



## Glyphosate and glyphosate-based pesticides in courts



Glyphosate is a molecule used in herbicides marketed since 1974 by the Monsanto Company under the name Roundup. Since 2000, when the patent for Roundup was transferred to the public domain, glyphosate-based herbicides (GBHs) are marketed by approximately 1,000 companies and are the best-selling pesticides in the world, with more than 800,000 tons of glyphosate sold worldwide in 2014. In 2018, 9723 tons of glyphosate were sold in France, a significant increase from 6292 tons in 2009, making it the largest consumer the European Union.

Glyphosate is often confused with glyphosate-based herbicides, the best known of which are the various formulations of Roundup herbicides. Glyphosate, which is declared by the manufacturer as the active ingredient of these herbicides, is only one of many ingredients of the weedkillers sold on the market. Glyphosate itself is not marketed as a weedkiller and not a single farmer in the world uses glyphosate alone, but herbicides that contain many toxic chemicals, including arsenic and petroleum derivatives, in addition to glyphosate. Roundup herbicides have been shown to be 100 to 1000 times more toxic than glyphosate. However, it is only glyphosate that is assessed in the applications for EU marketing authorization and not the herbicides as they are sold and used.

These herbicides are used for the destruction of weeds. Their huge success is due to several factors. The first one is the development of "Roundup Ready GMOs" by Monsanto, which are plants that are genetically engineered to tolerate glyphosate. These GMOs have been sown on millions of acres, mainly in the Americas, and have led to a 20-fold increase in glyphosate tonnages since they were first put on the market. The second factor is the manufacture of GBHs by a large number of competitors, notably in China, and its sale at very low prices throughout the world since Monsanto's patent on Roundup expired in 2000. The third factor is its chemical characteristics: glyphosate is a total and systemic herbicide. Total, because it acts on a mechanism that all plants have to live. Systemic, because it affects all the systems of the plant, from the tissues to the roots. These characteristics have allowed glyphosate to be used in many domains: commodity crops, vineyards, arboriculture, urban and industrial grounds management. For many years, glyphosate and GBH have been denounced for their danger to human health.

In 2015, the International Agency for Research on Cancer (IARC), a WHO agency, classified this pesticide as genotoxic and a "probable carcinogen".

Despite Monsanto's denials, the impacts of Roundup on health can no longer be denied, as evidenced by more than 125,000 U.S. Roundup users who have filed lawsuits after contracting non-Hodgkin's lymphoma.

In addition to the effects on human health, glyphosate and GBH harm the environment in direct and indirect ways. First of all, they are total weedkillers, which means that they kill all plants, except those that have been genetically engineered to be tolerant to them. They turn treated plots into real deserts, from which all weeds have been eliminated. This has a direct impact on plant biodiversity. They deprive a whole fauna of insects, birds and mammals of their food and prevents pollinators from performing their mission. Finally, they can alter the quality of the soil because the degradation product of glyphosate, AMPA, which is toxic, is not soluble in water and can remain in the soil for a long time. The upcoming period represents a major issue for glyphosate. Indeed, the registration period of this pesticide in the European Union runs until 2022. A dossier for re-registration was submitted to the European Food Safety Authority (EFSA) on June 8, 2020 by the Glyphosate Renewal Group, an industry group acting for the renewal of the approval of glyphosate. Conclusions on the safety of glyphosate are expected in mid-2022, based on scientific evaluations conducted by, a group of four member states including France (environment) and the Netherlands (health), as well as Sweden and Hungary.

