the interpretation of national measures adopted in order to implement them or where they are designed to supplement binding EU provisions[2].

Conclusion

It is the responsibility of Member States to authorise and withdraw plant protection products in their territory. It is equally the responsibility of Member States to ensure that official controls of operators are implemented to enforce compliance with pesticide legislation. The Commission, based on risk assessment, is monitoring the implementation of controls in Member States, which is an ongoing process.

Similarly, it is primarily the responsibility of the national competent authorities to enforce the national provisions transposing the EU Directives in the area of occupational health and safety and the Commission would advise the petitioners to address the issue to the administrative and/or judicial bodies of the Member States which are primarily responsible for monitoring compliance with EU law. Actions for the reparation of damage caused to workers as a result of breaches of EU Directives in the area of occupational health and safety attributable to national authorities should be brought before the competent national judicial bodies.

4. Commission reply (REV.), received on 31 October 2017

[1] Commission Recommendation 2003/670/EC of 19 September 2003 concerning the European schedule of occupational diseases, OJ L 238, 25.9.2003, p.28.
[2] Judgment of 13 December 1989, Grimaldi / Fonds des maladies professionnelles (322/88, ECR 1989 p. 4407) ECLI:EU:C:1989:646, paragraph 18.

As outlined in the Commission's communication transmitted on 21 December 2016, it is the responsibility of Member States to grant and revoke authorisations for plant protection products on their territory. Member States are also responsible for controlling operators so as to ensure that plant protection products are used safely.

The Commission further reiterates, as outlined in the above-mentioned Commission communication, that it is primarily the responsibility of the national competent authorities to enforce the national provisions transposing EU Directives in the area of occupational health and safety. Actions for the reparation of damage caused to workers as a result of breach of EU Directives in this area attributable to national authorities should be brought before the competent national judicial bodies.

In the additional comments the petitioners sent on 21 March 2017, they refer to alleged non-compliance of the French authorities with EU legislation. The Commission takes note of the cases for which the petitioners state that they could provide evidence on request. These individual cases would, however, not prove a non-compliance of the French control system for pesticides. The petitioners refer to a negative conclusion made in the report of a Commission audit performed in France in 2015 (DG SANTE/2015-7473), which evaluated the control system in place. This conclusion led to a recommendation in the audit report. Nevertheless, there was a positive overall conclusion in the report, which concluded that there was a well organised system of controls covering all categories of operators involved in marketing and use of plant protection products, with generally very good co-operation between relevant competent authorities. The Commission wishes to reassure the petitioners that the recommendations made in the audit report are followed up by the Commission services. The French authorities provided an action plan which is published on the Commission website[1], and the implementation of the action plan is being followed up.

The Directorate General for Health and Food Safety plans to conduct an audit to France next year to assess the implementation of Directive 2009/128/EC on the sustainable use of pesticides. This Directive covers a range of areas relating to the safe use of pesticides, including monitoring of chronic and acute poisoning. This audit will cover the systems in place to address these issues in France, and will take into consideration the issues that the petitioners have raised. The Commission will request the French authorities to include a visit to the region of Brittany in the course of this audit.

Conclusion

The issues fall primarily under the competence of the Member States, and the services of the Commission are of the opinion that these should be dealt with by the competent national authorities. There is no evidence of non-compliance of the French control system with the relevant EU legislation. Nevertheless, the information provided by the petitioners will be taken into account for the organisation of a further routine Commission audit in France.

5. Commission reply (REVII.), received on 22 February 2019

The Commission’s audit to France on the Sustainable Use of Pesticides Directive (SUD)[2]

[1] http://ec.europa.eu/food/audits-analysis/audit_reports/details.cfm?rep_id=3535

took place from 29 May to 6 June 2018. During the period of the audit, the Commission's auditors discussed the petition with the relevant authorities in Paris on 30 May 2018 and in Rennes on 6 June 2018. A meeting was held with the petitioners and Solidaires Bretagne (a group supporting the petitioners) on 6 June 2018.

During these meetings, additional information was provided to the Commission's auditors. Following their return from the audit, the Commission's auditors examined this additional information and reached the conclusion that there were still a number of issues which required further clarification.

In an effort to obtain this clarification, a number of questions were addressed to the Directorate General for Food of the French Ministry of Agriculture (DGAL) by letter on 13 July 2018. In its response of 19 September 2018, the DGAL provided information to address certain points. However, additional clarifications need to be sought from the French authorities on certain points.

The Commissioner responsible for Health and Food Safety met with the petitioners in Brussels on 17 September 2018 and was presented with additional information concerning the allegations made in the original petition and on a number of new but connected issues. The Commission is currently examining this additional information.

Conclusions

The issues raised in the petition and in the subsequent additional information provided by the petitioners are being examined outside of the scope of the SUD audit report and will be the subject of a separate assessment finalised in the light of EU legislation for health and worker protection. However, it should be noted that its finalisation is dependent on receipt of information/clarifications from the French authorities on a number of key points. Consequently, the Commission's assessments are still ongoing and it is not yet able to provide a final report to the Petitions Committee. Given the importance of these issues, the Commission would propose continuing its investigations with the aim of providing a report to a future meeting of the Committee.

6. Commission reply (REV III.), received on 27 July 2020

This additional communication is intended to inform the Committee on Petitions of progress made by the Commission in completing its assessment of the issues raised in the petition.

Since its last communication, the Commission has continued to assess the considerable volume of information received linked to the serious issues raised by the petitioners and in the context of the broader questions raised about the level of compliance of France with the relevant legal requirements. The assessment is at an advanced stage and, once it has undergone the necessary internal consultations and checks, it will be sent to the French authorities to give them the opportunity to comment on the draft assessment before it is

[2] 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 (Text with EEA relevance), OJ L 309, 24.11.2009, p. 71–86.

finalised and presented to the Committee on Petitions. Some delays in completing these steps might be anticipated due to priorities and restrictions linked to the COVID-19 pandemic.

Conclusion

The assessment of the issues raised in the petition is at an advanced stage and, once it has undergone the necessary internal consultations and checks, it will be sent to the French authorities for their comments. Some delays in completing these steps might be anticipated due to priorities and restrictions linked to the COVID-19 pandemic.

7. Commission reply (REV IV.), received on 14 November 2022

These additional observations are intended to inform the Committee on Petitions of progress made by the Commission in completing its assessment of the issues raised in the petition.

Since its last observations, the Commission has completed its draft assessment report of the issues raised in the petition. This was sent to the French authorities on 30 June 2022 to give them the opportunity to comment on the draft assessment. On 26 September 2022, the French authorities provided clarifications in relation to certain points in the draft report. These are now being evaluated and taken into account as the report is being finalised. Once the internal checks and procedures have been completed, the assessment report will be finalised and forwarded to the Committee on Petitions.

Conclusion

The Commission has completed its assessment of the issues raised in the petition and the report is now being finalised, taking into account clarifications recently provided by the French authorities. Once it has undergone the necessary internal checks and procedures, the report will be finalised and forwarded to the Committee on Petitions.