

Bayer AG
c/o L. Condon and M. Berninger
Kaiser-Wilhelm-Allee 1
51373 Leverkusen



Berlin, 10. Juni 2020

Pesticides

Dear Mr. Condon and Mr. Berninger,

Thank you for your reply and for explaining to us your point of view on the issues raised in our petition.

We would normally refer to the date of your reply, however it was dated July 24, 2019 when it was in fact received by foodwatch on April 23, 2020. We would suggest you take care to adapt the date of a letter before you simply resend it; not doing so conveys a certain disrespect for the specific issues addressed in our letter and to the recipient.

However, having read your letter with great interest, please see our response below.

Health damages and suicides

In your letter, you highlight the distinction between accidental poisonings and intentional suicides referring to the figure of 200,000 deaths per year through pesticides, a figure which is communicated by the UN. This figure can be misinterpreted indeed and we are no longer using it in our communications. However, without going into the details of existing (or non-existing) data, we would like to reiterate our position that a correlation between pesticides regulation and intentional pesticide poisoning does exist.

In a recent article published by Michael Eddleston, member of the FAO/WHO Meeting of Experts overseeing implementation of the FAO/WHO Code of Conduct on pesticides management, he states that, **effective regulation of pesticides, in particular bans, could have a positive impact on the number of intentional pesticide poisonings.**¹Beyond the issue of intentional poisonings, the important

¹ "Banning highly hazardous pesticides from agricultural use has been successful in reducing total suicide numbers in several South Asian countries without affecting agricultural output." Bonvoison, T et al, 2020, 'Suicide by pesticide poisoning in India: a review of pesticide regulations and their impact on suicide trends', BMC Public Health, vol. 20, no. 1, <https://doi.org/10.1186/s12889-020-8339-z>

fact remains that your company endangers the life and the health of people through the production and export of highly hazardous pesticides. Health risks associated with pesticides use range from acute to chronic, from irritating to fatal. Examples of acute health impacts include “fatigue, headaches and body aches, skin discomfort, skin rashes, poor concentration, feelings of weakness, circulatory problems, dizziness, nausea, vomiting, excessive sweating, impaired vision, tremors, panic attacks, cramps, etc., and in severe cases coma and death”.² Pesticide-induced chronic illnesses include “cancer, Alzheimer’s and Parkinson’s diseases, hormone disruption, developmental disorders and sterility [as well as] memory loss, loss of coordination, reduced visual ability and reduced motor skills”, among others.³

You claim to not sell any pesticide (products) classified as acute toxic Ia or Ib by the WHO. By doing so you set an insufficient benchmark, because Bayer still sells *active ingredients* in pesticide products that are acute toxic Ia or Ib: „*While we do still have very few active ingredients listed under this classification in our portfolio, the products we sell containing them do not fall under this classification.*”⁴

Furthermore acute toxicity is not the only constraint to selling pesticides. By that you do not show responsibility for long-term hazards to human and any hazards to nature and animals. According to the FAO „highly hazardous pesticides” are defined much more comprehensive⁵:

- *Pesticide formulations that meet the criteria of classes Ia or Ib of the WHO Recommended Classification of Pesticides by Hazard;*
or
- *Pesticide active ingredients and their formulations that meet the criteria of carcinogenicity Categories 1A and 1B of the Globally Harmonized System on Classification and Labelling of Chemicals (GHS);*
or
- *Pesticide active ingredients and their formulations that meet the criteria of mutagenicity Categories 1A and 1B of the Globally Harmonized System on Classification and Labelling of Chemicals (GHS);*
or
- *Pesticide active ingredients and their formulations that meet the criteria of reproductive toxicity Categories 1A and 1B of the Globally Harmonized System on Classification and Labelling of Chemicals (GHS);*
or
- *Pesticide active ingredients listed by the Stockholm Convention in its Annexes A and B, and those meeting all the criteria in paragraph 1 of annex D of the Convention;*
or
- *Pesticide active ingredients and formulations listed by the Rotterdam Convention in its Annex III;*
or

² ‘Pesticides and Health Hazards: Facts and Figures’ (PAN Germany 2012) p.5 https://www.pan-germany.org/download/Vergift_EN-201112-web.pdf ; citing M.C.R.Alavanja, J.A.Hoppin, F. Kamel, ‘Health Effects of Chronic Pesticide Exposure – Cancer and Neurotoxicity’ (2004) 25 Annual Review of Public Health 155–197. <https://doi.org/10.1146/annurev.publhealth.25.101802.123020>

³ UN Human Rights Council, Report of the Special Rapporteur on the Right to Food (Effects of Pesticides on the Right to Food) (2017) A/HRC/34/48 p.5. <https://reliefweb.int/report/world/report-special-rapporteur-right-food-ahrc3448>

⁴ https://www.publiceye.ch/fileadmin/doc/Pestizide/2020_Bayer_answer-to-media-query-HHPs.pdf

⁵ <http://www.fao.org/agriculture/crops/thematic-sitemap/theme/pests/code/hhp/en/>

- *Pesticides listed under the Montreal Protocol;*
or
- *Pesticide active ingredients and formulations that have shown a high incidence of severe or irreversible adverse effects on human health or the environment.*

It is evident that pesticides pose risks to the health not only of the direct applicant but also of their families and the surrounding communities. Poisoning from pesticides is even more detrimental to those living in the Global South where access to clean water, adequate health care and sanitation can be much lower than in the Global North.

