

NEWSLETTER

SCC Newsletter Vol. 14, No. 5, December 2014

A LOOK INTO THE REAR VIEW MIRROR – AgChem Forum Barcelona 2014

SPECIAL EDITION

Dear Subscribers,

This edition of the Newsletter comprises a detailed report on the last CIR Conference in Barcelona focused on the AgChem Forum.

A review of selected presentations on regulatory frameworks is given for your convenience.

Furthermore, information about ECHA's recent activities, nanomaterials, and launching of IUCLID6 are presented.

In the fast-moving world of regulation SCC is ready to keeping its customers on a successful course. Regardless of whether your needs are in scientific and regulatory support for agrochemicals and bi-pesticides, biocides, chemicals, feed and food additives, veterinary medicine, archiving solutions or Task Force management, SCC can provide you with high quality service and consulting.

Furthermore, we appreciate your feedback and comments regarding the SCC Newsletter. Please drop us an E-mail at newsletter@scc-gmbh.de.

Finally, all of us here at SCC would like to wish you joyful festive days and an opportunity for some relaxation before the challenging year ahead of us.



Dr. Friedbert Pistel

IN THIS ISSUE:

Foreword	p. 1
Agrochemicals	p. 2
Chemicals/REACH	p. 12
Calendar	p. 13



SEASONAL
GREETINGS
AND
A HAPPY
NEW YEAR
FROM EVERYONE
AT SCC

AGROCHEMICALS



AgChem Forum, Barcelona 9 - 10 September 2014 A Review of selected Presentations

As a sponsor of this year's CIR 2014 Conference, which included the 14th annual AgChem Forum, SCC was a major participant, both at the exhibition and as presenter.

Dr. Bernd Brielbeck, Senior Manager Regulatory Affairs Agrochemicals and Biopesticides informed as speaker about the feedback from industry on the implementation of Regulation (EC) 1107/2009 as already provided in the previous newsletter. Two other colleagues, Dr. Norbert Weißmann, Senior Manager Regulatory Affairs Efficacy, and Dr. Gertraud Wirzinger, Manager Regulatory Science Ecotoxicology, were also present at the conference to respond to customer requests and to meet customer's needs.

The following summaries of selected presentations provide you with information and insights regarding the regulatory framework, proposed timelines and other important issues related to the registration of agrochemicals.

For more information, please contact Dr. Bernd Brielbeck (bernd.brielbeck@scc-gmbh.de) or Dr. Albrecht Heidemann (albrecht.heidemann@scc-gmbh.de).

Please note that the following abbreviations appear in the summaries below:

CIRCA =	document management system used by EFSA
EFSA =	European Food Safety Authority
MRL =	maximum residue level
NGO =	non-government organization
RMS =	Rapporteur Member State(s)
(d)RR =	(draft) registration report

1. Implementation of Guidance Documents and Future Changes to Pesticide Legislation

Pavel Minár

Head of Plant Protection Products Section,
Administration, Czech Republic

Commission guidance documents on procedures can be accessed via the DG SANCO homepage and EFSA guidance documents on risk assessment and scientific issues via the EFSA homepage. The speaker proposes to bring those two locations together, as the guidance documents are dealing with different aspects of the same process. He emphasised that the guidance documents are, as stated on their initial pages, not legally binding, but that they represent a consensus between the Member States and the Commission.

He acknowledges the problem that some guidance documents remain draft versions for a very long time (longest one since 1997) and are issued in many successive draft versions. Also, drafts have been applied in the evaluation before they were finally approved. Generally, guidance documents that have been noted in the standing committee by the time of dossier submission should be used, although the speaker conceded that this did not work in practice without problems. The main concern raised in this context is the evaluation of similar products at different times. In the case of the Czech Republic, the regulatory authorities are consulting with the applicant as to which version of the guidance document should be applied. To increase transparency and reliability, the date of applicability should be given in the text of the guidance document; which should also include a detailed revision history, as has been implemented in more recent guidance documents.

Guidance documents from EFSA are usually initiated upon request of the Commission (Regulation (EC) 1107/2009 article 29). The development of these guidance documents includes a public consultation. The problem with guidance documents generated by EFSA is that they are usually very complex and long. The regulators would prefer to see a clear risk assessment output in the guidance documents, along side a risk management output and enforceability. Finally, an impact analysis of the guidance document should be part of the document itself, and the implementation should already take into account the availability of laboratory space, as well as the training time for evaluators.

The Central Zone Member States propose guidance documents on technical changes, removing the main

procedural problems related to article 43 of Regulation (EC) 1107/2009. Furthermore a simplification of the zonal system, taking into account the current experience, should be put into a new or renewed guidance document.

2. Regulatory Implications of Cumulative Risk Assessment

Jean-Pierre Busnardo

European Regulatory Affairs Manager,
DuPont Crop Protection, Belgium

The presentation focused on the overall complexity of the new approach relative to the current protection standards. The cumulative risk assessment is composed of various residue, consumption and toxicological data, which must be carefully chosen and combined. Historically, the cumulative risk assessment was introduced in the US through the food quality protection act in 1996. It was then subsequently applied to several chemical families, such as Organophosphates, Carbamates, Triazines, Chloroacetanilides and Pyrethroids.

In the EU legislation it was introduced in 2005 through the MRL regulation and in 2009 with the pesticides regulation.

