NOTICE TO MEMBERS

Subject: Petition No 1418/2014 by Harry Durimel (French) on the quality of water in Guadeloupe and Martinique and the inaction of French authorities

1. Summary of petition

In his very detailed petition, the petitioner explains that the Guadeloupe and Martinique have been widely polluted for years without the French State taking any preventive or corrective measures. In particular, the chlordecone, a pest control substance used by banana-growers, has been used for a longer time in these islands, while being banned in the rest of France. Aerial pesticides application went on for the banana plantations thanks to derogations to Directive 2009/128. These aerial applications on such a tiny territory had detrimental effects on populations, which has been pointed out by the Doctors Order of Martinique. The whole food chain has been affected. The petitioner mentions several studies that underlined high rates of chlordecone in population blood, as well as high rates of prostate cancers.

He also mentions misleading advertising campaigns (co-funded by the EU) to make the consumers believe that banana-growers from Guadeloupe and Martinique use widely natural agricultural methods.

In addition to health damages, the petitioner deplores the environmental impact of such chemical pollution. He mentions several reports that demonstrated the high pollution levels of water resources, and the destruction of an invaluable biodiversity, which falls within the scope of protection of Cartagena Convention, the CITES, as well as the Natura 2000 network.

According to him, the French state is in breach with Article 191(2) of TFEU (precaution principle), the principle of sustainable development, the environmental obligations of the common rules for direct support schemes for farmers (Council Regulation 73/2009), Directive 98/83/EC on the quality of water intended for human consumption, Regulation 178/2002 laying down the general principles and requirements of food law (due to the lack of traceability regarding chemical substances in food products, as well as Directive 2003/4/EC on public access to environmental information and the Aarhus Convention on access to
information, public participation in decision-making and access to justice in environmental matters (due to the lack of transparency regarding public measures).

Therefore, the petitioner demands that the French state acknowledges the health and environmental crisis in Guadeloupe and Martinique, that it establishes an honest mapping of current pollution and that it takes monitoring and preventive measures concerning the diseases caused by such pollution (e.g. by a systematic prostate cancer screening test for banana-workers).

2. Admissibility

Declared admissible on 30 April 2015. Information requested from Commission under Rule 216(6), (new Rule 227(6)”).

3. Commission reply, received on 29 April 2016

*With respect to chlordecone and its past use as a pesticide*

As reported in the petition, chlordecone is an old organo-chlorine active substance used as an insecticide in banana plantations in the 1980s. The substance has never been approved in Europe but was allowed in France under national transitional provisions until 1993. France is currently implementing its third action plan (Plan 2014-2020) to remedy the consequences of the environmental pollution due to past use of chlordecone in Guadaloupe and Martinique1.

Under Regulation (EC) No 1107/20092 a substance not approved at European level cannot be marketed or used except in very specific circumstances. This exception applies if an emergency derogation (under Article 53) has been notified to the Commission. It applies for a maximum period of 120 days and the non-authorised product can only be used under strict controlled conditions when no alternative is available to fight a serious danger. Chlordecone has never been notified to the Commission under Article 53.

Today, chlordecone is considered an environmental contaminant for which maximum residue levels (MRL) have been set by Commission Regulation (EC) No 839/2008, in accordance with Article 16 of Regulation (EC) No 396/2005 on maximum residue levels3.

The re-assessment of such MRLs is foreseen at least every 10 years. The results of the annual EU Report on pesticides residues4, published by EFSA in February 2015 (referring to 2013 data) show very little incidence of chlordecone. 10 out of 1689 samples showed quantified levels below the MRL, while 8 samples exceeded the MRL. A review of present levels is therefore not considered urgent. With respect to data from 2014 which are still to be published, 4 out of 1214 samples showed quantifiable levels below the MRL, while 5 samples exceeded the MRL. 210 samples were reported as originating from Guadaloupe and Martinique. 3 out of these samples showed quantified levels below the MRL and 2 samples

exceeded the MRL. The results are comparable to those from previous years. Since no new evidence on the toxicity of the substance has been made available, a review of the present levels is not considered urgent.

**With respect to water pollution**

With regard to water pollution by chlordecone, in the implementation of the Water Framework Directive 2000/60/EC\(^1\) (WFD) France has identified chlordecone as a River Basin Specific Pollutant (RBSP) in Guadeloupe and Martinique. Environmental quality standards (EQS) in freshwaters, transitional waters and biota have been defined, and measures should be in place to meet them. The third French Action Plan against chlordecone pollution in Guadeloupe and Martinique\(^2\) builds on actions in the two previous plans\(^3\), some of which were aimed at better understanding the movement of chlordecone in the environment, including into groundwater and the marine environment.