The myth of the “safe use” of pesticides

Over the course of decades, the pesticides industry, including your company, has propagated the idea of “safe use” as a pillar of support for its continued manufacture and export of hazardous chemicals. The rationale behind the concept is that pesticides are “safe” when they are used “properly” and “responsibly”, and when the correct precautions for their use are taken.

Examples of such precautions include: following the directions on the container labels, wearing suitable personal protective equipment (PPE), careful storage and responsible disposal of chemicals, adherence to proper agricultural practices for mixing, loading and application of pesticides. Unfortunately, it is not realistic that such guidelines can or will be followed under the current conditions in many countries of the Global South⁶.

“Safe use” presupposes an awareness of risks and knowledge of precautionary measures. However, there is increasing evidence that training given to pesticide users by the relevant government bodies or businesses are both inadequate in their content and assessment procedures to ensure safe usage for the 500 million farmers worldwide. Even for trained farmers it can be the case that personal protective equipment (PPE) is not affordable or due to the climate in the region, hardly wearable. Furthermore the pesticide product labels are not necessarily written in the local native language, as a research in India has shown – and the writing on the labels not printed in sufficient size, making them illegible.⁷

Overall we firmly believe that Bayer is not able to meet its own criteria for producing and exporting pesticides that are not registered in the European Union for toxicological reasons.

“Double Standards” – prohibited in the EU but sold elsewhere

In our publication, foodwatch only comments on the pesticides that are forbidden in the EU *due to* their hazardous effects. We do not comment on non-registered pesticides.

A recent study by several civil society organisations shows that it is current practice to export (highly) hazardous pesticides prohibited in Europe to other countries, taking as an example exports from

⁶ C. Terwindt, S. Morrison, C. Schliemann, ‘Health Rights Impacts by Agrochemical Business: Legally Challenging the “Myth of Safe Use”’, 2018 Utrecht Journal of International and European Law, 34 (2), 130-145.
<https://www.utrechtjournal.org/articles/10.5334/ujiel.460/#n31>

⁷ See C. Terwindt, S. Morrison, C. Schliemann, ‘Health Rights Impacts by Agrochemical Business: Legally Challenging the “Myth of Safe Use”’, 2018 Utrecht Journal of International and European Law, 34 (2), 130-145.
<https://www.utrechtjournal.org/articles/10.5334/ujiel.460/#n31> and

Ad Hoc Monitoring Report: Claims of (non-)adherence by Bayer CropScience and Syngenta to the Code of Conduct Provisions on Labeling, Personal Protective Equipment, Training and Monitoring, ECCHR et al. 1 October 2015. https://www.ecchr.eu/fileadmin/Juristische_Dokumente/Ad_Hoc_Monitoring_Report_Final.pdf

Germany to South Africa and Brazil including those by your company.⁸ In your reply to our letter you seem to imply that there are compelling reasons to export such pesticides to third countries despite the fact that they are not on the market anymore in the EU.

No matter how often you repeat the contrary, food security is not dependent on the use of hazardous chemicals, prohibited in the EU. It is common knowledge that hunger and undernourishment do not exist due to the lack of food supply but due to the insufficient purchasing power and poverty of a population.

We demand an end to the production and export of pesticides (both products and active ingredients) that are not (re-) approved or that are actually banned in the EU due to negative health or environmental impacts.

When the EU risk assessment considers certain pesticides (active ingredients) as too dangerous for humans, animals or the environment, this is not limited to European boundaries but has general and global significance – no matter whether there is a registration in any OECD country. These harmful pesticides should not be used anywhere. Their production, as well as their sale and export to third countries, should be stopped immediately.

It is for that reason that France introduced new legislation that indeed prohibits the production and export of precisely those pesticides that **are not available anymore in the EU due to the risks for health and the environment**. This law has survived intact despite being attacked by French industry associations, to which also your French subsidiary belongs. The French constitutional court effectively upheld the objectives pursued by this law.⁹ In its judgment, the intentions of the industry were clear: It is not an altruistic approach on guaranteeing global food security, but clearly an approach focussed solely on profit.

The FAO Code of Conduct on pesticides management – and Bayer's lack of transparency and respect for human rights

In your letter you also claim to adhere to the FAO Code of Conduct on pesticides management, a statement which we strongly contest.

The Code of Conduct emphasises its importance in relation to countries where regulation is not sufficient to protect the population and environment from the risks of pesticide use. The distribution of pesticides in such countries increases the responsibility of industry to promote adherence to the Code of Conduct.¹⁰ This means, where it presents stricter standards, the Code of Conduct applies in addition to national legislation. According to Art. 3.5.6, the pesticide industry should retain an active interest in following their products through their entire life-cycle, keeping track of major uses and the occurrence of any problems arising from the use of their products.