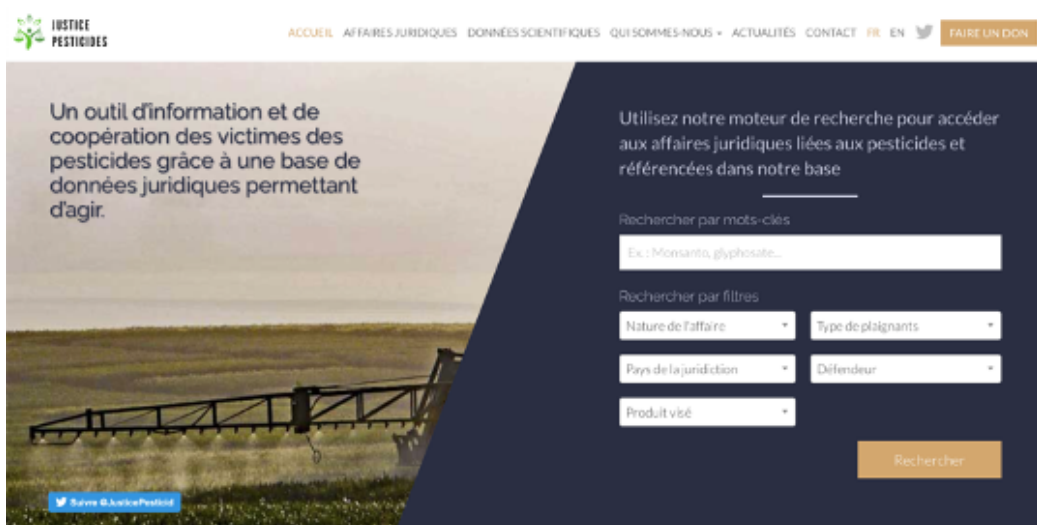
The Glyphosate Evaluation Group is supposed to publish its opinion by June 2021. Within these 4 countries, France and Sweden were opposed to the renewal of glyphosate in 2017, while the Netherlands and Hungary were in favor of renewing its authorization for 15 years. On the basis of this opinion, EFSA will define whether the substance meets the EU approval criteria. The Commission will then prepare a proposal for renewal -or non-renewal-, which will be put to a vote by the experts of the Member States at a meeting of the Standing Committee on Plants, Animals, Food and Feed (Scopaff).

Given their massive use and dangerousness, glyphosate and GBHs have led to numerous court cases. The mission of Justice Pesticides is to collect all court cases related to pesticides in the world in order to help victims to obtain compensation for the damage they have suffered, and to help NGOs to push for banning these toxic

[1] <https://ree.developpement-durable.gouv.fr/themes/pressions-exercees-par-les-modes-de-production-et-de-consommation/usages-de-matieres-potentiellement-polluantes/pesticides/article/les-quantites-de-glyphosate-vendues-en-france>

[2] Albaugh Europe SARL, Barclay Chemicals Manufacturing Ltd., Bayer Agriculture bvba, Ciech Sarzyna S.A., Industrias Afrasa S.A., Nufarm GMBH & Co.KG, Sinon Corporation, Syngenta Crop Protection AG

products, by making all the jurisprudence and legal or scientific arguments used in these disputes available to everyone. This brochure aims to show how the courts have dealt with GBHs and glyphosate within the European Union (I), and outside (II), through a summary of the cases listed on Justice Pesticides' website. Finally, it provides an overview of the evolution of the regulations (III).



Among the nearly 400 pesticide-related litigation cases collected by Justice Pesticides, 130 (1/3) involve glyphosate-based herbicides (GBHs). Cases from 13 different countries (Argentina, Colombia, Thailand, United States, etc.) are listed, in addition to 7 cases listed for the European Union and one that has been the subject of an international dispute between Colombia and Ecuador, which resulted in an agreement between the 2 countries.

This inventory shows that most of the litigation in the European Union is administrative, unlike in the United States, where there is more civil litigation due to the large number of Roundup victims. In terms of challenges to marketing authorizations in Europe, it is the so-called active ingredient of the herbicide, in this case glyphosate, that is challenged at the EU level, while it is the glyphosate-based formulations, including the various Roundups, that are challenged at the national level.

## THE EUROPEAN UNION'S CASE LAW ON GLYPHOSATE

### The Court of Justice of the European Union and Glyphosate



The Court of Justice of the European Union (CJEU) has had to rule on several marketing authorizations for glyphosate, including the publication of the information that made these authorizations possible, as well as the validity of the European regulation.

