5 October 2021

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List of supporting organisations

Name	Location	Website
Accademia delle Erbe Spontanee	Italy	https://www.accademiadelleerbespontanee.it/
Agroecology Europe	European	https://www.agroecology-europe.org/
Beelife (European Beekeeping Coordination)	European	https://www.bee-life.eu/
Earth Trek	Croatia	http://www.zemljanestaze.org/
Earth Thrive	Balkans	http://earth-thrive.org
European Environmental Bureau	European	https://eeb.org/
Ecologistas En Accion	Spain	https://www.ecologistasenaccion.org/areas/toxicos/
Eco Hvar	Croatia	http://www.eco-hvar.com/en/
Estonian Green Movement / Friends of the Earth Estonia	Estonia	https://roheline.ee/
Génération Futures	France	https://www.generations-futures.fr/
Health and Environment Alliance (HEAL)	European	https://www.env-health.org/
Health and Environment Justice Support (HEJSupport),	International	www.hej-support.org
Hogar sin Tóxicos (Vivo Sano Foundation)	Spain	https://hogarsintoxicos.org/en
IFOAM Organics Europe	European	https://www.organicseurope.bio/
Justice Pesticides	France	https://justicepesticides.org/en/
Pesticides Action Network Europe	European	https://www.pan-europe.info/
Pesticides Action Network Germany	Germany	https://pan-germany.org/
Pesticide Action Network Italia	Italy	http://www.pan-italia.org/
Plastic Soup Foundation	Netherlands	www.plasticsoupfoundation.org
Umweltinstitut München	Germany	https://www.umweltinstitut.org/
ZERO Association for the Sustainability of the Earth System	Portugal	https://zero.ong/

Time to modernise the European data on chemicals used in agriculture

Voting recommendations to the AGRI committee

ClientEarth, and 20 environmental and health organisations across Europe as well as the European organisation representing the **organic food chain business** IFOAM Organics Europe, make the following **recommendations to the Members of the AGRI committee** regarding the Commission's proposal for a regulation on statistics on agricultural input and output (SAIO) (the Proposal).[1]

Note: This paper will be updated once the compromise amendment are available.

We identify in this paper problematic amendments tabled (AM) that would need to be rejected and the positive amendments (AM) to be supported so that the new regulation can deliver on the **pressing need to collect and publish data on the sale and use of chemicals input in agriculture** including data on pesticides, biocides, fertilisers and veterinary medicinal products.

The EU is very much lagging behind when it comes to knowing which pesticides and other chemicals are used in agriculture, in which quantities, where and how. California, for example, has put in place a public database which is far more precise and advanced[2] than what is available on Eurostat's website.[3] **In the EU, currently, no one has a comprehensive and precise picture of the extent to which people and the environment are actually exposed to these chemicals**.[4]

This is a problem for several reasons. First, such lack of data creates barriers for public authorities to **assess the effectiveness of past decisions** to protect human health and the environment, and **to take informed decisions for the future**. It therefore limits their ability to prevent harm to farmers, residents and other people exposed as well as to the environment. Then this lack of public data impacts public trust in governments and in the farming sector, as recently highlighted during the EU Pollinator Week.[5] Indeed, the current data gaps prevent any meaningful monitoring of progress accomplished by farmers to reduce their reliance on chemicals input, and thus **prevents the recognition and reward of their efforts.**

This problematic state of play is due to the current weak regulation on pesticides statistics (Regulation (EC) No 1185/2009) that the Commission is now proposing to revise. To truly empower informed decisions and rebuild trust, **the new regulation** for the collection and publication of data on chemicals input **needs to ensure that**:

I. **All relevant** data is collected;
II. The system is **efficient** - which requires **transparency** and relying on **existing records;** and
III. The data is collected and published **without delay.**

The recommendations detailed below aim to achieve these goals.

