

Time to fill the data gap on the use of pesticides

Analysis of the Council position on the reform of pesticides statistics

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Background

This analysis relates to the ongoing reform of the EU regulations on the “Statistics on Agricultural Input and Output” (SAIO).¹ This legislative reform is pivotal because it is meant to ensure the availability of the **data needed to measure progress towards the reduction target** at the core of the EU Farm to Fork Strategy: the 50% reduction in the use of pesticides.

Today, the legal framework is weak. As a result, Eurostat receives incomplete data from Member States on the use of pesticides and only publishes very vague aggregated datasets.² No precise data is available showing what pesticides were used in recent years to produce food in the EU, nor where, when and in which quantities.

The proposal of the European Commission (Eurostat)³ repealing Regulation (EC) No 1185/2009 concerning statistics on pesticides was published in February 2021.⁴ Since then, the Agriculture Committee of the European Parliament has adopted its position supporting key aspects of the proposal. They support several amendments to ensure in law that the data obtained and published will be at a meaningful level of detail and quality.⁵

The Council has now published its “Mandate for negotiations with the European Parliament”.⁶ This note aims first to explain **what the amendments put forward by the Council mean** for the future collection and publication of data on pesticides use. Appendices expose in more details the **weaknesses of the key arguments** raised by Member States to support such position.

¹ See [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0020\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0020(COD)&l=en)

² See https://ec.europa.eu/eurostat/databrowser/view/aei_pestuse/default/bar?lang=en

³ See Proposal available at:

[https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2021/0037/COM_CO M\(2021\)0037_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2021/0037/COM_CO M(2021)0037_EN.pdf)

⁴ Regulation (EC) No 1185/2009 of the European Parliament and of the Council of 25 November 2009 concerning statistics on pesticides, OJ L 324, 10.12.2009, p. 1–22

⁵ https://www.europarl.europa.eu/doceo/document/A-9-2021-0285_EN.html

⁶ [Search results - Consilium \(europa.eu\)](#)

Summary of the Council position

In summary, if the Council position was to become law, **it will not be possible to monitor in any meaningful way by 2030 whether we have achieved the 50% reduction of pesticides use target at the core of the Farm to Fork Strategy**. And this is simply because if the Council's position becomes law, the relevant data on pesticide use will not be available.

If the old system (Regulation (EC) No 1185/2009) corresponds to a ruin beyond repair, and the Proposal of the Commission a new-build with strong foundations for the collection of data on pesticides use, the Council position amounts to:

- Undermining the **foundations** of the new house
- Drilling **holes** in the walls
- Making the **backdoor** wider and leaving it open
- Preventing the foundations from being fixed and the holes filled **in the future**
- Ensuring the **blinds** remain closed
- **Delaying** the construction and move-in dates

As a result, the new house will have shaky foundations, a lot of draughts, and not much light, and will still be under construction in 2030.

The Council position, or how to wreck a construction project

1. Undermining the foundations of the new house

The Commission, acutely aware of the need to improve data on pesticides use, proposed key improvements to the current system, which are the foundational pillars of the new framework:

- Increasing the **frequency of the data** collection on the use of pesticides from every five years to every year (“annually” in last lines of the Annex of Commission Proposal);
- Ensuring all Member States provide data for the **same reference periods** (e.g. “calendar year” in the last lines of the Annex);
- Ensuring (already) existing mandatory records of pesticides use kept by professional users are relied on as the **source** of the data as opposed to voluntary surveys (Article 8 para.3 and 4 of the Commission Proposal) and the transmission be done in **electronic form**.

These proposals are intended to ensure that the data is reliable, comparable and time-sensitive. Collecting existing records also ensures better administrative efficiency. Indeed, why carry out surveys to gather data that is already compiled in records by professional users by law?

The Council is opposing these pillars by:

- Keeping the old system for pesticides statistics (Regulation (EC) No 1185/2009) in place **until January 2026**, delaying the already late entry into force of the new system by at least three years (See amendments to Article 17)

- Keeping the current frequency of the data to **every five years** (see amendment to the Annex, last line) and making reference periods vague ('Year' instead of 'Calendar Year' in the Annex);
- Making the **records** on pesticides use a **voluntary source**, allowing the old fashioned, burdensome and less reliable survey system to be used (see Amendments to Article 8 para. 3 and 4)

It means that the Council intends to continue living in a ruin for four more years, and then move into a new house that has foundations as shaky as the old one. This amounts to limiting the improvements between the old and new house to a fresh coat of paint.