The Commission is currently beginning an assessment of the second River Basin Management Plans that Members States were required to establish and adopt by December 2015. These plans are to include updates of the characterisation of pressures on the quality of waters, and of the necessary measures to achieve the WFD objectives, including the chemical quality of waters. The assessment by the Commission will look, for example, at the identification of RBSPs and measures taken to meet the EQS.

**With respect to the traceability issue**

Traceability\(^4\) is a fundamental requirement under Regulation (EC) No 178/2002\(^5\) which applies in all Member States, including the overseas departments. The objective of the Regulation is to ensure a comprehensive system of traceability within food and feed businesses to allow targeted and accurate withdrawals and information to consumers. Article 18 of the Regulation obliges food and feed business operators to ensure traceability at all stages of production, processing and distribution and to make this information available to competent authorities on demand.

The information transmitted by France within their national monitoring report on pesticide residues show that in cases of non-compliant samples, the French authorities have taken follow up measures, including the destruction of products where judged appropriate. This indicates that it has been possible for the French authorities to trace back the non-compliant consignments.

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\(^3\) [http://www.observatoire-eau-martinique.fr/les-outils/local_bd_results?portal_type=ReferencedContent&Contributors=Direction%20G%C3%A9n%C3%A9rale%20de%20la%20Sant%C3%A9](http://www.observatoire-eau-martinique.fr/les-outils/local_bd_results?portal_type=ReferencedContent&Contributors=Direction%20G%C3%A9n%C3%A9rale%20de%20la%20Sant%C3%A9)

\(^4\) Traceability is defined as "ability to trace and follow a food, feed, food-producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution".

With respect to aerial spraying

Directive 2009/128/EC on the sustainable use of pesticides\(^1\) provides for the ban of aerial spraying of pesticides and for strict conditions on possible derogations to be issued by Member States without obligation to report to the Commission.

The Commission included verification of the implementation of aerial spraying provisions of Directive 2009/128/EC in the scope of its inspections carried out by DG SANTE’s Directorate for Audits and Analysis. A report\(^2\) of a recent audit carried out in France indicates that the areas treated by aerial spraying have declined 93% in recent years and that there are official controls in place to verify compliance. Moreover, French authorities have indicated that derogations for aerial spraying have not been authorised after 2015 on the basis of a recent amendment of Article 253 of the Rural Code.

However, the Commission remains available to examine any other concrete information the petitioners may provide regarding compliance with the conditions for aerial spraying laid down in Article 9 of Directive 2009/128/EC.

With respect to advertising campaigns co-financed by the EU

The petitioner refers to advertising campaigns co-financed by the EU to inform consumers on the agricultural natural methods used by banana growers from Guadeloupe and Martinique.

One of the eligible themes and products within this policy (which are governed by Regulation 1144/2014\(^3\)) is to inform about the graphic symbol for the outermost regions to promote awareness and consumption of quality agricultural products (natural or processed) specific to these regions. Information about the agricultural methods used for production is not required within this theme of the promotion policy. This graphic logo was introduced in 2006. The use of the logo is monitored by bodies appointed by the national authorities and the conditions for using it are proposed by the trade organisations concerned. The agricultural products for which the logo may be used shall satisfy requirements defined by reference to Community rules and may be promoted under these conditions.

So far, this possibility has been used by producers in the Spanish, Portuguese and French outermost regions (e.g. for pineapples, bananas, melons and other exotic fruits from Guadeloupe, Martinique and la Reunion, for bananas from Madeira and for bananas, tomatoes, cucumbers and other fruits and vegetables as well as flowers and wine produced in the Canary Islands). These initiatives informing about and promoting the logo of the outermost regions are essential to add value to the local production of regions which are severely handicapped by their remoteness and insularity and by difficult geographical and meteorological conditions.

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2 http://ec.europa.eu/food/fvo/audit_reports/details.cfm?rep_id=3535
Since 2005, four information/promotion campaigns on the graphic symbol for the outermost regions have been co-financed by the promotion policy. Those campaigns submitted by several banana producers' organisations (France, Spain, Portugal) aimed at communicating on the graphic symbol for the outermost regions and not on banana. Nevertheless, they have been illustrating the graphic symbol by a typical product of the EU outermost regions (the banana).

**Conclusion**

The EU’s current legal framework sets the conditions to progress towards the sustainable use of pesticides. The Commission would like to reassure the petitioner that it will follow up the proper implementation of the Directive 2009/128/EC on the sustainable use of pesticides.