A basic feature of the cumulative assessment is the grouping of substances. The US EPA has based its grouping on common toxic effects by a common mechanism of toxicity. EFSA is currently recommending a grouping by similar phenomenological effects, e.g. liver-, thyroid- or neurotoxicity. EFSA's main reason for this grouping, is that the mechanism of toxicity is often unknown.

Secondly, an exposure assessment via the residue intake has to be made. The current regulatory procedure is based on a deterministic assessment, which uses field trial residue data and a standard diet database. The new approach would be a probabilistic assessment, which includes the use of residue monitoring data as well as field data. There are several possibilities that allow refining the residue intake, such as the use of monitoring data which can, for example, be derived from market share considerations or the percentiles of crop treated with a given plant protection product. Finally, food-processing factors have to be taken into account.

Moving on to the toxicity reference values, there are two approaches envisioned, as the combined assessment groups (CAG) are populated by substances showing similar phenomenological effects. One uses individual substance NOAEL for the effect considered, divided by a safety factor to obtain an "adjusted ADI" or adjusted "ARfD". But there is also the possibility to use one product as "reference" for the CAG and rating others according to their relative potency.

Currently, the probabilistic exposure assessment software is under development, but guidance is not available, and EFSA is still working on the grouping of substances. Regulatory decisions based on the first cumulative risk assessments are unlikely to be made before 2016 or maybe 2017.

The speaker considers the following issues as problematic for the use of the cumulative risk assessment in regulatory situations.

- ❖ Implementation of the cumulative risk assessment in regulatory decisions without full assessment and understanding of the consequences
- ❖ Selection of excessive levels of protection (e.g. systematically 99.9th percentile for probabilistic assessments)
- ❖ Grouping substances by phenomenological similarity without readily available methods for trimming CAG's:
 - Large number of substances sharing the same risk cup (up to 100 thyroid effects)
 - Potential loss of uses, products, protection solutions
 - Difficulty in authorising extensions
 - Difficulty in setting import tolerances
 - Loss of predictability for new active substance investments

Industry would like to emphasise the need for the development of methods to reduce the number of active substances in the cumulative assessment groups by better characterisation of the hazard and the mechanism. Reasonable levels of protection must be set and allowance must be made for realistic exposure refinement options. It was emphasized, that the cumulative risk assessment should not further delay the MRL setting and it should also not lead to a complete review of active substances by e.g. adjusted ADI being lower than the currently valid ADI in the list of endpoints. Finally, industry needs full access to detailed residue monitoring data and dietary surveys available, to be able to conduct the probabilistic assessment.

Though acknowledging that the cumulative risk assessment is an actual requirement and will have to be dealt with by industry, the speaker emphasised that there is no rush for implementation, as consumer protection standards are already very high!

3. Member State Feedback on Zonal Submissions

3.1. Feedback from the Central Zone

Annette Smits
Account Manager,
Ctgb, The Netherlands

With respect to the harmonisation in and between the different zones, the feedback from the Central Zone is as follows. The Central Zone steering committee meets regularly, either face to face or by telephone conference twice a month. There are different minutes and bullet point lists generated in these meetings and one of those lists is also available to the public on the Internet. Issues that have been dealt with lately are, for example, safeners, which still are to be addressed within national addenda, at least until uniform data requirements are available. Then efficacy and voluntary zonal applications have been discussed and it has been agreed that these are dealt with a light touch only. Finally, it was emphasised that, if there are both in- and outdoor uses, two separate and individual stand-alone dRRs are to be submitted by the applicant.

Between the inter-zonal steering committees the meeting reports of the zonal steering committees are exchanged as means of communication.

The speaker also gave feedback on zonal submissions from the point of view of ctgb. She emphasises that all efficacy issues should always be addressed in the core of the dRR and not in the national addenda. Furthermore, there should be no contradiction between the GAP and the instructions for use. The two years storage stability should, as a rule, be submitted together with the dossier, as this requirement is meanwhile well known. Within the Central Zone, a directors consultation group (DCG) has been established to facilitate proceedings. There are yearly meetings addressing various subjects. In the last meeting it was the opinion of the directors that the resources available at the authorities of the Central Zone are adequate for the task at hand.

3.2. Feedback from the Central Zone

Gábor Tökés,
Deputy Director,
National Food Chain Safety Office, Hungary

The speaker again emphasised the regular meetings in the Central Zone. In addition, it was addressed that after the last meeting in Wageningen at ctgb. There was also an industry meeting with all Central Zone authorities. The output of these meetings is a list of agreements, minutes, and a table of zonal applications, all of which are not available to the public. As to the capacities of the authorities in the different Member States of the Central Zone, the speaker observed major differences. For ex-

ample, neither Luxembourg nor Rumania are acting as zonal rapporteur Member States.

The speaker emphasised that the Central Zone consists of three different EPPO zones. All individual EPPO zones must be addressed and covered in the dRR. Otherwise, the concerned Member States can refuse the application or conduct their own evaluation within the 120 day period that is prescribed for the concerned Member States evaluation.

Also in the biological assessment dossier all EPPO zones should be addressed separately and descriptive passages are necessary instead of compilation of too many tables. He conceded though that diagrams are useful to obtain an overview of the efficacy part.

