

## Justice Pesticides Newsletter n°1 - January 2021

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This is Justice Pesticides' newsletter first issue.  
Justice Pesticides collects all legal cases involving pesticides in the world in order to help victims of these toxic products to obtain legal redress.  
We will try to provide you every two months with jurisdictional and legislative news regarding pesticides, as well as initiatives to fight these global poisons.  
We hope you will find this information interesting and useful. Please share this newsletter with potentially interested contacts.  
With all our best wishes for a Pesticide-free 2021!

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### Jurisdictional news



#### *France: Referral to the French Constitutional Council against the return of neonicotinoids*

Last October, members of the French parliament adopted the law “on the conditions for placing certain plant protection products on the market in the event of a health hazard for sugar beet”, which clears the return of the "bee killers" neonicotinoid insecticides. These pesticides, which are toxic in infinitesimal quantities and very persistent in the environment, have been banned in France since September 2018, according to the law for the recovery of biodiversity, nature and landscapes, promulgated on August 8, 2016. In 2020, beet growers, facing significant economic losses due to aphid vectors of the *Beet yellows virus*, requested exemptions from this ban and obtained authorization to use neonicotinoids, as seed coatings, until 2023. Arguing on the principle of non-regression enshrined in the environmental code, [opposition MPs and senators took the matter to the Constitutional Council](#) in November, with a considerable list of recent scientific studies demonstrating the negative impacts of these products on biodiversity at all levels of ecosystems and for years, well beyond the sugar beet fields where they would be authorized, and even for very small

quantities. Nevertheless, and despite proved negative impacts on biodiversity, pollinating insects and birds, water and soil quality and human health, the Constitutional Council ruled on December 10, 2020 that the provisions allowing for derogations from the ban on the use of neonicotinoid insecticides are in conformity with the Constitution as long as they apply exclusively until July 1, 2023 and only to beet crops. NGOs are studying the possibility of further legal action against the return of the bee killers.



*Bad day for Monsanto/Bayer: 2 cases in the United States and France confirmed its liability*

### [Dewayne Johnson v. Monsanto](#)

The latest twist in the case between California gardener Dewayne Johnson and Monsanto came on October 21, 2020. The California Supreme Court of Justice rejected the company's application to overturn the decision of the State Court of Appeals, which held, as did the trial jury, that the company was indeed responsible for the non-Hodgkin's lymphoma (NHL) contracted by Dewayne Johnson following the use of Roundup glyphosate-based herbicide during his professional weed control activities in school grounds.

Dewayne Johnson was the first of thousands of Roundup plaintiffs with NHL to go to trial, because his NHL is in a life-threatening stage. [On August 10, 2018](#), the jury unanimously found that the use of Roundup directly induced Dewayne Johnson's lymphoma, that Monsanto failed to warn of this health hazard and therefore acted maliciously and that the company should be punished for its behavior, and it set compensatory and punitive damages at \$289.2 million. The judges subsequently reduced the punitive damages from \$250 million to \$39 million, but Monsanto, which has since been acquired by the German company Bayer, has been challenging this decision from appeal to appeal. The Supreme Court's decision is the final step in this process and cannot be revisited, setting Monsanto's liability in stone. The next step will be the final determination of the damages owed to Dewayne Johnson, who also challenged the judges' reduction of damages. Two other US lawsuits against Monsanto and Roundup, which have been tried since the Dewayne Johnson case, confirmed the company's liability and malice and requested considerable damages, prompting the company to propose a \$10 billion global settlement to compensate

Roundup victims awaiting trial and thus avoid the thousands of pending lawsuits, while maintaining that its product is safe for health!

### [Paul François v. Monsanto](#)

On the same day and along the same lines as in the Dewayne Johnson v. Monsanto case, the French Court of Cassation - the last resort French court - rejected Monsanto's appeal against the Lyon Court of Appeal's decision of April 11, 2019, which had found it in breach of its duty to provide information, as there was no information on the label on the risks associated with the inhalation of alachlor-based herbicide Lasso.

