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22 September 2022

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

Dear Ms. Simm,

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 the Director of Legal Service charged with agriculture you may be aware of a comitology proposal<sup>1</sup>, issued by the European Commission, that is expected to be 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 26<sup>th</sup> and 27<sup>th</sup> September 2022.

The draft 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 act<sup>2</sup>.

Numerous third countries from across the world have 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 database<sup>3</sup> 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

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

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

<sup>3</sup> [https://ec.europa.eu/growth/tools-databases/tbt/en/search/?tbtaction=search.detail&Country\\_ID=EU&num=908&dsplLang=en&basdatedeb=&basdatefin=&baspays=&basnotifnum=&basnotifnum2=&baskeywords=thiamethoxam&bastypepays=CE&baskeywords=thiamethoxam](https://ec.europa.eu/growth/tools-databases/tbt/en/search/?tbtaction=search.detail&Country_ID=EU&num=908&dsplLang=en&basdatedeb=&basdatefin=&baspays=&basnotifnum=&basnotifnum2=&baskeywords=thiamethoxam&bastypepays=CE&baskeywords=thiamethoxam)

Parliament, potentially causing unintended consequences and placing the EU in breach of its international obligations.

Would the Council 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 'O. de Matos', written in a cursive style.

Olivier de Matos  
**Director General**