

German Plant Breeders' Association (BDP) comment on the decree of the French Republic regarding the definition of neonicotinoid active substances in plant protection products (notification number: 2017/39/F)

The German Plant Breeders Association (BDP) represents the interests of professional plant breeding companies at the national level but also within Europe and internationally via the sector's international roof organizations ESA and ISF.

In the opinion of the German Plant Breeders' Association the notified French Decree (Notification number: 2017/39/F, French decree hereafter) defining neonicotinoid active substances with the intention to ban plant protection products containing them violates EU Regulation 1107/2009.

Violation of Regulation 1107/2009

Authorization of active substances

Formally, the decree of the French Republic defines the neonicotinoid active substances acetamiprid, clothianidin, dinotefuran, imidacloprid, nitenpyram, thiacloprid and thiamethoxam as being covered by Article 253-8 of the French Rural and Maritime Fishing Code (amended by Article 125 paragraph 1 of the French Biodiversity Law) in which the French legislator prohibits usage of plant protection products containing neonicotinoids after September 1st 2018. In particular the French decree is extending the number of active substances beyond those already covered by EU-Regulation 485/2013 which largely restricts the usage of clothianidin, thiamethoxam and imidacloprid.

Since the French Rural Code without exception bans all plant protection products containing said active substances, the French decree in conjunction with its legislative basis in France (Article 253-8 of the Rural and Maritime Fishing Code) constitutes a factual ban of active substances. However, approval of active substances is the sole competence of the European Commission as laid down in Articles 13 and 21 of Regulation 1107/2009. Therefore, the French decree violates Articles 13 and 21 of Regulation 1107/2009.

Moreover, according to Article 21 (1) of Regulation 1107/2009 member states may request a review of the approval of active substances from the EU Commission upon submission of new scientific and technological knowledge and monitoring data. France has not provided such data in support of the French decree. In contrast the French Agency's for Food, Environmental and Occupational Health & Safety (ANSES) report of January 7, 2016 indicates that "despite considerable research efforts, there is still insufficient evidence of the impact of neonicotinoids on bees".

In the opinion of BDP there is no legal basis for the factual ban of neonicotinoid active substances by France.

Free movement of treated seed within the EU

The French decree also stipulates that according to Article 253-8 of the French Rural and Maritime Fishing Code seed treated with any plant protection product containing an active substance defined in the decree must not be used. The ban on using treated seed interferes with Article 49 (1) of Regulation 1107/2009 which regulates that "Member States shall not prohibit placing on the market and use of seeds treated with plant protection products

authorized for that use in at least one member State.” The prohibition of using seed treated with plant protection products that may be authorized in one or several other Member States, with particular respect to the extended list of active substances outlined in the French decree, clearly violates the intention of Article 49 which warrants the free movement of seed legally treated with a plant protection product authorized for that purpose in that particular Member State.

Impact on environment and economy

The neonicotinoid active substances clothianidin, thimethoxam and imidacloprid have already been largely limited for usage in plant protection products and banned for seed treatment in most crops since 2013 by EU-Regulation 485/2013. Studies by the Joint Research Center (JRC) which is part of the EU Commission’s own scientific advisory body, as presented in Brussels in January 2017 clearly show that the ban of neonicotinoid based seed treatment for oilseed rape has resulted in a significant increase in insecticide treatment as foliar sprays or other treatment. This has been corroborated in a study¹ by the Humboldt Forum for Food and Agricultural (HFFA) which found an average increase of 0.73 additional foliar applications of insecticides per hectare. Also both studies indicated a loss quantified in the HFFA study in yield (4%) and yield quality (6.3%) amounting to a total overall economic loss in Europe of almost € 900 million per year.

Established mitigation measures not taken into account

Dust drift from treated seed during sowing has been identified as one aspect that could lead to unintended exposure of pollinators to plant protection products. However, measures to limit dust drift from treated seed have not been considered as mitigation by French legislators despite the fact that the seed industry has invested considerably in improving seed treatment quality limiting dust drift to minimum. In Germany the quality assurance system SeedGuard has been established and is widely used for many crops. Quality standards have been developed in collaboration with authorities and were shown in subsequent studies to significantly reduce dust drift from treated seed down to levels that are below values considered safe for pollinators in the last public draft guidance on authorization of plant protection products for seed treatment from January 2014. Comparable seed treatment quality schemes are in place and running in France (Plant Qualité Poussière) and Europe-wide via the European Seed Treatment Assurance Scheme (ESTA).

In our view, the French decree on the definition of neonicotinoid active substances in plant protection products is overriding competence solely assigned to the European Commission and runs counterintuitive to the idea of a common market and common regulation within the EU.

Factually banning all neonicotinoid active substances by banning plant protection products containing them will likely have a negative impact on the environment through additional application of foliar sprays as exemplified by studies investigating the impact of the neonic ban in oilseed rape production. At the same time yield and yield quality will probably decrease. Both effects will be contrary to the intention of a ban on active substances.

¹ <http://hffa-research.com/new-hffa-research-paper-published-the-economic-and-environmental-costs-of-banning-neonicotinoides-in-the-eu/>