**Comments on the Royal Decree prohibiting the export of certain hazardous substances to non-EU countries**

Export and import of dangerous chemicals which can be used in plant protection are regulated via the PIC (Prior Informed Consent) Regulation[[1]](#footnote-2). The principle of this regulation is that the non-EU importing country first must give its approval for the import of the chemical for a specific use before export can take place. However, it is the current position of the European Commission and Member States that this regulation is not going far enough. Therefore, one of the actions of the Chemical Strategy for Sustainability is to investigate the option to totally ban dangerous chemicals for export. Currently, the European Commission is running a study to investigate what the legal options are to meet this objective. The report is expected in April ‘23.

Even though the European Commission is working on it, Belgian authorities decided to initiate a Belgian regulation to ban certain dangerous chemicals as, according to them, Europe is not moving fast enough. We understand that the Belgian regulation would work with two lists:

* Annex I lists chemicals which are totally banned for export
* Annex III lists chemicals which are banned for use as pesticides, but are allowed for authorized uses

One of the chemicals listed on Annex III is ethylene oxide. The listing of ethylene oxide finds its cause in the numerous cases of ethylene oxide contaminated sesame seeds which entered Europe over the last months and years. However, we believe that listing ethylene oxide in a regulation to ban export will not help solve this issue. Due to its physicochemical properties, as explosive and flammable gas and subsequent transport issues, this product is typically used in a local market. Sesame seeds imported from other regions (eg. India) will never be treated with European/Belgian ethylene oxide, but rather locally produced ethylene oxide will be used for this purpose. The only correct legal route to avoid entry in the European market of ethylene oxide contaminated sesame seeds is to improve border controls and enforcement to protect the European consumer.

We are of the opinion that export of chemicals should be regulated at the European level by changing the PIC regulation if required and not at national levels. Nevertheless, we also have issues with the legal text of the Belgian proposed regulation itself. Several definitions are vague and inconsistent with other regulations, and some procedures are unclear, which may result in some unintended consequences if wrongly interpreted.

More specifically, we have issues with the following parts of the legal text:

* What is meant by the term ‘export’ in the regulation? As this is a national regulation, this would mean ‘export out of Belgium’. Is this what the regulation wants to achieve or is it rather ‘export out of EU’, as the latter case can only be achieved on wider EU-level (eg. via PIC procedure).
* The procedure to update Annex I is described in detail; however, no procedure on updating Annex III is included in the regulation. It is unclear on what the procedure is to include chemicals on this list, which hazardous properties are targeted, and how frequently this list will be updated.
* What is meant by ‘authorized’ uses? We assume that authorized uses not only include uses which require an explicit authorization in a certain legal framework (eg authorisation in the Plant Protection Product Regulation, the Biocidal Product Regulation, the Medical Device Regulation, Annex XIV of the REACH Regulation etc), but also all allowed uses, i.e. not banned, in the EU where no explicit authorization process is foreseen in the legislation. We’d like clarification in the definition that also uses (eg. use as a monomer, or use as an intermediate), which are identified uses in the REACH registration dossiers, are covered under this definition. This is especially relevant for ethylene oxide as this substance is not listed on Annex XIV and as such does not fall under the authorization process as defined under REACH, but industrial use is still allowed in the EU and hence export for those uses should still be possible in the future.

1. Ethylene oxide is included in the PIC procedure based on reported bans and severe restrictions on its use as an agricultural pesticide. No control actions have been reported relating to its sterilant or industrial uses. Inclusion was recommended at the eighth meeting of the FAO/UNEP Joint Group of Experts on Prior Informed Consent. [↑](#footnote-ref-2)