Mutual recognition from minor crops is not possible, and, for example, applications of two times higher use rates in Hungary than in the zonal Rapporteur Member State cannot be authorized by Hungary. Non-target plants should not only be addressed in the ecotoxicological section, but also investigated in the efficacy section of the relevant EPPO zone. The question was raised, but could not be answered, on what basis the concerned Member States can support their evaluation, if the zonal Rapporteur is able to use national monitoring data.

Step 2 applications under Directive 91/414 can be submitted as voluntary zonal or national applications. It is possible to extend the uses/crops at this stage and with this application. Old studies are acceptable and can be submitted in Hungary, but they must be integrated into the biological assessment dossier.

The product re-authorisations under Regulation (EC) 1107/2009 are different from the above, in that crop extension under Regulation (EC) 1107/2009 is always a zonal procedure and mutual recognition is possible. However, crop extension is not possible under article 43. Late data submission is acceptable in the zonal Rapporteur Member State until the end of the completeness check. In the concerned Member State it is acceptable until the Member State actually starts to work on the dossier (this relates only to efficacy data). With confirmatory data it is the opinion of the speaker that they should not delay the evaluation in the concerned Member State unless a change of the conditions of inclusion of the active substance occurs.

The time period of evaluation of 12 months according to Regulation (EC) 1107/2009 starts after the completeness check has been done by the zone Rapporteur Member State (this is the UK interpretation). If Hungary is a concerned Member State they request conformation from the applicant that the zone Rapporteur has completed its work and the concerned Member State is to start the evaluation. The concerned Member States will start only after information is available on CIRCA and the certifi-

cate of authorisation is available from the zonal Rapporteur Member State.

Finally, the issue of the new guidance document on the different types of greenhouses has been addressed. A large variety of protected uses exists and each use has to be assessed differently.

3.3 Feedback from the Southern Zone

Thierry Mercier,
Deputy Director, Regulated Products Department,
Anses, France

The Southern Zone has similar meeting intervals of its Steering Committee, as the Central Zone. The zonal steering committee is currently chaired by France and the chair will pass on to Spain and Portugal in October 2014. The speaker emphasised that the workload for the chair is in no way negligible. Also, he addressed the point that not all southern Member States are equally involved in the discussions and activities, and do not attend all the meetings. The documents generated in the steering committee are not available to the public. To be able to plan the work ahead, it is important that applicants should notify, as soon as possible, what and when they intend to submit. Based on the workload, the zonal Rapporteur Member State addressed can propose another date for submission. Currently, there is no zonal Rapporteur Member State available in the Southern Zone for new applications prior to the end of 2015. Also, applicants must inform the zonal Rapporteur as well as the concerned Member States when a submission is postponed.

Between June 2011 and July 2014, 505 zonal applications were submitted in the Southern Zone addressing new applications and major label extensions. Since July 2014, 393 zonal applications for new registrations and major label extensions have been received or envisioned.

A major concern of the Member States is how to deal with article 43, re-authorisations under Regulation (EC) 1107/2009.

The southern Member States will send out letters to all authorisation holders asking to notify the dossiers that will be submitted. Greece has agreed to be the leader in this process and to identify possibilities to gather all the information submitted.

In the Southern Zone the national requirements are limited to specific crops/situations or higher tier risk assessments. The risk mitigation measures are not fully harmonised and still depend on the national rules of the Member States. However, better harmonisation of these measures is mandatory to gain more efficiency in work sharing.

All information necessary for applications in the Southern Zone is laid down in a guidance document; last revision was in December 2013 which it is available from the following homepage:

<https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp>

National addenda to the dRR must be justified and limited to specific requirements. An example would be the submission of a specific crop in one Member State. For France, there is a document available on the ANSES homepage which specifies such data requirements. Since the implementation of Regulation (EC) 1107/2009 national addenda were only necessary in less than 10% of the dossiers submitted to ANSES. Further harmonisation of the evaluation will reduce those specific requirements, but some, due to local conditions, will remain.

The speaker judges the increase of workload under the zonal evaluation of Regulation (EC) 1107/2009 as compared to Directive 91/414 to approximately 20 to 30% for each dossier! This is due to the extended level of detail, which is to be presented in the dRR; some sections can be longer than 500 pages. Secondly, the commenting period prescribed during the dRR evaluation is also increasing the workload. The speaker hopes that the new format of the dRR will improve the situation.

The speaker then addressed the possibility and emphasised the need for work sharing across the different zones. Not necessarily only of those sections which are independent of the zone, but also, if the GAP can be harmonized, across the zones as much as possible. He finally emphasised that to improve and make the zonal system sustainable, good coordination and strong communication between the Member States is essential.

3.4 Feedback from the Southern Zone

Miriam Cavaco,
Head of Management Division and Authorisation of
Plant Protection Products,
DGAV/DSMDS, Portugal

Portugal expects the remainder of 2014 and 2015 to be extremely challenging, because the first evaluations of products containing active substances fully evaluated under Regulation (EC) 1107/2009 are done. In addition, the first comparative assessments and assessments of endocrine disrupting properties are to be made for the first time.

With respect to pre-notifications where Portugal is acting as zonal Rapporteur, the applications will be accepted until June of each year and a decision will be provided to the applicants by July. The speaker clearly indicated

that they already have many requests for 2016 and no more applications will be accepted before that year. Portugal expects an advantage in the future, if pre-notifications for zonal Rapporteur Member State are organised via an EU database. She put great emphasis on pre-submission meetings, which have been shown to improve the quality of the dRRs submitted. In all completeness checks conducted by Portugal as zonal Rapporteur Member State since June 2011, not one single dRR was considered to be complete. This incompleteness leads to a delay of the starting date, which is always set to start after the completeness check.