More concretely, it means that by 2030, no relevant, annual, and reliable data on the use of pesticides across the EU will be available covering the period between 2022 and 2030. It means that in 2030, when we will be assessing whether the Farm to Fork reduction target of 50% by 2030 has been achieved, it will not be possible to do so. Attempts will be made using unreliable and vague use data based on voluntary surveys carried out only one year out of five, on some crops, that will differ from one country to the next. We will then have to rely on sales data that do not show what pesticides were *actually* used in practice each year, on which crops and which areas. Sales data do not show for example pesticides that are imported even though this is very common especially in border regions.

This will be the result of this reform, despite the wide recognition that precise yearly data on pesticides use is lacking and necessary.⁷

A few Member States seem to consider that requiring the collection of professional users' records cannot legally be done under the statistics framework. They think it would need to be done via a revision of the laws on pesticides (Regulation (EC) No 1107/2009 or Directive 2009/128/EC).⁸ In Appendix 1, we explain in detail why this argument is not legally grounded.

2. Drilling holes in the walls

In addition to ensuring the foundations are still shaky after this reform, the Council position limits the extent of the data on pesticides that Member States will have to collect. In other words, it is drilling holes in the walls by:

- Limiting the data to be collected on pesticides use by **restricting the meaning of "agricultural activities"** (Article 2, new para. 16 and 18). The Council intends to exclude some activities from the scope of the regulation without providing any justification. For example, it is not clear why the Council excludes some activities listed in category A.01 ("Crop and animal production, hunting and related service activities") as defined in Regulation (EC) No 1893/2006.⁹ For example, the new definition of agricultural activities excludes some activities from sub-group A.01.6. It is also not clear why activities within category A.02 ("Forestry") are excluded when agroforestry is explicitly included in the scope of the new Common Agriculture Policy.¹⁰

⁷ See Eurostat Research paper (2019) 'Statistics on agricultural use of pesticides in the European Union' (ESTAT E1/AES/2019/RP/1); European Court of Auditor, Special Report 05/2020 'Sustainable use of plant protection products: limited progress in measuring and reducing risks'.

⁸ According to the written comments made by Member States on the Commission Proposal in February-March 2021, which PAN Europe obtained via an access to document request.

⁹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1893-20190726>

¹⁰ See Recital 14 and Article 4 of Regulation (EU) 2021/2115

- Limiting the data to be collected on pesticides, to active substances **that are approved** (Article 4(4)(b) and Article 5 para. 9(a), referring to Regulation No 540/2011¹¹). This list excludes substances that are not approved even though Member States authorise their use in plant protection products, for example for “emergency” reasons under Article 53 of Regulation No 1107/2009. It therefore leaves out of the dataset active substances whose use need to be known – especially considering that Member States abuse this “emergency authorisation” process.¹²
- Limiting the information to be collected (i.e. the “variables”) on pesticide use and sales. Indeed, the Council proposal even limits the power of the Commission to specify the “variables” on the topic of plant protection products (Article 5 para. 9(a)). The amendment does this not only by limiting the data to be collected to active substances *approved* as explained above, but also by ruling out **other variables**. For example, the “area treated” is not listed in this provision, even though this “variable” was included in the old system (see Annex II section 2 of Regulation (EC) No 1185/2009).
- Limiting the meaningfulness of the data by making the **geographic** dimension of data on pesticides use and sales too wide – the national level (See Article 5(2) with the last lines and column of the Annex). The Commission proposal does not specify that data on pesticides use will be required at NUTS2 level¹³ - but at least left this possibility open, to be decided by implementing acts. The Council is eliminating this possibility altogether.
- Preventing the collection of data on pesticides use and sales per types of farming, i.e. **organic** versus non-organic (See Article 5(2) and (4) with the last lines and 6th column of the Annex).

The Council is therefore drilling many large holes in the walls of the new house. As a result, it is difficult to see what kind of data on pesticides use will be available in 2030, to monitor even the most basic trends between now and 2030.

3. Preventing the foundations from being fixed and the holes filled in the future

The Council is also creating many hurdles to stop the Commission from filling the data gaps in the future, via non-legislative acts. It does so by imposing unnecessary pilot and feasibility studies to be carried out first. The Council even makes the fixing of the foundations dependent on amending other pieces of EU legislation *first*.