On paper, Principle 6 of the Bayer Product Stewardship Policy 2019¹¹ also focuses on the prevention and reporting of incidents related to Bayer products worldwide:

⁸ Gefährliche Pestizide von Bayer und BASF - ein globales Geschäft mit Doppelstandards, April 2020. https://www.misereor.de/fileadmin/publikationen/Broschuere_Gerfaehrliche_Pestizide.pdf

⁹ Conseil Constitutionnel, Décision n° 2019-823 QPC, 31 January 2020. <https://www.conseil-constitutionnel.fr/en/decision/2020/2019823QPC.htm>

¹⁰ FAO International Code of Conduct on Pesticide Management. E.g. objectives 1.1 and 1.7.2; Pesticide Management 3.2

http://www.fao.org/fileadmin/templates/agphome/documents/Pests_Pesticides/Code/Code_ENG_2017updated.pdf

¹¹ <https://www.bayer.de/downloads/bayer-crop-science-product-stewardship-policy-2019.pdf?forced=true>

- All Bayer CropScience countries/ country cluster organisations must have a procedure in place to “assess all reported accidental or intentional exposures”. (Key Requirement 6.9).
- “Procedures for incidents will include possible communications to potentially impacted stakeholders, such as downstream partners, regulators and industry associations.” (Key Requirement 6.11)
- “The Bayer country organization will inform and cooperate with national authorities, users and Poison Control Centers to enable prompt remedial action.” (Key Requirement 6.12)
- “Updated SDS for products will be provided in an appropriate language to Poison Control Centers or other responsible organizations, to regulatory authorities, transport companies, distributors, retailers and, if requested, end users. This applies to all Bayer products sold or supplied by, or on behalf of Bayer.” (Key Requirement 6.13)

However, reports produced on the basis of this strategy are dealt with internally only and are not available to the public. At this time of writing, we are not aware of any Bayer reports on poisoning incidents, however we assume that the Bayer headquarters in Germany is fully aware of the general scheme of pesticide application and most cases of individual poisoning caused by Bayer products worldwide.

Since you emphasise your compliance with the FAO Code of Conduct so emphatically in your letter, it is only natural that Bayer should make available to the public the accumulated knowledge about experiences and problems in the use of pesticides in the countries of the Global South. The credibility of your argument could hardly be better demonstrated than by publishing the respective information of Principle 6 of the Bayer Product Stewardship Policy 2019.

It should go without saying that the pesticides that are not permitted in the EU due to the risks they pose to human and animal health and the environment are an unacceptable risk to everyone, everywhere.

In such a situation, article 5.2.5 of the FAO Code of Conduct states “when handling or use pose an unacceptable risk under any use directions or restrictions” pesticide industry should “halt sale and recall products as soon as possible”.

A similar measure is a requirement of your own Stewardship Policy, according to which “[s]ales will be stopped and products recalled, if handling or use according to label is found to pose an unacceptable risk to human health, the environment or product quality and these risks cannot be mitigated through stewardship or other appropriate measures.” (Key Requirement 4.23)¹²

In addition to the industry specific Code of Conduct, **pesticide companies also have the general responsibility to respect human rights, specified in the United Nations Guiding Principles, and the OECD Guidelines for Multinational Enterprises.**

Corporations should prevent, mitigate and remediate human rights impacts.¹³ In the context of pesticide manufacturers this could be done through active engagement with end-users and dealing

¹² Key Requirement 4.23, in: Bayer CropScience, Bayer Product Stewardship 2019.

<https://www.bayer.de/downloads/bayer-crop-science-product-stewardship-policy-2019.pdf?forced=true>¹³ UN Office of the Higher Commissioner for Human Rights, “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide”, 2012, p. 31, available at http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf

¹³ UN Office of the Higher Commissioner for Human Rights, “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide”, 2012, p. 31, available at http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf

with the problems they face in an on-going or iterative process.¹⁴ The sale of hazardous pesticides in countries where adequate use cannot be guaranteed is a prime example of a business activity that, despite decade long attempts to mitigate negative health impacts, harms human rights.

Conclusion

We therefore reiterate the demand of our petition and ask you to immediately **stop the production, sale and export of pesticides banned in the EU** because they are clearly proven to be harmful for health and the environment and to **stop opposing stronger EU regulation** regarding this.

And we urgently request that **the complete internal reports according to Key Requirements 6.1, 6.9, 6.11, 6.12 and 6.13 of the Bayer Product Stewardship Policy 2019 on poisoning incidents are published immediately.**

We look forward to hearing from you.

Yours sincerely,



Thilo Bode

International Executive Director foodwatch International
on behalf of foodwatch France, foodwatch Germany and foodwatch Netherlands

¹⁴ Ibid., p. 33.