The speaker again emphasised that the dRR is to be a stand-alone document and that in the product authorisation application access to a complete Annex II dossier must be shown.

Particular concern should be placed on the wording of the GAP. The following mistakes were highlighted:

- The GAP provided for the evaluation did not match the uses in the zone
- The GAP provided in the dRR was not the same as the GAP in the national documents
- The GAPs are different in the different sections of the dRR

The speaker emphasised that GAP changes are not accepted during or at the end of the evaluation. The few national requirements remaining in the Southern European Zone are limited to specific data and the speaker pointed out that the southern guidance document should be followed closely.

With respect to article 43 submissions, letters were sent to all possible applicants asking to notify their intentions early. For the Southern Zone Greece is gathering the information. Again it was highlighted that in addition to work sharing within the Southern Zone the possibilities for work sharing between the different zones must be considered.

4. Product Renewal and Article 43 Expectations

Maarten Trybou,
Head of Service Pesticides and Fertilizers,
Federal Public for Public Health,
Food Chain Security and Environment, Belgium

The presentation was focusing on the re-authorisation of plant protection products as laid down in article 43 of Regulation (EC) 1107/2009. The speaker indicated that currently this article is under review and an amendment of the article is to be expected, which is not part of this presentation.

Article 43 regulates the re-authorisation of plant protection products after re-approval of an active substance

contained therein. It is stipulated in this article that the applicant has to apply for re-authorisation not later than three months after the active substance renewal. Active substance renewal is seen here as entry into force of the respective regulation, not the publication of such a regulation. The product application must contain only the new and necessary information for re-authorisation. And it must comply with the conditions laid down for the renewal of the active substance. A zonal Rapporteur Member State will coordinate the evaluation and all Member States must come to a decision within 12 months after renewal of the active substance. Otherwise, a prolongation of the existing authorisation can be issued as the reasons for delay are beyond the control of the applicant.

New/necessary data are data to comply with the new data requirements, data that became necessary due to changes in the active substance approval, or monitoring data. Necessary information is not information that is submitted to prolong the data protection period.

The currently available version of the guidance document addresses articles 43, 44, 45 and 46 of Regulation (EC) 1107/2009. The Commission is working on a review of the document, as are the post approvals group and the zonal Steering Committees. In addition to other issues, a revision of how to address plant protection products containing more than one active substance, as well as new forms to notify/apply for re-authorisation of plant protection products under such circumstances are under review.

Crucial to the article 43 re-authorisation process is the time, when the information on the active substance approval renewal will become known. Especially, if endpoints change and new data must be generated for the product dossier to accommodate these changes. The speaker strongly recommended that the applicant should follow closely with the Rapporteur Member State during the active substance evaluation. Timing for data generation, as well as dossier preparation, will be essential.

First indications of a change of important endpoints can be gathered in the active substance approvals procedure from the EFSA conclusion listing such endpoints. This would be the time for an applicant in a re-authorisation to start acting on the dossier preparation for the plant protection products. Also, a list of relevant studies will be published by the RMS which is of importance to the applicant.

It was emphasised that under article 43 re-authorisations are strictly limited to uses which have already been authorised before. If a use is authorised in one Member State of a zone this can be extended to the whole zone in the re-authorisation procedure. The Member States expect a facilitation of their workload, if

the applications are included or submitted via an EU database, which is currently under preparation.

There are different categories of data gaps which might be identified:

- Category one: Information required, but with no impact on the risk assessment (waivers should be possible in the re-authorisation procedure).
- Category two: Confirmatory data for the active substance re-approval, which is not necessary for the plant protection products re-authorisation (waivers should be possible in the re-authorisation procedure).
- Category three: Confirmatory data in anticipation of the new data requirements, but which are not necessary for the re-authorisation (waivers should be possible in the re-authorisation procedure).
- Category four: Data to satisfy new endpoints, but with not enough time to generate the respective study. In this case it is up to the Member States to decide whether to prolong the authorization, until the information becomes available. Nevertheless, it was emphasised that there is need for a harmonised approach.
- Category five: New data which becomes necessary, but a guidance document is still under preparation (e.g. endocrine disrupting issues). Member States should not ask for such data during the re-authorisation process.

To facilitate the zonal coordination, the applicant should notify the intention to have a review of the authorisation one year before submission. The respective form is available in the guidance document. The product, the GAP, the critical GAP and the three zonal Rapporteur Member States should be identified in the document. This information should be sent to all concerned Member States and to the chair and co-chair of the zonal steering committees. The process is to be coordinated via the zonal steering committees. It is also important that there is an effective coordination between the three zonal Rapporteur Member States. Furthermore, the GAP should be harmonised as much as possible between the three individual zones. The dossier should be restricted to the identification of essential studies, the critical endpoints and the impact of the changes in the data requirements. It was noted, that a change of

source should be possible in this procedure, but no stop of the clock is foreseen.

To reduce the workload of the Member States, the efficacy evaluation should be restricted to resistance management, that is unless uses are new for a concerned Member State or if changes in the GAP become necessary due to risk assessments in other sections, such as fate for example. Currently, the UK authorities are undertaking a trial run with such a "lighter touch" evaluation. The concerned Member States should limit their evaluation on the comparative assessment. For studies which might be submitted later, the data protection period should nevertheless start at the same time as for all studies.