In 2004, Paul François had received the fumes of this herbicide on his face while cleaning a tank and was quickly overcome by nausea and then by several health problems (stuttering, dizziness, headaches, muscular problems...), which forced him to interrupt his activity for almost a year. Following the recognition of his illness as an occupational disease, the farmer attacked Monsanto in 2007, becoming the first farmer in the world to file a complaint against this big multinational corporation. Lasso has been banned in the same year because of its toxicity.

On February, 13, 2012, Monsanto was found liable for the intoxication of Paul François, paving the way for damages. While it consistently contested its responsibility, from appeal to appeal and all the way to the court of cassation, each judgment in this jurisdictional odyssey of more than 14 years has confirmed Monsanto's responsibility. This judgment of the Court of Cassation of 21 October is final. The question of the amount of compensation must now be raised before the Lyon judicial court.



### *The American saga of dicamba*

On October 27, 2020, the US Environmental Protection Agency (EPA) renewed the authorisation of dicamba-based herbicides on genetically modified cotton and soybean crops until 2025, despite the [ban decided by the Ninth circuit US Court of Appeals last June](#). The judges found that the EPA failed to take into account damage to farmers and environment caused by the use of dicamba, particularly since 2017 when its use soared with the release of soybeans and cotton seeds genetically modified to withstand the herbicide. The EPA's

decision will allow farmers to continue using different versions of this toxic herbicide, which is responsible for contamination and crop damage on thousands of hectares due to its propensity to volatilise and drift, for the next 5 years. Accidents related to dicamba drift have increased year to year, with nearly 3,000 complaints from farmers in 2019. Legal actions have multiplied, and the companies Monsanto/Bayer and BASF have been found [responsible for the damages suffered by the peach trees of the producer Bader](#) and ordered to pay him \$265 million in damages, later reduced to \$75 million. Bayer announced a \$400 million settlement with the farmers whose crops were destroyed by dicamba to end the lawsuits. The few restrictions on the use of dicamba imposed by the EPA on the renewal of its authorisation, in response to the Court of Appeal's concerns, did not convince the groups behind the application to ban dicamba in view of the damage already suffered, and they intend to challenge the EPA's decision to renew the herbicide's authorisation. These restrictions have also triggered a reaction from the producers of dicamba and their associated GM crops, who intend to challenge them in court.



*France: Two Châteaux in Gironde condemned for pesticide spraying near a school*

Following a long court case, two NGOs have obtained the condemnation of two Bordeaux Châteaux for illegal pesticide spraying. Even though it seems negligible from a financial point of view, the condemnation is highly symbolic because French wine production, which makes the country's reputation, comes with an intensive use of pesticides, a source of many neighbourhood problems in wine-producing regions such as Bordeaux. On May 5, 2014, following pesticide spraying under inadequate weather conditions, with strong winds, in the vicinity of the Villeneuve-de-Blaye elementary school, 23 pupils fell ill and their teacher had to be urgently hospitalized. NGOs Sepanso and Générations Futures [brought legal proceedings](#) against Château Rémy Castel and Château de Barbe, the two wine-producing properties at the origin of the spraying, but the case was dismissed in 2017, in the absence of formally established proof that winds were blowing at more than 19 km/h at the site of the events during the disputed spraying. There was no anemometer on site! Following the NGOs' appeal against this order, it was quashed by the Bordeaux Court of Appeal, which referred the case back to the Libourne Criminal Court on July 3, 2018. On April 30, 2019, the

two Châteaux were again discharged by the Libourne Criminal Court. However, the Bordeaux Public Prosecutor's Office decided to appeal against this decision, and in a decision dated November 18, 2020, the Bordeaux Court of Appeal sentenced the Châteaux to a suspended fine of 5,000 euros. The castles must also pay the amount of 3,000 euros in damages to the civil parties.