More specifically, the Council’s position amounts to:

- Excessively limiting the ability of the Commission to **increase the frequency** of data collection on pesticides use in the future (via implementing acts) (Article 7). The Council’s proposal requires a revision of other EU laws first to ensure the collection of professional

¹¹ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances

¹² 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)

¹³ NUTS2 corresponds for example to Brittany in France, to Schleswig-Holstein in Germany, or to major metropolitan areas such as Warsaw or Bucharest-Ifov. See: <https://ec.europa.eu/eurostat/web/nuts/background>

users' records (Article 7(1a)(a)) and again more feasibility studies (Article 7(1a)(b)). The choice of the implementing act procedure is also not trivial here: it means that the Commission will not be able to increase the frequency without the Member States agreeing by a qualified majority within the comitology procedure.

- Excessively limiting the ability of the Commission, to require **regional** instead of national pesticides data in the future (via delegated acts) (Article 5 para. 2 and 8). Indeed, it limits delegated acts to '*replacing or deleting the detailed topics and their [...] reference periods*', and imposes burdensome feasibility studies before it can be done (see new Article 10a);
- Preventing the Commission from adding in the future (via implementing acts) to the list of information required (or '**list of variables**') regarding pesticides sales and use (Article 5 para. 9(a)).
- Excessively limiting the ability of the Commission to fill the data gaps on pesticides use and sales, via **ad hoc data requirements** (Article 6) setting for example an arbitrary maximum of 20 variables related to plant protection products (Article 6(3)(b)).

The Council is ensuring with these amendments that the holes in the walls already known to be problematic today and the weaknesses in the foundations can either never be fixed or only with great difficult and delay. By 2030, the house will only be half built and already crumbling.

More concretely, it means that even after 2030, we will likely still not be in a position to start collecting yearly data. So even if a new reduction target were set by 2040, we will end up in the same situation, without the relevant data available.

4. Making the backdoor wider and leaving it open

The Council position also widens derogations and exemptions that could impact the collection of data on pesticide use:

- The Council **widens the possibility for Member States to exempt themselves from regular data transmission**. The exemption will not only cover cases where the impact of the Member States' data on the EU total of a variable is limited (already in the Commission Proposal), but also (and as an alternative) cases where the impact of the variable is limited in relation to the total production at national level (new Article 7a). The initial exemption proposed by the Commission was already unacceptable, given that the data may not be significant in relative terms but may still be significant in absolute terms for the people and wildlife exposed. This additional exemption proposed by the Council is even less justified.
- The Commission proposed the possibility to grant derogations for up to two years, in case data collection under this regulation would require "major adaptations in a national statistical system". The Council proposes to allow for this **derogation to be renewable** (Article 13(2)). This is unacceptable considering already how vague the scope of this derogation is and the fact that the procedure applicable to such derogations essentially gives Member States the power to grant themselves these derogations (via the examination procedure for implementing acts). In other words, it amounts to giving to the Member States the keys to open the backdoor.

5. Ensuring the blinds of the new house remain closed

Even if meaningful data on pesticides use were collected thanks to this new regulation (which is far from guaranteed considering all the amendments proposed by the Council), if it is not published, proactively by Eurostat at a meaningful level of detail, it will be all in vain. **The regulation needs to provide sufficient legal certainty to Eurostat so that they can publish this data.**

On this aspect, the Council's position is very concerning. Not only do they refrain from proposing any amendments that would improve legal certainty in this area. They go so far as to propose a baffling amendment: the deletion of Recital 31. This recital is as follows:

"This Regulation should apply without prejudice to both Directive 2003/4/EC and Regulation (EC) No 1367/2006"

This recital is an important statement of the legislator's intention to provide greater transparency on pesticides' use. This is because "without prejudice" indicates that the regulation on statistics cannot be interpreted as derogating from the EU rules implementing the Aarhus Convention¹⁴ ensuring public access to environmental information. By deleting it, the Council clearly intends to create an additional barrier for Eurostat to publish the data at a meaningful level of detail.

In other words, with this amendment, **the Council's intention is to limit the ability of the public to know relevant environmental information, and thus keep the blinds closed.** This amendment sends a strong signal to citizens that their national governments would rather keep data on pesticide use a secret.