[1] European Commission Proposal for a regulation on statistics on agricultural input and output and repealing Regulations (EC) No 1165/2008, (EC) No 543/2009, (EC) No 1185/2009 and Council Directive 96/16/EC, COM(2021)37 final, from 2 February 2021
[2] See the system in California which is comprehensive and precise: https://www.cdpr.ca.gov/docs/pur/purmain.htm
[3] https://ec.europa.eu/eurostat/databrowser/view/aei_pestuse/default/bar?lang=en
[4] See European Environment Agency State of the European Environment report 2020, https://www.eea.europa.eu/soer/publications/soer-2020 e.g. p. 241 "Few countries report pesticide emissions to water, and for only a few selected pesticides, so no picture is available for European trends in pesticide emissions (EEA, 2018b)."
[5] http://www.pollinatorweek.eu

Contents

I. What is needed to fill the relevant data gaps

1. Comprehensive data sets

a) All chemicals input matters

The Proposal includes 'Plant protection products' in the list of 'topics' for which data has to be collected as regular data requirements.[6] While it is correct that "*Increasingly, statistics on the sales and use of plant protection products and fertilisers are needed*"[7], it is well known that biocides and veterinary products used in agriculture can be composed of the same problematic active ingredients as 'Plant Protection Products'[8] and be equally dangerous to the environment or human health.

It is therefore critical that the regulation foresees the collection of data on the sales and use of **plant protection product** and **fertilisers** as proposed by the Commission, but also **biocides** and **veterinary** medicinal products. In addition, while antimicrobial products and antibiotics do need close attention, there is no reason to limit the scope of the data collected to these sub-products.

Support AMs 57, 58, 66, 89, **122, 123, 125, 131, 132, 133, 134, 135, 136-140, 182, 230, 234 235 236 237**

Reject AM 3, 8, 11, 12, 15-18, 28-31, 49, 67 and 90 in that they limit the collection of data for veterinary medicinal products to 'antimicrobial' or 'antibiotics'.

b) All contributions to the overall chemical load matter

We acknowledge that for some data topics, such as 'animal production' or 'crop production', it is possible to not collect data from each and every farm holding and still obtain in the end representative data for reliable statistical analysis. This explains why the Proposal only requires 95% of the livestock units to be covered for such data. It also explains the possibility for Member States to exclude data of "*low or zero prevalence*",[9] and be exempted from regular data requirements "*where the impact of the Member State on the EU total of a variable is limited*"[10].

However, **for chemicals input**, it is critical to ensure that the data collected is exhaustive considering that **each emission contributes to the overall chemical burden**.[11]

The exemption proposed by the Commission which is triggered by a comparison with the 'EU total' is based on the assumption that it is the EU level data that matters. However, a small country may use a small amount of pesticides compared to the total used in the EU. That does not make the quantities of pesticides used in that country negligible in absolute terms.

That is why it is important to ensure that:

- Article 4(4) is clarified AMs 122, 123, 124, 179, 181
- The possibility to exclude "low or zero prevalence" data under Article 5(6) is not permitted for data related to chemicals input: AMs 146, 147

[6] Article 5(1)(d)(iii), and Annex part (d).
[7] Proposal, recital 3
[8] See Mahefarisoa et al. (2021) 'The threat of veterinary medicinal products and biocides on pollinators: A One Health perspective', available at : https://www.sciencedirect.com/science/article/pii/S2352771421000276
[9] Article 5(6)
[10] Article 7(2)
[11] See Commission staff working document SWD(2020)250 final, 14 October 2020 on chemical mixtures.

- The possible exemption "where the impact of the Member State on the EU total of a variable is limited" under Article 7(2) is not permitted for data related to chemicals input: AMs 176, 177 and reject AM 92

Furthermore, it is important to note that the Proposal fails to address the data gaps in relation to pesticides and biocides **beyond agriculture**, while the scope of Regulation (EC) 1185/2009 was not limited to the agriculture sector. So first, it should be clarified that the data on the placing on the market of pesticides shall continue to be collected and published whether sold with the intention of being used in agriculture or not, as it was foreseen under Regulation (EC) 1185/2009. Second, in the context of this proposal the meaning of agriculture should be understood widely, including notably forestry in line with the Common Agriculture Policy.

In addition, we call the Commission to propose a new legislative proposal that would cover the pesticides and biocides statistics beyond agriculture. This requires an additional amendment to be tabled to ensure that the Commission makes such proposal without undue delays. Such amendment could be as follows similarly to AM 223:

"**Review clause**

By [*date*] the Commission shall present a legislative proposal for the collection and publication of statistics on plant protection products and biocidal products that do not fall within the scope of this regulation, including uses in infrastructures such as train tracks, schools and public parks".

c) Data on agricultural practices to minimise the use of chemicals input are also necessary

Alternatives to chemicals input require a change in agricultural practices and currently there is no public data available on this. There is no visibility, for example, on the extent to which Integrated Pest Management[12] techniques are applied in practice.