## Legislative and regulatory news



### *European Union: Mancozeb ban, a victory for the environment and for health!*

The toxicity of the fungicide mancozeb has been known for decades, but it remains one of the most widely used pesticides in the European Union. It has already had its authorisation extended four times between 2013 and 2019. In its 2019 opinion, the European Food Safety Authority (EFSA) identified six "critical areas of concern", i.e. six reasons why mancozeb should not be authorized by the EU, including the fact that it is an endocrine disruptor, that it is classified as toxic to reproduction and that it poses high risks to birds, mammals, non-target arthropods and soil macro-organisms. According to EU rules, being toxic to reproduction and/or endocrine disrupting is sufficient to prohibit the use of the substance. The Risk Assessment Committee (RAC) of the European Chemicals Agency (ECHA) has classified mancozeb as "toxic for reproduction, category 1B" (R1B) due to the severity of brain malformations observed in the offspring caused by its metabolite ETU. The classification of mancozeb as a reprotoxic pesticide means, in accordance with European regulations, that all contact with humans is prohibited, which almost amounts to a ban on the product. The European Commission's proposal for the non-renewal of the authorization of mancozeb, adopted by a qualified majority of Member States at the meeting of the EU Standing Committee on Plants, Animals, Food and Feed (Scopaff) on October 23, 2020, therefore represents a major victory for the environment and health. Mancozeb is the first pesticide banned in the EU because of its endocrine disrupting properties. This decision should therefore serve as a precedent for banning all endocrine disrupting pesticides.



*Brazil: Paraquat is forbidden, but still allowed!*

September 22, 2020 is the date at which the import, production and marketing of herbicides based on the active ingredient paraquat are banned in Brazil, by resolution of the collegial management (RDC 177) of the National Sanitary Surveillance Agency of Brazil (*Agência Nacional de Vigilância Sanitária - Anvisa*). But paraquat is one of the most widely used herbicides in the country, and under pressure from the powerful Parliamentary Front of Agriculture (*Frente Parlamentar da Agropecuária - FPA*), which has been claiming that millions of Brazilian reais would be lost for the agricultural sector a result of the ban, the Ministry of Agriculture hastened to authorize the use of the remaining stocks of the herbicide for the 2020-2021 harvest. The normative instruction of October 22, 2020 states that the authorization of the use of glyphosate stocks will be completed by July 31, 2021 and defines the procedures for monitoring and inspection of the use and collection of stocks held by farmers. It also sets out the conditions of use of the product, risk management with regard to occupational exposure - for example: the use of closed-cabin tractors which are supposed to allow the product to be applied without exposing workers, or the use of personal protective equipment, etc. - whose effectiveness and applicability in tropical environments is questionable. Nevertheless, these decisions show that the use of paraquat, although banned, will continue this year without limitation. And this, in prejudice of the applicators, producers, consumers and the environment, and with the concern that Brazil, the champion of pesticide authorizations since Jair Bolsonaro's presidency, may decide to renew the authorization of this cheap product when stocks expire.