In [Appendix 2](#), we explain why this approach is counterproductive and can only lead to more distrust in governments as it shows their reluctance to provide public to the most basic information, i.e. what chemicals they are actually exposed to. In summary, if the records are not collected systematically and their content published at a meaningful level of detail in application of the new rules on statistics, they will have to be collected and disclosed **anyway** following individual access to document requests in application of Directive 2003/4/EC. Deleting Recital 31 of the Commission proposal will not change this. This amendment is therefore **a desperate attempt to resist the existing right of citizens to know what is emitted in their environment.**

6. Delaying the construction and move-in dates

It is also important to understand when building a new house when it will be possible to move in. For our purposes, that means when relevant data on pesticide use and sales will come in and finally be available. In addition to the delay caused by the alleged need to wait for other laws to create the obligation to collect the records, the Council proposes that:

¹⁴ The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on 25 June 1998 and to which the EU is a party, along with all 27 Member States.

- This new regulation only **enters into force in 2026** with respect to data on pesticides (Article 9(3)), which makes it clear that in 2030 not much data will be available to evaluate trends in pesticide use over the last 10 years;
- Member States are given at least a **whole year** for sales data and **a year and a half** for use data **to be transmitted** to Eurostat (see Annex, 5th column). This creates a delay that seems arbitrary and excessive, preventing once more the availability of up-to-date data.

In other words, the Council's position amounts to delaying the completion of this crucial work, which is already long overdue. The need for data on pesticides use can be traced back to 1993 when the Fifth Environmental Action Programme defined as a target the "reduction of chemical inputs" in agriculture, specifically setting as an objective "the significant reduction in pesticides use per unit of land under production" by 2000 and foreseeing the "registration of sales and use of pesticides".¹⁵

APPENDICES

Appendix 1 - No legal reasons to wait

The Member States have raised a somewhat technical legal argument against the new obligation (set out in Article 8(3) and (4) of the proposal) to collect the records that professional users of pesticides must keep on their use of pesticides. They argue that it would be more appropriate to create such an obligation under other sectoral laws, namely Regulation (EC) No 1107/2009 or Directive 2009/128/EC.

These Member States seem to prefer the old system, which consists of collecting imprecise and unusable data on pesticides' use via voluntary surveys. The issue is that such surveys depend on the will and availability of farmers to participate. In addition, this survey system creates a double burden for farmers and the authorities, since the data needed and requested by the surveys is already available in the farmers' records. The regulation on pesticide authorisation (Article 67 Regulation (EC) No 1107/2009) already requires farmers to create and keep such records for three years. Not making use of them is absurd in terms of administrative efficiency.

The following explains **why there are no legal grounds to wait for Regulation (EC) No 1107/2009 or Directive 2009/128/EC to be amended to require that Member States collect farmers' records on a yearly basis and in electronic form.**

¹⁵ Available at : "[Towards sustainability](#)" the European Community Programme of policy and \ action in relation to the environment and sustainable development aka "The Fifth EC Environmental Action Programme" (europa.eu)

1. The ‘legal’ arguments raised by some Member States

According to the documents obtained by PAN Europe,¹⁶ Austria raised the following comments on the legislative proposal in February 2021:

“While we welcome attempts to give NSI’s access to existing (administrative) data, the current wording would leave us on unstable legal ground. Our specific concerns are:

1. Article 8(3) refers to Article 67 of Reg. 1107/2009. The purpose of Regulation 1107/2009 is „to ensure a high level of protection of both human and animal health and the environment and to improve the functioning of the internal market through the harmonisation of the rules on the placing on the market of plant protection products, while improving agricultural production“. The purpose is not to produce statistics. So why this reference?

2. Article 67 of Reg. 1107/2009 does not prescribe a certain format for the records to be kept by users of PPP while the proposal for Article 8(4) of SAIO foresees to oblige users to deliver electronic records.

- If the Commission sees a necessity to use electronic records, would it not be a nearby way to change the specialised law?

- The obligation to deliver electronic records would create a big burden for many users of PPP.

Why should this be done for statistical purposes when it is not necessary in specialised law?

It is not a purpose of European statistics to control the behaviour of farmers, but such an image would be created if the proposal would be realised.”

A few other Member States raised similar concerns. Lithuania for example raised:

“We are of the opinion, that the issue of annual delivery of data on use of plant protection products cannot be discussed in the frame of the SAIO Regulation until the revision of Regulation (EC) No 1107/2009 or Directive 2009/128/EC is done and the obligation for professional users to keep electronic records appears in these or in other EU legal acts.”

These Member States seem to argue that the proposal is not legally sound because only Regulation (EC) No 1107/2009 or Directive 2009/128/EC could create an obligation to collect existing records, and to do so in electronic form. They seem to consider that the legal basis of SAIO (i.e. Article 338(1) TFEU) does not empower the Commission to propose such a change.