Without this information, it is not possible to monitor the implementation of the Sustainable Use Directive.[13] It is not possible either to identify sectors or regions that are at the forefront of the transition, those that are in the middle of the transition but still need support and finally those that have not started to transition that would need support as well.

The Proposal does not foresee agricultural practices as a relevant topic for which regular data collection will be required. Many MEPs have proposed amendments to fix this and they should be supported.

Support AMs 47, 53, 87, 128, 129, 141, 142, 143, 144 240, 241, 242

2. Precise data

a) Support the collection of precise data

The data currently available on chemicals input is not precise enough which leads to:

- 'Harmonised Risk Indicators' used by EU decision makers that have limited value to assess progress towards a reduction in the use of pesticides in agriculture;[14]

[12] In the sense of Directive 2009/128
[13] Directive 2009/128/EC
[14] See PAN Europe 2021 publication on the indicators to best measure the EU objective of pesticide use and risk reductions, available at : 20211202_PAN Europe position on pesticide indicator final.pdf (pan-europe.info) ; see also Microsoft Word - PAN Europe opinion on HRI final.docx (pan-europe.info)

- Barriers to assess whether the assumptions on which the authorisations of pesticides are based are actually **realistic**;[15] This includes difficulties to determine the **real life exposure of agricultural workers,**[16] their families and residents of rural areas;
- Barriers to assess the impact on human health and the environment of the overall exposure to the **cocktail** of chemicals released;[17]
- Barriers to assess the overall impact of chemicals used in agriculture in their nano-form;[18]
- Barriers for **citizens to know** to what extent, when where and how they - as well as their families and environment - are exposed to pesticides. This opacity fuels distrust of citizens towards the agrochemical and agricultural holdings that resist transparency. This lack of transparency also generates mistrust towards governments that do not collect precise data even when available to them and when the data is essential to be able to perform their public missions to protect human health and the environment.
- Barriers to **keep track of progress accomplished by farmers** to reduce their reliance on chemicals input and ensure that they are rewarded and their efforts recognised by the public.

In order to solve these issues, there is a need to have data on the use of pesticides at the level of the active substance, the product, per crop and/or animal species treated, and at postal code level.

That is why we call on you to support AMs AM 145, 153, 182, 244, 245

It is also important to be able to identify which active substances and products are used in organic agriculture and therefore the essence of AM 184 should be integrated with the above amendments.

Some MEPs propose that the data on the sales of pesticides be collected only every five years. Regulation No 1185/2009 currently requires that the sales data on pesticides be collected every year. Therefore, such amendment would mean *even less precise data* on the sales of pesticides than what is available today. This AM is missing the whole point of this reform. Reject AMs 239

[15] European Commission, Report on the implementation of Regulation (EC) No 1185/2009, 3 March 2017, COM(2017) 109 final, p. 5: "**Pesticide statistics are too aggregated to effectively inform environmental risk assessment.** A robust analysis of the impacts of pesticide application on ecosystems would require data on which specific active substances in pesticides are applied to which crops, as well as information on the types of ecosystems in which those crops are sited"; see also p. 6 on the usefulness of 'retrospective risk assessments of the actual levels of risk expected from the overall use of pesticides in the EU, for human and animal health, and the environment'

[16] See Report from ANSES on the retrospective assessment of farm worker exposure: https://www.anses.fr/en/content/pesticide-exposure-users-and-agricultural-workers recommending notably "By improving the accessibility, pooling, exploitation and capitalisation of information relating to pesticides, especially that concerning the exposure of people working in agriculture." and in particular the Annexe: https://www.anses.fr/fr/system/files/AIR2011SA0192Ra-Anx5.pdf section 5.1 explaining the barriers they faced to access relevant data

[17] See Commission staff working document SWD(2020)250 final, 14 October 2020 on chemical mixtures. See e.g. p. 44: "However, despite these improvements, **considerable data gaps on the toxicity of components of unintentional mixtures, as well as on exposure to such mixtures remain**. The gaps relates to chemicals across uses and regulatory areas (i.e. in addition to chemicals subject to REACH registration, also e.g. **pesticides, biocides, pharmaceuticals**, substances in imported products) that can occur in unintentional mixtures, and these gaps will likely remain for a long time. This will continue to limit the extent to which unintentional mixtures can be properly assessed. Approaches, such as grouping of chemicals, read-across, in-silico and modelling will be important to fill these data gaps, although a prerequisite for benefiting more from them is to **improve our knowledge on where chemicals are used and in what quantities**." Available at: SWD_mixtures.pdf (europa.eu)

