

LET/22/LW/35965
11 October 2022



Ms Ilze JUHANSONE
Secretary-General
European Commission - Secretariat-General (SG)
Ms. Chiara CATTABRIGA
Principal Legal Adviser
European Commission – Legal service (SJ.B)
Mr Marc VAN HOOFF
Principal Legal Adviser
European Commission – Legal Service (SJ.L)

Olivier de Matos
Director General
CropLife Europe
9 Rue Guimard
1040 Brussels
Belgium

11th October 2022

Potential over-reach of delegated powers and non-compliance with International Obligations of the Union

Dear Ms. Juhansone,
Dear Ms. Cattabriga,
Dear Mr. Van Hoof,

CropLife Europe, previously European Crop Protection Association (ECPA), is the European organisation representing the crop protection industry. Our members are leading global companies and European national associations working in conventional pesticides, biopesticides, plant biotech innovation, and digital and precision farming.

In your capacity as Secretary General, Principal Legal Advisors at the European Commission's Legal Services charged with agriculture, trade policy and WTO respectively you may be aware of a comitology proposal¹, issued by the European Commission, that was presented to the relevant comitology committee (The Standing Committee on Plants, Animals, Food and Feed, chaired by DG SANTE) for discussion and a vote on 26th and 27th September 2022.

The proposal appears to introduce essential elements that are beyond the scope of the authority delegated to the European Commission by the Council and Parliament. Specifically, it introduces new environmental assessment criteria relating to production methods in third countries, that are outside of the scope of the legal act².

¹ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/TBTN22/EU908.pdf&Open=True>

² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32005R0396>

Numerous third countries from across the world expressed major concerns about this proposal, disputing the underpinning scientific basis put forward by the Commission and listing arguments about the legality of the measure, non-compliance with the international obligations of the Union and incompatibility with the GATT, TBT or SPS agreements. Formal responses to the WTO notification via the Technical Barriers to Trade mechanism may be found in the European Commission Technical Barriers to Trade database³ which assert that the notification is incorrect and should have been made under the SPS agreement, as is usual practice for EU measures of this nature.

Indeed, the proposal may be contrary to the views expressed by Ministers in the Agriculture Council on 13 June, going beyond the scope of the delegation of powers from the Council and Parliament, potentially causing unintended consequences and placing the EU in breach of its international obligations.

Would the Secretariat-General and Commission's Legal Service consider the legality of this measure under the Treaties and specific Union legal instruments, plus compatibility with international obligations? Attached, I have included for your consideration our legal opinion on the matter. Thank you in advance for your kind consideration of this information.

I would of course be very pleased to discuss this matter with you or your team further.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Olivier de Matos', written over a light blue grid background.

Olivier de Matos,
Director General

³ https://ec.europa.eu/growth/toolsdatabases/tbt/en/search/?tbtaction=search.detail&Country_ID=EU&num=908&dsplang=en&basdatedeb=&basdatefin=&baspays=&basnotifnum=&basnotifnum2=&baskeywords=thiamethoxam&bastypepays=CE&baskeywords=thiamethoxam