A prolongation of the existing authorisation will be issued only if the delay is beyond the control of the applicant. This would apply, for example, if the zonal Rapporteur Member State or the concerned Member State cannot finalise their evaluation in due course.

Plant protection products with multiple active substances are of particular concern. Currently, it is proposed that a single plant protection products dossier is accepted, if the active substances are re-approved within one year. There is agreement that the draft registration report for the product should be submitted when the last active substance is re-approved. For the other active substances pro forma applications for the product authorisation are necessary for the Member States to be able to prolong the authorisations.

5. Comparative Assessment and Candidates for Substitution

Christian Prohaska,
Head of Department for Residue Behaviour
Austrian Agency for Health
and Food Safety (AGES), Austria

The comparative assessment is detailed in Article 50 of Regulation (EC) 1107/2009. It is obligatory for any plant protection product containing a candidate for substitution. For new products a comparative assessment is obligatory five years after the first authorisation at the latest. The speaker explained that "new product" in this context would mean any new use. For existing products the comparative assessment must be conducted in the next "legal step", which in most cases would be the renewal of the product authorisation.

A precondition for any comparative assessment is that the list of candidates for substitution has been voted upon or has been noted in the Steering Committee; it is unclear which of the two legal acts is necessary. According to the speaker, the European Commission is currently considering transitional measures which would make

the comparative assessment mandatory for product applications as of January 2016, with the exception of active substances which have been approved/renewed in the meantime and which were identified as candidates for substitution. For products containing these latter active substances, comparative assessment would have to be performed as of January 2015. However, both dates are uncertain.

The criteria for a candidate for substitution are hazard based, in contrast the active substance and plant protection product evaluation is risk based. The speaker emphasised that even though there might be a high hazard, a no risk situation can be established by appropriate methods.

The comparative assessment is due to be performed by the Member States (not at the zonal level i.e. by the zonal Rapporteur Member State). It is obligatory for products containing a candidate for substitution. An optional comparative assessment may be performed for products not containing a candidate for substitution, by comparing these products against non-chemical methods which are of equivalent agronomic effect, significantly safer and are in common use. The aim of the comparative assessment is to replace a product by methods of lesser concern, while minimising at the same time the economic and practical disadvantages for agriculture.

A further example of optional comparative assessment is reflected in Article 29 (1 d) of Regulation (EC) 1107/2009 with regard to the technical formulation. Currently, Sweden is dealing with such comparative assessments. It is only stipulated that the alternative product must show significantly lower risk. However, the definition of "significantly lower risk" is unclear. It is not considered to be useful for the comparative assessment to compare risks in different areas of the assessment, e.g. risk for health versus risk for the environment. Also consideration must be given to comparison products which contain a different candidate for substitution or even the same candidate for substitution. This might be possible if the comparison product is a combination product of two active substances and has a lower application rate than the original product.

The comparative assessment is a tiered approach.

Step one:

The product contains a candidate for substitution, i.e. mandatory assessment.

Step two:

The product is to be compared with non-chemical alternatives. At this stage resistance must take precedence in the evaluation, as well as economic effects and the impact on minor uses. It is the opinion of the speaker that this step should be a very good filter to stop or end the

majority of comparative assessments for existing products.

Step three:

A comparison for health and the environmental hazards of the product with the alternative product is to be conducted. The focus must be on the specific criterion, which defines the active substance as a candidate for substitution. It must be considered in this step that the risk assessment of the two active substances might have been different due to new guidance documents. Also risk mitigation measures have to be considered at this step.

Step four:

Other aspects have to be taken into account in this step. The question is raised, how to evaluate and weigh differences between, e.g. human risk and advantages to the environment.

As the comparative assessment clearly is not a zonal procedure, but a national issue, it has to be dealt with in the national addenda of part A of the dRR. The applicant has to provide a proposal for the comparative assessment as detailed in SANCO/2010/13170 revision 7.

Whether home and garden products are to be excluded from the comparative assessment is currently under discussion.

It is the opinion of the speaker that for most fungicides and insecticides the comparative assessment will end at step two described above. Herbicides for the same weed control might have to be taken to step three or four. Out of all products (not uses!) 20% might be subject to comparative assessment, 5% of those will have to be assessed up to step three and approximately 2% will be substituted.

The parallel trade permits will have to be considered along with their reference products. A question currently discussed is how to deal with minor crops, minor uses and products that have only one minor use in their portfolio.

For new products (i.e. new uses as defined above), it is stipulated that the comparative assessment is to be performed five years after the first authorisation at the latest. It is unclear how this could be practically done, i.e. could the initial authorisation be limited to five years. Furthermore, as substitution is a strictly national issue, this has to be considered by each Member State individually.

Currently pilot projects on these issues are ongoing in the Netherlands and the UK, and Austria is planning to join, also EPPO is involved. As a last thought before closing his remarks, the speaker asked the audience to

consider that copper compounds are candidates for substitution and at the same time are allowed in organic farming.

6. Candidates for Substitution and Comparative Assessment

Janet Williams,
Regulatory Affairs Manager,
Bayer CropScience Ltd, UK

The speaker asked, how Member States can apply the legislation on comparative assessment simply and effectively, whilst at the same time preserving adequate solutions for farmers to maintain our food supply?