[18] In the French register of nanomaterials, the first "sector of use" of nanomaterials is agriculture, see https://www.ecologie.gouv.fr/sites/default/files/Rapport%20R-nano%202019.pdf

b) Resist calls to give precedence to <u>fear of 'burden'</u> over the real need for meaningful data

Many AMs tabled focus on the concern that collecting data creates burden for public authorities and agricultural holdings. While limiting the burden to what is necessary is a legitimate concern, limiting such burden cannot become 'the aim' of the Proposal. The primary aim must remain to ensure that meaningful and useful data is collected to enable informed decision-makings.

It is also worth considering the following conclusions of the Impact Assessment at the basis of the Proposal:[19]

> *"*[…] ***a lower burden is not automatically better if it leads to inferior statistical products****, and a higher burden is not automatically worse if it leads to better products. This balance should be kept in mind when assessing the burden of data collection"*
> […]
> "*one should however keep in mind that "the burden of statistics" is a* ***perception of respondents which does not objectively reflect a measurable and genuine statistical impact****, since it is sometimes confused with other opinion surveys, or combined national addons*."

Furthermore, the Commission has assessed already the potential burden from the Proposal in the context of this impact assessment. Regarding the burden on respondents in particular, it considered that the burden was reduced significantly by only requiring 98% of total utilised area and livestock units for certain datasets.[20] The Proposal actually goes further by requiring only 95% of total utilised area and livestock units for these datasets (see Article 4(2)-(3)). The concern for 'burden' has therefore already been duly taken into account in the Proposal.

The AM listed below make the reform come dangerously close to Option 2 or even Option 1 analysed in the impact assessment:

- Option 1 'no more EU statistics on agriculture', "*while seemingly reducing administrative burdens […] would therefore in fact greatly increase complexity and burdens within the entire system of agricultural statistics and policy […]*".[21] Such option was deemed highly inappropriate ("*very negative in the short and long term*");[22]
- Option 2 'no new data requirements' was considered "*only mildly negative in the short term*" but "*highly negative*" in the long term'[23]

By focusing on the fear of burden on agricultural holdings, these MEPs are losing sight of the main issue this reform is meant to address: the data gaps preventing public authorities from making informed decision.

Reject the following AMs:

- In preamble: 25, 33, 34, 35, 73, 84, 86, 98, 110, 112
- All new information requirements: 109 ('one in one out')
- Re. regular requirements: **126, 160**, **161, 162, 163**
- Re. ad hoc requirements: **164, 166, 167, 172, 173, 174(a)**

[19] IA 2016, p. 30
[20] IA 2016, p. 30
[21] IA 2016 p. 36
[22] IA 2016 p. 35-38
[23] IA 2016 p. 38-39

II. What is needed to ensure the efficiency of the new system

1. The collection of existing records on the use of chemicals input

One of the Proposal's biggest benefit is to require Member States to collect, as the source of the statistics on pesticides, the data on the use of pesticides that professional users already have to record in accordance with Article 67 of Regulation (EC) No 1107/2009.[24]

This means no surveys to fill for farmers for the data on pesticides but a mere collection of the records they already have to keep. This addresses the concerns raised by some MEPs calling to maximise the use of existing data and ensure legal certainty (see AM 78, 83, 86, 91, 102).

It is also foreseen to reduce the administrative burden of public authorities in the long term. Indeed, while it is not clear currently to what extent Member States collect these records, such collection is already essential to fulfil their missions under the Water Framework Directive,[25] Birds and Habitats Directives,[26] and Sustainable Use Directive.[27]

It is also important to note that when a national authority receives an access to document request for the farmers' records, recent precedents[28] in Germany have confirmed that the public authorities have to collect the records and grant access to it to the organisation requesting it in application of Directive 2003/4 on public access to environmental information.

Hence, the collection of farmer's pesticides records should already be happening systematically or at the very least upon an access to document request. Therefore, the Proposal does not create any *new* burden but will create synergies.