On November 21, 2018, the CJEU dismissed the appeal from environmental NGOs, after the European Commission having denied them access to several documents related to the first marketing authorization of glyphosate in Germany. The Commission had in fact granted access to requested documents, but with the exception of a part of the draft assessment report produced by Germany, because it contained confidential information. Despite the cancellation of its first judgment, the EU Court confirmed on appeal the need to protect the commercial interests of the producers of glyphosate and pesticides containing glyphosate, by allowing some information to be concealed. It considered that the information that had been disclosed to NGOs was sufficient.

On March 7, 2019, the CJEU ruled in favor of two requests. On the one hand, a private individual had requested the cancellation of a decision by the European Food Safety Authority (EFSA) to refuse access to the full contents of some documents, on the grounds that this violated both international and European regulations. On the other hand, MEPs from the Greens/EFA group of the European Parliament had also requested the cancellation of another similar decision. The Court considered that it was not possible for EFSA to refuse access to all its studies, or even to the most important documents of its studies, by virtue of the principle of information, and cancelled the two refusal decisions.

These cases show that the CJEU seeks to balance economic interests against other interests, those of the environment and the public. The protection of confidential business information is a clear hindrance in the fight against pesticides.



On October 1, 2019, referred with 4 questions for a preliminary ruling by the French criminal court regarding the EU authorization of glyphosate, and mainly the observance of the precautionary principle by Regulation (EC) No. 1107/2009 of the European Parliament and of the Council of 21 October 2009 "concerning the placing of plant protection products on the market", the CJEU considered that nothing affects the validity of this regulation, but it provided essential clarifications and interpretations on the European regulation, which are likely to call into question a large number of authorizations of pesticides, because they show that the evaluation procedures are not correctly applied by the authorities.

The European Commission's decision to extend the approval period for the active substance glyphosate by 5 years was the subject of two appeals before the CJEU, by *Associazione Nazionale Granosalus* (Italy) and *Mellifera eV* (Germany). In both cases, the Court refused to cancel the regulation of 12 December 2017 renewing the approval. The Region of Brussels-Capital also filed an appeal against the decision of the European Commission, supported by 6 NGOs, including Justice Pesticides. On February 28, 2019, the action was rejected as inadmissible for lack of standing of the Region. Despite the Advocate General's recommendations for a more open interpretation of the criteria for direct assignment, the appeal is also rejected, on December 1, 2020.



### The French judge and glyphosate-based herbicides



French judges are regularly confronted with cases concerning glyphosate-based herbicides (GBH), whether in administrative (1), criminal (2) or plant protection product liability (3) litigation.

#### 1. The administrative judge and glyphosate-based herbicides

The administrative Judge in front of GBH Administrative litigation relating to GBH consists mainly of appeals against marketing authorizations for plant protection products (a) and appeals by prefects against municipal anti-pesticide orders (b).

#### a. Appeals against marketing authorizations for glyphosate-based pesticides

Authorizations for the marketing of pesticides are decided by the Minister of Agriculture, after receiving the opinion of the French Agency for Food Safety (AFSSA). Several organizations, including CRIIGEN and Générations Futures, sought to have these ministerial decisions cancelled by the administrative courts.

On March 7, 2012, at the request of the association Générations Futures, the Council of State enjoined the Minister to reconsider his decision to authorize the marketing of Roundup Express. The High Court considered that the Minister had not implemented an appropriate evaluation method because he did not prove that pelargonic acid was not an active substance in the formulation.

On the other hand, on the same day, the Council of State rejected the request for cancellation of the marketing authorization for Roundup, filed by the NGO CRIIGEN. The judge considered that the analysis method used by AFSSA, which was based on the evaluations carried out when glyphosate was included on the European list of authorized active substances, was appropriate for assessing the toxicity, including chronic toxicity, of the product. The Council of State also considered that CRIIGEN did not prove that AFSSA had not assessed the effects of the active substance in relation to its co-formulants. Finally, since AFSSA had concluded that the risks to human health were acceptable, subject to effective and appropriate management measures, the Council of State considered that Roundup can remain authorized.