If this is indeed what Austria and this group of countries meant, this legal argument is unfounded, as explained below.

2. In reality – there are no legal reasons to wait

First, according to settled case-law, the choice of the legal basis for a European Union measure must be based on objective factors amenable to judicial review. Such factors include **the aim and content** of that measure. The legal basis used for the adoption of other European Union measures which might display similar characteristics¹⁷ is not a factor amenable to judicial review.

In this case, the content and objective of the regulation proposed, including the content of objective of the contested provision (i.e. Article 8 creating an obligation for Member States to collect the farmers’ records) fits perfectly with the legal basis mentioned: Article 338(1) TFEU.

¹⁶ See in particular document ref. WK 1580/2021 ADD 3 obtained by PAN Europe via access to document request.

¹⁷ C-155/07, EU:C:2008:605, *Parliament v Council*, para. 34.

Indeed, Article 338(1) TFEU states:

“1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Union” (emphasis added)

The objective of the regulation is fully in line with this legal basis since Article 1 states:

“This Regulation establishes a framework for aggregated European statistics related to the inputs and outputs of agricultural activities, as well as the intermediate use of such output within agriculture and its collection and industrial processing.”

Recitals 1 to 3 of the proposal explain why statistics on agricultural input and output are necessary for the performance of the activities of the Union. Recital 1 for example states that:

“A statistical knowledge base is necessary to design, implement, monitor, evaluate and review policies related to agriculture in the Union, in particular the common agricultural policy (‘CAP’), including rural development measures, as well as Union policies relating to, among other things, the environment, climate change, land use, regions, public health and the sustainable development goals of the United Nations.”

Article 8(3)-(4) of the proposal are as follows:

3. The statistics on plant protection products as referred to in Article 5(1), point (d)(iii) shall be provided using the records kept and made available in accordance with Article 67 of Regulation (EC) No 1107/2009.
4. For that purpose, the Member States shall request from professional users of plant protection products, in electronic format, records covering at least the name of the plant protection product, the dose of application, the main area and the crop where the plant protection product was used in accordance with this Regulation.

The **main goal** pursued by Article 8 is therefore clearly the production of statistics necessary for the performance of the activities of the Union in line with Article 338(1) TFEU. That this provision will also serve other purposes – such as directly improving the implementation of Regulation (EC) No 1107/2009 by facilitating controls or of Directive 128/2009/EC by facilitating the protection of specific protected area – does not call into question the appropriateness of the legal basis. A regulation may indeed serve several purposes, and in such cases the adequate legal basis is determined by looking at its “centre of gravity”,¹⁸ i.e. its main purpose.

Second, even if there were a genuine concern regarding the legal basis and this regulation or Article 8(3)-(4) should have been adopted under both Article 338(1) and the legal bases of Regulation (EC) No 1107/2009 or Directive 128/2009/EC, **waiting for the revision of one of these two legislative acts is hardly a logical solution.**

The most efficient solution, if the legal basis were truly an issue (which it is not) would be to correct the legal basis during the trilogues. It is well-established that it is possible for a legal act to have multiple legal bases, “where a measure has several contemporaneous objectives which are indissolubly linked with each other without one being secondary and indirect in respect of

¹⁸ Lenaerts *European Union Law* (2011) section 7-015; see for example C-377/98 para 27-28

the others”.¹⁹ A dual basis is possible unless the procedures laid down for each legal basis are incompatible with each other or where the use of two legal bases is liable to undermine the rights of the Parliament.²⁰ In the present case, both Article 338(1) TFEU and the legal bases of Regulation (EC) 1107/2009 call for the ordinary legislative procedure and thus pose no risk to the rights of the Parliament.

The fact that in both scenarios the ordinary legislative procedure would apply also means that even if an error in choosing the legal basis were found, it would only be a “purely formal defect”. As such it would not lead to the annulment of the regulation should a court case ever be brought.²¹

Finally, there is **nothing unusual** in one legislative act building on a previous one with complementary goals. In such cases, the first legislative act does not have to be revised. Here are two examples.

Example 1: Directive No 2004/38/EC on the free movement of citizens and their family members in the EU states at Article 5(1): “Member States shall grant Union citizens leave to enter their territory with a valid identity card”. Regulation (EU) No 2019/1157, on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement, also adopted following the ordinary legislative procedure, set out what those cards have to look like (harmonised format with security features, bilingual, etc.).