## **Civil society activities**



### *Exports of pesticides banned in the EU. Letter to the European Commission*

The European Union is guilty of an immoral and scandalous practice that environmental NGOs have been denouncing for years. It bans the agricultural use of the pesticides that are considered the most dangerous for the environment or health on its territory, but authorizes their export to third countries, often poor and lacking the capacity to control these products. In addition to the immoral nature of selling these toxic products outside Europe's borders, they return to Europe as residues in agricultural products that the EU imports in large quantities. Faced with this "poison circle", agrochemical companies are trying to increase the authorized maximum residue limits (MRLs) of these banned products in imported products! Following an [in-depth investigation](#) carried out with Greenpeace UK's investigation unit, Unearthed, the Swiss NGO Public Eye reveals the colossal scale of exports of banned pesticides from the EU: in 2018, EU member countries approved the export of 81,615 tons of pesticides containing substances banned on their own territory because of unacceptable health or environmental risks, to 85 countries, three-quarters of which are developing or emerging countries, where the use of such substances presents very high risks. These exports were the subject of a [webinar organized by our partner PAN-EU](#) on September 29, with the participation of 3 Justice Pesticides' board members, Corinne Lepage, former French Minister of the Environment, Michèle Rivasi, Member of the European Parliament from the Greens/EFA group, and Larissa Bombardi, a Brazilian geographer specialized in EU-Brazil relations. Justice Pesticides naturally partnered with 75 associations in the open letter sent on November 5, 2020 to the Executive Vice-President of the European Commission., and the Commissioners for Health, Agriculture and the Environment, asking them to put an end to the double European standard, which bans the most dangerous pesticides at home, but allows itself to export them to third countries, and which residues return to the plates of European consumers through imports of contaminated agri-food products. In its response on December 9, 2020, the Commission says it is considering options to achieve the goal of preventing exports of dangerous chemicals, notably pesticides, including through potential legislative change, and is assessing concerns about tolerances for pesticide residues in imported products. So it's a case to be followed in the coming year.



### *Op-ed on Strategic lawsuits against Public Participation (SLAPP)*

Along with 99 other civil society groups, Justice Pesticides co-authored an opinion piece published on November 13, 2020 against Strategic Lawsuits against Public Participation (SLAPP). These lawsuits, which are increasingly numerous, are brought by economic stakeholders against activists or civil society groups who try to highlight the seriously damaging environmental and human health actions of companies. Their aim is to frighten individuals and associations, to drown them in legal proceedings so that their energy, time and financial resources are devoted to their defense to the detriment of the denunciation of polluting activities. In the field of pesticide use, two gagging lawsuits made headlines at the end of 2020. The Minister of the Italian province of Alto Adige (South Tyrol) and representatives of the fruit industry are [suing](#) activist Karl Bär and the German NGO Umweltinstitut with threats of imprisonment and fines, as well as potential claims for millions of euros in damages, for having denounced the heavy use of pesticides in South Tyrol, one of Europe's largest apple-growing regions. In the French region of Bordeaux, an activist for the *Alerte aux toxiques*'s NGO is being sued for "denigration of Bordeaux wines" by the Interprofessional Committee of Bordeaux Wines (CIVB), which is claiming more than €150,000 in damages, following the publication of the results of the analysis of 22 bottles of wine, all of which contained residues of dangerous pesticides, although most of these wines are labelled HVE (High Environmental Value). The Op-ed, published in 11 European newspapers, including *Le Monde* in France, calls for European legislation against "this hole in democracy" of abusive legal actions.





*The murky relationship between FAO and the pesticide industry. Letter to the Director of FAO*

Following the [announcement](#) in October 2020 that the Food and Agriculture Organization of the United Nations (FAO) and the International Pesticide Producers' Organization, CropLife International, will strengthen their collaboration to find new ways to transform agri-food systems and promote rural development through innovation and investment on the ground, more than 350 civil society groups from around the world, including Justice Pesticides, have written to FAO Director, Mr. Qu Dongyu, to express their concern about the organization's official links that would be strengthened with CropLife International, "a trade association representing the interests of companies that produce and promote hazardous pesticides". The letter recalls the principles that should guide FAO, as spelled out in the organization's Code of Conduct, including its opposition to the promotion of hazardous pesticides under the aegis of its main principles such as the right to adequate food and health. The letter was delivered to Mr. Qu Dongyu on November 19, 2020, by the Director of PAN-Asia Pacific, Sarojeni Rengam, who is also a board member of Justice Pesticides.



**JUSTICE  
PESTICIDES**

**You can help us!**

Justice Pesticides needs your help to develop its database of legal proceedings related to pesticides around the world. This database, which is unique in the world, is a valuable

source of information to help pesticide victims to claim justice that is due to them and NGOs to appeal against the authorizations of these toxic products.

Making a donation to Justice Pesticides means also helping define legal strategies to put an end to the poisoning of the planet and strengthening current and increasing future litigation.

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