That is why we recommend you to oppose AMs 187 and support AM 100, 188, 190, 191, 192

AM 183 shall be rejected as well for its anachronism. Not requiring the records to be collected electronically does not fit with XXI century and will create unnecessary burden for public authorities.

2. The publication of the data collected on chemicals at a meaningful level of details

a) Data per active substance, per product, per year, per crop and at the postal code level

The Proposal is silent on what data will be published on Eurostat's website, while Regulation 1185/2009 (to be repealed) specified that only data aggregated per groups of pesticides would be published. Without a clear provision in the regulation addressing this issue, Eurostat and national authorities will have to deal with individual access to document requests on a case by case basis. Thus, ensuring that the data on chemicals input is proactively published at a

[24] Article 8(3)-(4)
[25] Under Directive 2000/60 Member States are required to "collect and maintain information on the type and magnitude of the significant anthropogenic pressures to which the surface water bodies in each river basin district are liable to be subject" (Annex II section 1.4 of Directive 2000/60). To that end, they need to collect data on the use of pesticides in the area connected to the river basin.
[26] Directive 92/43 and Directive 2009/147
[27] Member States have the obligation under the Sustainable Use Directive (Directive 2009/128, SUD) to take "appropriate risk management measures" in particular in protected areas defined under the Habitats and Bird directives (Article 12(b) of SUD). To that end, they need to collect data on the use of pesticides in the relevant areas.
[28] VG Freiburg of 13 July 2020 10 K 1230/19, VG Sigmaringen, 30 September 2020 8 K 5297/18, VG Stuttgart of 10 June 2020, 14 K 9469/18, VG Karlsruhe of 30 January 2020 confirmed in appeal on 4 May 2021, VGH 10 S 1348/20, VGH 10 S 2422/20.

meaningful level of details[29] will prevent multiple access to document requests and thus reduce the burden on Eurostat and Member States.

That is why we call on you to support AMs 88, 89, 103, 104, 105, 106, 107, 113, 114, 182, **205 211** and **206** (more precise geographically)

It is also important to ensure that the public authorities who need this data to perform their public missions related to environmental and public health protection have easy and full access to it. **Collecting data loses its purpose if only the authority collecting it can fully access it**. For example, an authority such as the French public health authority ANSES should not have to face any barriers to access the data on pesticides use, in order to run a retrospective assessment of farm worker exposure. However, today, it is very much the case.[30] Without additional safeguard, contrary to what some MEPs think (AM 198) authorities such as ANSES will still face problematic barriers to access.

That is why we call on you to support AMs 193, 194, 196 (197)

b) Negligible risk of interference with the protection of 'personal data'

Some MEPs have raised some vague data privacy concerns limiting potentially what information Eurostat would be required to publish. However, in the context of statistics on agricultural input and output, and especially regarding the data on the sales and use of chemicals input**, such concerns are overstated**. There is no need and no obligation to make the collection and publication more complex for the Member States because of a misplaced fear to compromise personal data.

More specifically, assuming that the final text of the regulation will ensure that the data on chemicals input is published per active substance, product, per crop, per year and postal code (as opposed to the precise address) (as per AM 206), only extremely limited "personal data", if at all, within the meaning of Regulation 2018/1725, may be revealed. This is because, even in the worst-case scenario, only the address of the agriculture holding may be disclosed indirectly and this would happen only in very limited circumstances.

Indeed, learning from the experience in France where pesticides sales data is already published at the level of the active substance, product and per postal code of purchase, the potential issue of revealing indirectly the addresses of farms[31] only arose for **0.1%** of the quantities sold in France in 2019.[32] **The risk of disclosing personal data as a result of publishing quantities of chemicals input used at a postal code level is therefore negligible.**

In any case, the Court of Justice left no doubt on the fact that the EU legislator has the power to limit the protection of personal data if the derogation is proportionate, necessary and meets objective of general interest or is needed to protect the rights of others.[33] Considering the right of citizens to have access to information on environmental emissions as well as the lack of

[29] Per active substance, per product, per crop/animals, per year, per postal code of use.
[30] See Report from ANSES on the retrospective assessment of farm worker exposure: https://www.anses.fr/en/content/pesticide-exposure-users-and-agricultural-workers recommending notably "By improving the accessibility, pooling, exploitation and capitalisation of information relating to pesticides, especially that concerning the exposure of people working in agriculture." and in particular the Annexe: https://www.anses.fr/fr/system/files/AIR2011SA0192Ra-Anx5.pdf section 5.1 explaining the barriers they faced to access relevant data
[31] due to a small number of farms in a given postal code
[32] See note from French authorities explaining their method of publication when a postal code only includes less than 5 buyers available at: http://www.data.eaufrance.fr/opendata-files/a69c8e76-13e1-4f87-9f9d-1705468b7221/bnvd_eaufrance_metadonnees_achat_20201215.pdf
[33] Para. 48-50 C-92/09

sensitivity of the addresses of agricultural holdings (that can in any case be found in the public domain), the conditions would be here met.