She identified the authorisation of plant protection products as a 4-layer process. In step one, the active substance contained in a product is evaluated against hazard cut-off criteria. In step two, the active substances passing step one are evaluated against risk criteria in a risk assessment. Only then, in step three, are the products evaluated against risk criteria and finally, in step four, products containing a candidate for substitution (CfS) will be subject to the comparative assessment.

The now foreseeable timeframe for implementing the comparative assessment and the candidate for substitution list is assumed to be as follows:

The voting on the list of candidates for substitution has been postponed. Nevertheless, voting is now expected in the Standing Committee in late 2014 or early 2015. If the need for an impact assessment is agreed upon, a delay into late 2015 would result.

For the speaker it is mandatory that a process to challenge the listing outside of the renewal process is established, e.g. in classification and labelling cases.

From an industry view point it must be emphasised that many of the criteria for classifying an active substance as CfS are vague. All active substances approved in the EU have already passed the most stringent pesticide regulatory system in the world! The listing of an active substance as candidate for substitution does not question the safety of the products and their removal does not necessarily improve safety. Once the list is finalised, proper communication of the purpose of the list is needed by the legal services of the authorities. The list must not be misinterpreted as a blacklist. There are currently too many active substances on the list and research has shown that in Germany 25% of the products and 50% of the uses would require a comparative assessment. This means 18,500 additional assessments have to be conducted by the authorities (Environmental Sciences Europe 2014, 26:11; <http://www.enveurope.com/content/26/1/11>).

To avoid confusion the following wording is proposed. A candidate of substitution would be an active substance with certain hazard properties. A product which contains a candidate for substitution would be called a candidate product. The candidate product would be compared with alternative products or methods which would be called alternative. Subsequently, the use of a candidate product may be substituted with a use of an alternative which has a lower risk. The comparative assessment is a comparison of risks of products, not of their hazards!

From a Member State perspective it is mandatory to minimise the workload as much as possible. The expectations are that there will not be a major negative impact, and only few uses and products will be substituted. This is clearly contradicting the position given previously in the presentation based on the publication.

In a non-formal consultation by the UK CRD it was stated, that only obligatory comparative assessments are to be conducted, industry is requested to submit their case (templates are available) and there will not be a comparative assessment for amateur products. It has to be clearly defined what type of application triggers a comparative assessment, e.g. whether a formulation change will be such a trigger or not.

A DEFRA report shows, there are very few viable non-chemical alternatives available, at least four modes of action are needed in every case the time available to the Member States for such assessment is clearly limited and additional fees have to be charged. In that step-by-step process, for UK CRD it is clear that one single reason is enough to stop the comparative assessment. Finally, UK will allow for industry commenting the decision.

From an industry perspective there is a strong potential for complexity and diverging interpretation between the individual Member States. There is certainly a necessity for Member States to observe the requirement of "weighing up the risk and benefits" which should minimise unwanted substitutions. They should be limited to critical effects which are severe and actually drive the risk assessment, or pose a risk to ground water demonstrated by monitoring data. Also, a significant proportion (above 25%) of an inactive isomer could trigger a substitution. However, there is a need to compare all areas of risk and not only the reason for listing as candidate for substitution. Clear documentation and the possibility to challenge the decision is needed (also challenges in court should not be precluded). Finally, the legality of industry conducting comparative assessment with competitor products, as requested in the legal documents, is highly questionable.

The speaker then presented the stepwise approach of conducting comparative assessments as detailed in the previous presentation.

One could envision additional mitigation measures to limit the risk of a candidate product. There would be the

possibility to avoid bird and mammal breeding seasons or the flowering periods, to protect pollinators. Larger buffer zones could be envisioned as well as vegetative filter or buffer strips. Also, drift reducing technologies are a possibility to reduce the risks. All these measures could make the candidate product or use into a use as safe as that of the alternative. A substitution should only take place, when the alternative is better than the candidate for the human health and at the same time, for the environment.

The question was raised on how to reintroduce a substituted use, if the reason for substitution no longer exists. A quick procedure would be welcomed, but to expect a full re-evaluation, to even updated Guidelines, might be more realistic.

7. Data Protection, Confirmatory Data and Trade Secrets under 1107/2009

Claudio Mereu,
Partner,

Field Fisher Waterhouse LLP, Belgium

The basic rule on data protection is laid down in Article 59 of Regulation (EC) 1107/2009, but Article 62 (4) stipulates that vertebrate animal test and study reports are not to be repeated.

Conditions for studies to fall under data protection are:

- ❖ Data necessary for authorisation or amendment
- ❖ GLP or “Good Experimental Practice” was observed in the study
- ❖ Protection is claimed at the time of submitting the dossier and the protection was never granted before (also on another molecule) or has not expired.

With respect to the inclusion of a new crop into an application where new data is submitted, the data protection period starts with the amendment of the authorisation and not at the time of the first authorisation.

Article 61 and 62 of Regulation (EC) 1107/2009 lay down the general rules to avoid duplicative testing. They are applicable to all studies, but with sanctions only for vertebrates studies. In the latter case, if no agreement between the parties can be reached, the Member State may rely on the studies of the first applicant to the benefit of the second applicant.