Example 2: Regulation (EC) No 1907/2006 (REACH) - the main horizontal EU law regulating chemicals - creates a procedure to identify “substances of very high concern”, and imposes certain information obligations in the supply chain. However, it did not require suppliers of products to notify the European Chemicals Agency in case their products contained such substances. In 2018, the Waste Framework Directive (Directive 2008/98/EC) was revised and building on the obligations already existing in the REACH Regulation, required Member States to go further and “ensure that any supplier of an article as defined in point 33 of Article 3 of [REACH] provides the information pursuant to Article 33(1) of that Regulation to the European Chemicals Agency as from 5 January 2021”.²²

If every time there is a need to build on existing legislation there needs to be a revision of the original instrument, EU law will evolve very slowly if at all, and necessary actions at EU level would be paralysed.

¹⁹ Lenaerts *European Union Law* (2011) section 7-016

²⁰ C-178/03 para. 57

²¹ C-81/13 para. 67

²² See Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste, OJ L 150, 14.6.2018, p. 109–140.

Appendix 2 – A reminder of the public’s right to access records on pesticide use

1. The Aarhus rules under EU law

The Council’s position does not square well with Member States’ international commitment to comply with the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“**the Aarhus Convention**”).²³ This Convention was adopted in 1998 in the Danish city of Aarhus (Århus). It entered into force more than 20 years ago.

According to Article 1:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention. (emphasis added)

Article 3(1) states:

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention. (emphasis added)

The first pillar of the Aarhus Convention on the right of access to environmental information was implemented in EU law via Regulation (EC) No 1367/2006²⁴ (for EU institutions) and via Directive 2003/4/EC (for national public authorities).²⁵ This framework sets out a special regime for access to information when the information relates to “emissions into the environment”.

According to Article 4(2) of Directive 2003/4/EC:

Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.

This means that information on emissions into the environment cannot be kept secret even if the information requested would adversely affect, for example:

- “The confidentiality of **commercial or industrial information** [...], **including the public interest in maintaining statistical confidentiality** and tax secrecy” (2(d));
- “The confidentiality of **personal data** and/or files relating to a natural person where that person has not consented to the disclosure of the information to

²³ More information at: [Aarhus Convention - Environment - European Commission \(europa.eu\)](http://europa.eu)

²⁴ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25.9.2006, p. 13–19

²⁵ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26–32

the public, where such confidentiality is provided for by national or Community law” (2(f));

- “The interests or protection of any person who supplied **the information requested on a voluntary basis** without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned” (2(g)).

In addition, Directive 2003/4 covers both information:

- "held by a public authority" which means environmental information in its possession which has been produced or received by that authority” (Article 2(3) Directive 2003/4);
- "held for a public authority" which means “environmental information which is physically held by a natural or legal person on behalf of a public authority” (Article 2(4) Directive 2003/4).

2. Existing right to access the records of pesticides use

Article 67 of Regulation (EC) No 1107/2009 requires that professional users of pesticides keep records of the products they use for at least three years:

Professional users of plant protection products shall, for at least 3 years, keep records of the plant protection products they use, containing the name of the plant protection product, the time and the dose of application, the area and the crop where the plant protection product was used.

This article continues as follows:

They shall make the relevant information contained in these records available to the competent authority on request. Third parties such as the drinking water industry, retailers or residents, may request access to this information by addressing the competent authority.

The competent authorities shall provide access to such information in accordance with applicable national or Community law.

While this provision, on its own, does not explicitly require Member States to collect these records, it must be read together with “applicable national or Community law”, and this includes Directive No 2003/4. These records are “held for a public authority” by professional users, within the meaning of this directive. In addition, as the records contain information on emissions, the law creates a special regime which warrants the disclosure (see above part 1.). **As a result, following an access to document request, national public authorities are obligated to collect the records and disclose them.**

In short, EU law (Directive 2003/4) requires public authorities to collect and disclose these records upon request.

It is on that basis that environmental and water supply organisations won several cases before the German courts: 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.

So, if the records are not collected systematically and the data are not published at a meaningful level of detail in application of the new rules on statistics, they will have to be collected and disclosed **anyway** following individual access to document requests in application of Directive 2003/4/EC. Deleting Recital 31 of the Commission proposal will not change this. It will only increase the amount of access to document requests and make it more difficult in practice for public authorities.

Opposing the collection of the records and deleting an important guarantee of transparency in the Commission's Proposal (i.e. Recital 31) is very much like taking the battery out of the smoke detector in the kitchen of the new house: it will undermine trust in each national government who voted in favour of it, and ultimately only waste precious time in dealing with the inevitable.

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