Indeed, when it comes to the publication of data on chemicals input, first, there **are several general interest** recognised by the EU requiring the publication of this data:

- The **EU's obligations to guarantee transparency in relation to environmental information,** especially information on emissions,[34] under the UNECE Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention);

- **The right to know** "*essential information enabling individuals to assess risks to their health and lives*",[35] considered by the European Court of Human Rights[36] as an important preventive measure to protect the **right to life** under Article 2 of the European Convention on Human Rights. The right to life, compared to the right to the protection of personal data, is an absolute right "*which admit of no restriction*".[37]

Furthermore, when data concerns legal persons (as opposed to natural persons), the Court has recognised that "*legal persons are already subject to a more onerous obligation in respect of the publication of the data relating to them*". This has an influence on the assessment whether the legislator is striking a fair balance between the personal data protection and the general interest in publication.[38] When agricultural holdings are actually registered as companies and thus have legal personality, their addresses are published already on the national central registry of companies.[39] The fact that this data is already publicly available limits further the extent of the potential interference with right of personal data protection.

c) The problematic blurred concept of 'data ownership'

Some MEPs have also raised concerns regarding potential interference of the Proposal with 'data ownership' (e.g. AM 82). However, the idea of 'data ownership' is not recognised or defined legally.[40] What the law protects when it comes to intellectual products is much more precise. For example, not all data is protected by 'copyrights' and 'copyrights' do not grant an 'ownership' right but rather some right to control the use or re-use of the creative work, a control which has some limits.

Thus, it is not clear what data covered by the Proposal these MEPs consider are protected by intellectual property rights, and which intellectual property right would be concerned.

Furthermore, even assuming that some data covered in the Proposal were covered by some intellectual property rights, it is not clear how the publication of the data would interfere with these rights.

[34] Judgment in case C-57/16, ECLI:EU:C:2018:660, para 100.
[35] Judgment of 24 July 2014, case of Brincat and others v. Malta : https://hudoc.echr.coe.int/eng#{"itemid":["001-145790"]} see in particular para. 113-116; In case Vilnes and Others v. Norway (Judgment of 5 December 2013, case of Vilnes and others v. Norway : https://hudoc.echr.coe.int/eng#{"itemid":["001-138597"]} para. 235) the European Court of Human Rights also relied on the positive obligation for States to provide access to essential information enabling individuals to assess risks to their health and lives.
[36] The European Court of Human Rights, whose case law, by virtue of Article 52(3) of the Charter of Fundamental Rights, applies to the EU institutions and to Member States implementing EU law, has made clear that these rights place positive obligations on the authorities (in this case, its Member States) to ensure the protection of human health from environmental pollution.
[37] C-112/00 para. 80
[38] C-92/09 para.87-88
[39] E.g. infogreffe in France
[40] "For these reasons, there is a lack of legal basis, in common or civil law, for the idea of data ownership" https://royalsociety.org/-/media/policy/projects/data-governance/data-ownership-rights-and-controls-October-2018.pdf

Overall, such amendments bring confusion and potential undue barriers to the publication and re-use of the data. Eurostat has since 1995 a policy regarding copyright[41] that favours free re-use of its data. There is no reason to introduce a different policy when it comes to agriculture statistics.

Some even called for the 'Code of Conduct on Agricultural Data Sharing by Contractual Agreement' to "*serve as a basis for improving transparency*" (AM. 96). However, the subject matter of this code is not to improve transparency or access of the data to third parties (i.e. the public) but rather to provide contractual safeguards to the data producer. References to this code in the regulation may therefore create potential barriers to the publication of the data.[42]

In addition, such code and the contractual agreements it covers, aim to protect commercial interests only[43] which, according to the Aarhus Convention, and its transposition into EU law,[44] **cannot take precedence over the overriding public interest to disclose information on emissions into the environment**.[45]

That is why we recommend you to reject AMs 82, 93, 94, 95, 96, **195, 200**

3. Transparency on quality reports

It is important to ensure the quality reports of Member States are published to ensure transparency on the quality of the data. Again, if these reports are not published, Eurostat will have to process access to document requests, which will create unnecessary burden.