Access to data and documents held by institutions is laid down in Regulation 1049/2001 and the Aarhus Convention. Article 14 of Directive 91/414 and Article 63 of Regulation (EC) 1107/2009 lay down the confidentiality that can be claimed by an applicant for certain data.

These confidentiality claims apply “without prejudice” to legislation on access to environmental information (Aarhus Convention).

In case C-266/09 (studies/reports on presence of residues in lettuce) there was a request for access for such information. In this case, environmental information includes information submitted under a national procedure for the authorisation or the extension of the authorisation of a plant protection product. A request for access may, except where it relates to emissions into the environment, be refused if disclosure would adversely affect confidentiality of commercial/industrial secrets. The national authorities must, in these cases, balance interests at stake (disclosure vs. confidentiality).

In case T-2/03 the general court stated that the request relates to a “manifestly unreasonable number of documents, perhaps for trivial reasons, thus imposing a volume of work for processing this request, which could very substantially paralyse the proper working of the institution”. It was then added that an institution must therefore retain the right to balance the interest in public access against the burden of work so incurred.

Case T-545/11 ((Greenpeace NL & PAN Europe vs. the Commission) currently under appeal).

The two NGOs have requested access to documents held by the European Commission in support of the first approval of glyphosate, to be informed about the composition of the active substance glyphosate. They invoked Article 4 of Regulation 1049/2001, which contains exceptions against disclosure, even where disclosure would undermine the protection of commercial interest. The general court rejected the European Commission’s refusal to disclose the data, which is now challenged by the Commission again in court.

In case T-578/13 (Luxembourg Industries vs. the European Commission) EFSA has informed the notifier that it intends to make a dRR for potassium phosphonates publicly available and asked for sanitisation. The notifier objected to the release on this new active substance. Upon which EFSA referred the matter to the European Commission for decision under Article 14 of Directive 91/414. The court so far has decided against the disclosure of the documents, but the final decision is still pending.

8. Update on Endocrine Disruptors

Neil Greener,
Regulatory Manager,
Syngenta, UK

The WHO/IPCS (2002) definition of endocrine disruptors is widely accepted. An endocrine disruptor is an exogenous substance or mixture that alters function(s) of the endocrine system and consequently causes adverse effects in an intact organism, or its progeny, or (sub) populations.

This definition was not developed to be a regulatory definition!

EFSA in 2010 defined an endocrine active substance (EAS) as follows: "any chemical that can interact directly or indirectly with the endocrine system and subsequently result in an effect on the endocrine system, target organs and tissues". The speaker emphasised that in these terms the word "adverse" is missing. Thus, it applies to many substances, such as coffee and chocolate.

In 2012 a WHO/UNEP report raised global concerns on endocrine disruptor (ED) chemicals. This report is considered by the speaker not to be a suitable scientific basis for policy making on endocrine disruption. A critical review of that report was published by Jim Lamb *et al.* in February 2014 highlighting that the summary is not a true representation of the main report, disease trends are attributed to endocrine disruptors without evidence of their causes and dose response and potency are very poorly addressed. The report of WHO/UNEP does not provide a balanced assessment and is not an accurate reflection of the state of scientific knowledge on endocrine disruptors.

The ED issue within the EU is reflected in a variety of individual areas, such as pesticides, biocides and REACH. They differ widely as to the details of what they stipulate. In plant protection regulation endocrine disruption is a hazard based assessment and could be part of the cut off criteria. The Commission was under obligation to present scientific criteria by 14 December 2013. As long as these criteria are not available the current interim criteria continue to apply, although they are a poor substitute for true scientific criteria. A roadmap has been published which should lead to the establishment of such scientific criteria. The Commission is not limited to the stipulations of the roadmap, but is free to act otherwise. Industry is particularly welcoming the inclusion of risk assessment elements and socio-economic considerations as options for regulatory decision making. The roadmap contains little detail and, in particular, a complete risk assessment option for identifying endocrine disruptors is absent. The potential health care costs of diseases claimed to be linked to ED exposure must be based on robust scientific data and a scientific

approach is needed for assessing them. The final ED criteria need to result in consistent regulatory decisions across the parallel legislations of plant protection, biocides and REACH. Industry asks that endocrine disrupting compounds should be managed by risk assessment, considering both hazard and exposure. The EFSA opinion of 2013 concluded that endocrine disruptors and endocrine active substances can be treated like most other substances of concern, which is exactly what industry is still maintaining. The concept of categorisation for endocrine disruptors is likely to have a negative impact on European agriculture, innovation and international trade and will almost certainly lead to blacklists! Industry is of the opinion that the WHO/IPCS definition should be used as a basis for identifying potential ED hazards, but these should be amended by considering, for example, severity of effects, potency and reversibility. A structured weight-of-evidence-approach, considering all relevant information, will give a solid basis for regulatory decision making and ensure, the final ED criteria can differentiate substances that are of high regulatory concern from those that are not. It is option 4 of the roadmap, which takes this into account, but the proposal needs to go further than detailed in the paper.

The development of active ingredients worldwide is stable, but active ingredients developed for the European market have decreased from 33% of the total in 1980 to approximately half (16%) in 2014. Endocrine disrupting criteria have the potential to further hinder innovation and research in the EU. Furthermore, they have an impact on international trade, if we can assume that the MRLs for such substances will be set at the default value of 0.01 mg/kilogram, this will affect an import worth of 65 billion € by the endocrine disrupting cut-off criteria alone.



