

CLE comments on draft Commission Regulation amending Annexes II and V to Regulation 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products (SANTE/11226/2021 Rev.01)

- **Maximum Residue Levels (MRLs) for pesticides are trading standards driving good agricultural practice and ensuring a level playing field for EU and other farmers.**
- **Different regions have different needs.**
- **Trade-restrictive measure is inconsistent with EU and WTO legal frameworks and will harm competitiveness of the EU food chain.**

Context

In 2020, in its Communication Farm2Fork the European Commission committed to “take into account environmental aspects when assessing requests for import tolerances for pesticide substances no longer approved in the EU”. This ambition has been laid out in the Commission's notification to the WTO on 6 July 2022. The EU notified¹ the WTO members under the Technical Barriers to Trade (TBT) framework about lowering MRLs for two substances, with the stated aim to “address an environmental concern of global nature, that it is the decline of pollinators worldwide. It concerns the review of all existing maximum residue levels (MRLs) for clothianidin and thiamethoxam to the limit of quantification in accordance with Regulation (EC) No 396/2005.”

Our position

1. MRLs are trading standards and relate to consumer health, not the environment

MRLs are trading standards that ensure there are no **unacceptable health risks from pesticide residues for consumers** and provide assurance that good agricultural practices have been followed. The European Food Safety Authority (EFSA) conducts consumer risk assessments and establishes MRLs for active substances in the EU, and similar assessments are conducted by third countries when they set MRLs. When there is a difference between two established MRL values – due to differing cropping conditions in third countries – and when there is no threat to human health, an import tolerance is set after thorough assessment.

MRLs are not an appropriate regulatory tool to address environmental concerns as the level of residues in a harvested crop does not correlate to the safety for non-target species or the local environment.

2. Different regions – different needs and extraterritorial application of the EU law

Farmers around the world have different needs when it comes to protecting their crops from pests and diseases. **Some pesticides not registered in the EU may be necessary in non-EU countries for different crops or pests that do not exist in the EU.** For example, tropical and sub-tropical climates tend to have high pest and disease pressure due to the combination of heat and moisture resulting in different weeds, pests and fungi. Those farmers, including smallholder farmers, should not be unduly penalised when legally treating their crops and subsequently realising that they will not be able to export to the EU. Attempting to use MRLs as a non-tariff barrier will simply create market access hurdles for those farmers, many of whom rely on the EU market to achieve fair incomes through agricultural development.

¹ <https://epingalert.org/en/Search/Index?countryIds=U918&viewData=G%2FTBT%2FN%2FEU%2F908>

Third countries have their own regulatory frameworks for evaluating the risks of pesticides and their use, including on the environment. The risk manager can decide risk mitigation measures. Risk-benefit analysis should take into consideration pests and disease pressures as well as biodiversity and environmental risks that are likely to differ depending on regions and countries.

Consideration of environmental effects occurring outside the EU would be an **extra-territorial application of EU law in violation of several principles of EU and international law**. Specifically, Article 191(2) and (3) Treaty on Functioning of the European Union (TFEU) states that the EU, in defining its environmental policy, shall take into account the "diversity of situations in the various regions of the Union" and the "environmental conditions in the various regions of the Union" and this clearly limits the geographic scope and competence of the EU to its own territory. The use of pesticides in non-EU countries has no connection with the EU territory. Furthermore, Articles 52 Treaty of the European Union and 355 TFEU limit the territorial scope of the applicability of EU law.

3. EU measure is inconsistent with the objectives and requirements of the EU MRL Regulation

The proposed Regulation is not in line with the intention of the existing EU MRL Regulation², which primary objective is to **ensure a high level of consumer protection and to remove trade barriers within the single market and facilitate international trade**. None of the provisions of the EU MRL Regulation expressly refer to environmental protection as a relevant consideration for the setting of MRLs. The wider EU legal regime applicable to pesticides shows that environmental concerns are addressed at the substance/product authorization stage (Regulation 1107/2009).

4. Trade-restrictive policies on MRLs will not benefit the EU but can harm competitiveness of the EU food chain

MRLs provide fair market access for suppliers from non-EU countries and ensure the **competitiveness of the entire EU agri-food value chain**, including traders, processors, the food and feed industry, as well as livestock producers. The EU relies on imports of key **commodities that end up being further processed in the EU**, resulting in added value food products such as chocolate and coffee, **or directly enjoyed by EU consumers** such as tea, tropical fruits, nuts, and spices. In many cases pesticides help prevent food waste in such products, which could be damaged by pests and fungal infections pre- or post-harvest and in transport without the benefit of treatment. Additional food waste would be a clear unintended consequence of the evolving policy. Given that farmers in other countries have different needs to grow their crops successfully, they cannot simply switch to the very limited range of tools authorised in the EU. As a result, supply of some products is likely to switch to other markets, denying EU consumers choice and risking reciprocal market access restrictions and challenges from other countries.

5. EU measure is inconsistent with the WTO framework

The EU measure raises serious concerns of inconsistency with the WTO Technical Barriers to Trade Agreement (TBT) and GATT 1994 Agreement, specifically Art 2.1, 2.2 and 12.3 of TBT. The proposed Regulation is more trade restrictive than necessary and discriminates non-EU countries as it has disproportionate impact on them. Furthermore, the measure ignores different production and regulatory conditions in non-EU countries and fails to take into account the special development, financial and trade needs for developing country members. Finally, the proposed ban is a border measure (GATT 1994 – article XI), exclusively restricting imports, with one-sided effects.

6. Global environmental concerns are best addressed at the global level

We support the EU ambition to act on global environmental issues. The **best way to address global challenges is at the global level**. International fora have been established to provide a proper framework for multilateral discussions and decision-making. We encourage the European Commission to **prioritise multilateral engagement** on global environmental issues as opposed to taking unilateral actions. The Food and Agriculture Organization (FAO) of the United Nations (UN) and the World Health Organization (WHO) established the Codex Alimentarius Commission specifically to provide international standards in several areas including MRLs.

² Regulation (EC) No 396/2005