Support AMs 201, 202, 203

III. What is needed to ensure swift delivery of relevant data

1. No additional delays

A few amendments submitted consist solely in delaying further the collection of data. The length of these delays are not grounded on any evidence. **By contrast, the urgency to act, and at the very least 'to know', is very much real**.

We are in 2021, and we still do not have a statistical framework that ensures that EU policy makers receive precise data on pesticides sales and use. In other words, EU policy makers still do not know which pesticides (per product or active substance) are used in which quantities, where and how often. Meanwhile, we are witnessing a biodiversity crisis. The European Parliament itself recognised that:

> *"[It] is **deeply concerned about the continuous and potentially irreversible loss of biodiversity** in Europe and about the **alarming decline of winged insects**, including pollinators, as evidenced by the findings of the October 2017 scientific study on flying insect biomass,[46] according to which the flying insect population in 63 nature protection areas in Germany has*

[41] Copyright notice and free re-use of data - Eurostat (europa.eu)
[42] Governments or public authorities are described as the other 'data users' (see p. 17) and there is no acknowledgment that some of the data covered are actually data that shall be disclosed to the public in application of EU law.
[43] See p. 12 « Protecting trade secrets, intellectual property rights and protecting against tampering are the main reasons as to why information is not shared […] »
[44] Regulation (EC) 1367/2006
[45] See Article 6 of Regulation 1367/2006
[46] https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0185809

> *plummeted by more than 75 % in 27 years; stresses, further, the* ***important decline in common bird species*** *across Europe, possibly arising from the reduced insect population; notes, moreover, the unintentional effects of pesticides on soil and soil organisms*[47] *and other non-target species; considers that* ***pesticides are one of the main factors responsible*** *for the decline of insects, farmland bird species and other non-target organisms, and further underlines the need for Europe to switch to more sustainable pesticide use and increase the number of non-chemical alternatives and low-risk PPPs for farmers;"*[48]

The European Parliament is thus very aware of the **urgency** of the situation. It also recognised the need for:

> "***a fully operational and transparent system for the regular collection of statistical data on pesticide*** *use, impacts of occupational and non-occupational exposure to pesticides on human and animal health, and presence of pesticide residues in the environment, especially in soil and water*".[49]

In this context, pushing for further delays in the collection of precise data, when collecting this data is the <u>bare minimum</u> already, is unacceptable.

Reject

- AM 158 (regular data requirement)
- AM 167, 169, 170 (for ad hoc requirement)
- AM 214 (extension of derogation for adaptation)

Furthermore, the Proposal foresees at its Article 13 the possibility for Member States to be granted a two-year derogation, if the application of this regulation "*necessitates major adaptations in a national statistical system of a Member State*". While we understand that some Member States may need more time to upgrade their systems, the conditions for this derogation are too vague and are likely to lead to abuses and therefore undue delays, especially if such derogations are granted via implementing acts. This is because the procedure to adopt implementing acts requires the vote of the Member States (qualified majority). Requiring Member States to vote on their own derogations has led to abuse in the past.[50] That is why we recommend you to:

Support AMs 212, 213, 215, 216, 217, 218

Reject AMs 214

2. Data requirements already specified in the regulation for chemicals input

The Proposal only sets out the framework for detailed data requirements to be defined, by contrast with Regulation (EC) No 1185/2009 on the pesticides statistics. It is therefore, in

[47] https://esdac.jrc.ec.europa.eu/public_path/shared_folder/doc_pub/EUR27607.pdf
[48] P8_TA(2019)0082 A8-0045/2019 European Parliament resolution of 12 February 2019 on the implementation of Directive 2009/128/EC on the sustainable use of pesticides (2017/2284(INI)) point 22 https://www.europarl.europa.eu/doceo/document/TA-8-2019-0082_EN.html
[49] P8_TA(2019)0082 A8-0045/2019 European Parliament resolution of 12 February 2019 on the implementation of Directive 2009/128/EC on the sustainable use of pesticides (2017/2284(INI)) point 54 https://www.europarl.europa.eu/doceo/document/TA-8-2019-0082_EN.html

[50] See Study from the European Parliament Research Service, April 2018, European Implementation Assessment Regulation (EC) 1107/2009 on the Placing on the Market of Plant Protection Products, summarising the experience from the implementation of Article 53 on emergency authorisations of pesticides, under the Regulation 1107/2009 (see p. 57-61)

essence, an empty shell. This approach presents the high risk of delays in the definition and therefore collection of the data on chemicals input.