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CHEMICALS/REACH



IUCLID 6

SCC has accompanied the testing phases of IUCLID 6. The external testing phase 3 of IUCLID 6 (migration, import and export, dossier creation) has been started at end of September 2014. Next deliveries for testing are planned for December 2014 and March 2015. The release is also foreseen in 2015. Thus, one can assume that IUCLID 6 might become available in 2015.

Substances under Focus - The latest ECHA and Member State Procedures

Until recently, the first possibility to realize that a substance is under focus by EU authorities was the listing on the Registry of Intentions indicating that a Member State will submit an Annex XV Dossier for either authorisation, restriction or CLH purposes of a substance of concern. It is now planned that - even not mandatory - Member States will carry out a Risk Management Option Analysis (RMOA) prior to the Registry of Intention listing to enable a proper discussion on the most appropriate route for regulatory risk management of a substance of concern. The purpose is to clarify at the very beginning whether regulatory risk management activities are required for a substance and if so which instrument (authorisation, restriction or CLH) is the most appropriate. It is planned that industry and the general public will as soon as work on the RMOA starts be informed via a so called Public Activity Coordination Tool (PACT). This tool went online end of September for the first time and contains 80 substances which will be/ were analysed in a RMO analysis with regard to defined risk concerns. The majority of substances are under focus due to suspected CMR and sensitisation properties (e.g. diisocyanates). But also endocrine and PBT substances are within the scope.

PACT will from now on be the number one table to be monitored to learn as early as possible that a substance is under focus.

PACT can be accessed via the following link:

<http://echa.europa.eu/addressing-chemicals-of-concern/substances-of-potential-concern/svhc-roadmap-implementation-plan/pact>

This first publication shows that there are parallel activities at different Member States for the same substance as some substances listed here are for example also on the CoRAP list with no final decision yet!

Nanomaterials

Nanomaterials themselves are covered by the definition of substance within the REACH legislation (Regulation (EC) No 1907/2006), as can be read on the European Commission's webpage: "Nanomaterials are regulated by REACH because they are covered by the definition of a chemical "substance" in REACH. The general obligations in REACH therefore apply as for any other substance and there are no provisions referring explicitly to nanomaterials." However, for the regulatory framework specific requirements for nanomaterials have proven necessary in order to improve assessment of potential hazards imposed by nanomaterials and to allow corresponding risk management measures.

For this reason, ECHA has published recommendations for exposure assessment and risk characterisation of nanomaterials under REACH. The document on "best practice for REACH registrants" summarises the outcomes of the third and final agency's GAARN (Group Assessing Already Registered Nanomaterials) meeting in September 2013. By this document, ECHA stresses the legal obligation for registrants updating their dossiers as soon as new information becomes available (e.g. new nano-specific studies as scientific developments are progressing).

Dossiers need to contain a comprehensive physico-chemical characterisation of the registered nanoform(s). For nanomaterials, not only their chemical composition but also size, shape, morphological and surface properties (specific and total surface area) determine their characteristics (e.g. if similar to biological molecules). These properties do not only differ in comparison to the corresponding bulk material but also between different nanoforms of the same substance. Depending on the nanomaterial, the majority of the particles may be agglomerates or aggregates. Thus, all these forms need to be identified and characterised and safe use has to be demonstrated for each.

However, measuring nanomaterial exposure is complicated and a single approach can currently not be used or recommended. Not only (the usual) mass-based exposure concentrations, but also e.g. number of particles per air volume unit are relevant. There are few measurement methods with nano-specific devices but they are not chemical specific and background is always included.

Thus, beside all these technical and analytical challenges, the regulatory requirements have to be specified. The Commission plans to modify REACH Annexes and Guidance but not the main text of the Regulation.

ECHAs recent action to improve transparency

The web section on ECHAs homepage for the Board of Appeal (BoA) now contains summaries of the main BoA final decisions (<http://echa.europa.eu/en/about-us/who-we-are/board-of-appeal/decisions>). The summarised cases contain e.g. decisions on the proceeding of ECHA (communication of deadlines) or interpretations of the REACH legislation (company status e.g. SME, data requirements and waiving arguments). Thus, these decisions become compulsory reading for all those involved in REACH registration in addition to already published ECHA guidance. The now published summaries improve the accessibility of the documents as the main parts are briefly described in more accessible wording. ECHA points out, that the summaries have an unofficial and non-binding status. Thus, if a case matches to your current situation the original decision should be consulted.

ECHA makes a further step in acquisition of old JRC data set

The ECHA database for information on chemicals now contains a copy of the Existing Commercial chemical Substances (EINECS), the European List of Notified Chemical Substances (ELINCS) and the list of No-Longer Polymers (NLP). Thus, it is now possible to search old data as well as current registration dossiers in one procedure. ECHA plans to implement further functionalities for the future.



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CALENDAR



Residues workshop – The current and future challenges

26-27 January 2015, Brussels, Belgium

A main issue of this workshop organized by ECPA will be to review and discuss the present and future challenges linked to Regulation 396/2005 – the progress that has been made and the issues that still need to be resolved. The workshop will also look at future demands to update the legislation – and the opportunity to build on and enhance the current legislative framework. Dr. Monika Eder, Senior Manager Residues and Consumer Risk Assessment, will attend this conference and will be available to talk to you about your regulatory needs.

EDITION NOTICE

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