With respect to chlordecone, it is at present considered an environmental contaminant and monitoring of such contamination is ongoing to check that human and animal health and the environment are not at risk. However, the Commission would like to underline that there are very few findings of chlordecone as demonstrated by the most recent Annual EU Report on Pesticides Residues published by EFSA. The existing temporary MRLs for chlordecone will be subject to a review as required by EU legislation or earlier if it is judged necessary because of safety concerns.

4. **Commission reply (REV.), received on 8 June 2020**

The Commission’s observations

_With respect to chlordecone_

On 12 July 2019, the French competent authorities notified to the Commission two emergency measures\(^1\), which had been taken at national level pursuant to Article 54 of Regulation (EC) No 178/2002 laying down the general principles and requirements of food law\(^3\). Following the opinions\(^4,5\) of the French Agency for Food, Environmental and Occupational Health & Safety (ANSES), France had fixed national maximum residue limits (MRLs) for chlordecone in bovine, ovine, caprine, porcine and poultry matrices at lower values than the ones currently applicable under Regulation (EC) No 396/2005\(^6\) to ensure the protection of consumers in Guadeloupe and Martinique. France requested the Commission to

\(^1\) Decree of 25 January 2019 amending the Decree of 30 June 2008 on maximum residue levels of chlordecone which certain food stuffs of plant and animal origin must not exceed in order to be recognised as fit for human consumption (NOR: AGG1901040A).

\(^2\) Decree of 23 May 2019 amending the Decree of 25 January 2019 on maximum residue levels of chlordecone which certain food stuffs of plant and animal origin must not exceed in order to be recognised as fit for human consumption (NOR: AGG1913466A).


\(^4\) Note providing the scientific and technical support of the French Agency for Food, Environmental and Occupational Health and Safety in respect of the fixing of a maximum residue limit for chlordecone in fat for meat products (2018-SA-0202).


amend the MRLs in Regulation (EC) No 396/2005 accordingly and clarified that on the basis of the available monitoring data it is premature to also take action on products of plant origin as there are still occurrences due to the persistency of the substance in soil. The presence and concentration of pesticides in agricultural topsoil will be measured for the first time at large scale and in a harmonised way in the EU in the context of the Land Use and Coverage Area frame Survey (LUCAS) 2018. Chlordecone is one of the many substances that will be analysed. The results will allow to assess if chlordecone is still present in European soils despite the ban on its production and use.

The Commission asked the European Food Safety Authority (EFSA) to carry out a consumer exposure assessment in relation to the MRLs and toxicological reference values established by ANSES in the relevant opinions. On 3 March 2020, EFSA published a statement where it confirmed that the proposed levels for animal products are acceptable with regard to consumer safety. Neither the lifetime nor the short-term exposure due to high consumption of the relevant products showed that there is a risk that the acceptable daily intake or the acute reference dose is exceeded. Based on these conclusions, the Commission is currently preparing a draft Regulation in order to lower the MRLs for chlordecone in products of animal origin. The draft Regulation will be presented to the Member States at the Standing Committee on Plants, Animals, Food and Feed – section pesticides residues, scheduled on 15-16 June 2020.

**With respect to aerial spraying**

Verification of the implementation of the provisions related to aerial spraying in Directive 2009/128/EC on the sustainable use of pesticides is included in the scope of the inspections carried out by the Directorate-General for Health and Food Safety’s Directorate for Audits and Analysis. Two audits have been carried out in France since the petition was presented. The first report (2015-7473) of 2015 indicated that the areas treated by aerial spraying had declined 93% between 2008 and 2014 and that there were official controls in place to verify compliance.

The second audit, carried out in 2018 (2018-6365) highlighted that on the basis of an amendment of Article 253 of the Rural Code, derogation for aerial spraying can only be granted in the event of a serious plant health hazard which cannot be controlled by other means. The derogation for aerial spraying of plant protection products must be granted by a joint Decree of the Ministers responsible for the environment, agriculture and forestry, and health. French authorities indicated that only one derogation for aerial spraying was granted in 2016 for a limited period and for a limited area in the departments of Haut-Rhin and Bas-Rhin in Grand Est. No derogations were granted in 2015, 2017 and 2018.

**Conclusion**


With respect to chlordecone, the Commission is currently reviewing the MRLs that are set for products of animal origin in Regulation (EC) No 396/2005 with a view to protecting consumers in the EU, including the ones living in Guadeloupe and Martinique. The new MRLs are expected to become applicable in the course of 2021. In the meantime, the national limits fixed by France in early 2019 apply in the French territory.

The Commission would like to inform the petitioner that it has verified the implementation of Directive 2009/128/EC on the sustainable use of pesticides in France and has not found irregularities as regards aerial spraying of pesticides.