That is why we recommend you to support AM 145, 153, 244, 245

3. Procedural choices limiting the risk of structural delays

The definition of the detailed data requirements (e.g. what variables to collect, to what level of detail etc.) are so important to ensure the effectiveness of the regulation that it is not appropriate to rely on the implementing act procedure as proposed by the Commission (Article 5(9)). It is because this procedure is adapted for mere 'implementation'[51] of the regulation, not to 'specify' its content. Delegated acts are meant to be used in such case, i.e. "to supplement or amend".[52] In addition, the implementing act procedure in the area of chemicals has led to endless discussions with Member States and thus to structural delays.[53]

That is why we recommend to support AM 127, 154, 159, 168, 171

Some MEPs have even suggested not to provide any delegated powers to the Commission to amend or supplement the list of detailed data topics. This means that the regulation will have to go through a completely new legislative process to adapt to new data needs. This is the most heavy and lengthy process of all and therefore the longest and least efficient. This cannot be accepted. Some have also proposed to limit the delegated powers to 5 years, which will not leave much time before a new legislative process has to reopen.

Reject AM 44, 148, 149, 150, 219, 220, 221

While the Commission should be granted delegated powers to be able to adapt the data topics to new needs, the current proposal also grants the Commission the right to 'amend' the existing data topics. Such power is very broad and should therefore be confined to 'adding new' detailed topics.

Support AM 152

4. No repeated 'feasibility' analysis

a) Reject calls for an update of the 2016 Impact Assessment

The need for flexibility to be able to adapt the statistics law to 'new' data needs is not a valid reason to require the 'update' of the 2016 Impact Assessment. This Impact Assessment already foresaw that the data needs would evolve with time and integrated this concern when assessing the effectiveness of each option.[54] This flexibility is thus embedded already in the Proposal with the possibility for the Commission to adopt new 'ad hoc' data requirements (under Article 6). There is therefore no need to 'update' the Impact Assessment.

Reject AM 108

[51] Article 291 TFEU
[52] Article 290 TFEU
[53] Brussels criticised for delays in banning toxic chemicals | Pollution | The Guardian
[54] See p. 42 IA 2016 "Both regulations would remain open for new needs and help to improve cross-domain cooperation".

b) Reject calls to require “feasibility studies” every time data sets are specified

The 2016 Impact Assessment (IA 2016) has already assessed the relevant questions warranted in impact assessments.[55] It is unlikely that when specifying the ‘variables’ of the data required, the conclusions as to the effectiveness or efficiency assessment set out in the IA 2016 would change significantly.

Requiring impact assessments for specifying the data requirement would lead to unnecessary delays in the adoption of implementing or delegated acts, and in the delivery of much needed data. This would run contrary to the spirit of the inter-institutional agreement at the basis of the Better law making institutional commitment.[56]

Reject AMs 68, 78, 111, **163** (re. regular data requirements)

Requiring impact assessments when the Commission identifies an ad hoc data need under Article 6(1) and proposes to adopt delegated acts to supplement the data set, defeats the purpose of having a flexible regulation. This flexibility was at the core of the Impact Assessment that favoured the option that lead to this legislative proposal. Without it, the reform loses key benefits. It would create further delay and prevent policy makers from receiving relevant data before they need to make a policy decision.

Reject AMs 91, **165, 175** (re. ad hoc data requirements)

[55] https://ec.europa.eu/info/sites/default/files/better-regulation-guidelines-impact-assessment.pdf
[56] Inter-institutional agreement between the European Parliament, the Council and the Commission on Better law-making, 13 April 2016, para 12: “Impact assessments are a tool to help the three institutions reach well-informed decisions and **not a substitute for political decisions** within the democratic decision-making process. IIA must not lead to **undue delays** in the law-making process”

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ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.