However, the Administrative Court of Lyon cancelled the marketing authorization for Roundup Pro 360 on January 15, 2019, at the request of CRIIGEN. As a result, considering that all authorizations of glyphosate-based herbicides should be cancelled equally due to their toxicity, CRIIGEN referred the matter to the Administrative Court of Paris on April 15, 2019, so that it may order the withdrawal of the marketing authorizations of all concerned products. This decision is pending and could be one of the most important decisions regarding glyphosate since it will take a position on all products containing this molecule.

#### b. The development of municipal anti-pesticide orders

Since 2019, the administrative judge is faced with a new form of opposition to glyphosate: that of city mayors. Indeed, many French municipalities, of which Langouët was the pioneer, have adopted orders banning the use of plant protection products, most often including glyphosate, on all or part of their territory. However, these local initiatives are systematically challenged by the prefects, who claim that city mayors are not competent to make such decisions. The anti-pesticide orders are therefore referred to the administrative judges for review. In most cases, they give right for the State and cancel them.

Indeed, it is in principle up to the minister and the prefects to adopt such restrictions, since the law has instituted a special police force for plant protection products. The mayor may issue restrictions only if he demonstrates a lack of action by the State in this area, as well as the existence of a serious hazard or particular local circumstances justifying the application of the precautionary principle in order to protect the inhabitants from pollution caused by pesticides. If these conditions are met, the mayor could then use his general police powers.

But the condition of local circumstances is generally assessed very strictly by the Judge. This is the case, for example, of the Administrative Court of Appeal of Versailles which suspended the execution of anti-pesticide orders issued by the municipalities of Nanterre, Malakoff, Bagneux, Sceaux, Chaville and Gennevilliers on May 14, 2020. The Court considered that the fact that these cities are subject to high atmospheric pollution, which would increase the carcinogenic risk of plant protection products, does not place them in a different situation from the other municipalities of the Paris conurbation. The presence of vulnerable populations and numerous establishments accommodating susceptible public (schools, retirement homes, hospitals) was also judged as not constituting a particular local circumstance. However, on March 3, 2020, the Montreuil Administrative Court ruled that the intermingling of spaces in an urban environment and the proximity between residential areas of vulnerable populations and sites where glyphosate is used constituted special local circumstances. It therefore refused to suspend the execution of the orders made by the mayors of Montfermeil, Ile Saint Denis, Sevrans and Villemomble.

At the end of 2020, the same court clarified the notion of "serious danger". It considered that a danger may indeed be serious and imminent even if the impacts from the exposure to pesticides are detected only months or years later. The judge relied on new study showing a link between pollution due to plant protection products and respiratory viruses such as Covid-19 (TA Montreuil, ord., November 27, 2020, Cne de Clichy-sous-Bois, n° 2011721). Prior to this decision, the administrative judge was struggling to find ways to recognize the danger caused by exposure to pesticides as serious and imminent. The Administrative Court of Cergy-Pontoise thus suspended the execution of an order made by the mayor of Pierrelaye and refused to recognize that his action was justified in this case, despite the submission of studies reporting malformations in children and carcinogenic risks due to glyphosate (TA Cergy-Pontoise, ord., January 9, 2020, Cne de Pierrelaye). Earlier, the administrative judge had even required the municipality to prove that there was a "short-term danger" (TA Cergy-Pontoise, ord., November 27, 2020, Cne de Pierrelaye).



As the number of anti-pesticide orders increases, judges seem to be gradually reducing the stringency of the conditions required for a mayor to act in the event of a failure by the competent authority to do so. As of today, the decisions by the administrative courts related to these municipal orders have been mostly provisional, since they have been taken in emergency proceedings for suspension. The orders have not been yet examined on their merits and cancelled or maintained.

However, on December 31, 2020, the Council of State ruled very severely on the anti-pesticide orders, imposing on them an almost systematic suspension from now on. Indeed, it considered that a mayor could not infringe on the competence of the special police in matters of pesticides, even in the presence of exceptional local circumstances that could justify his intervention under his general police powers. With this decision, the administrative judge thus establishes the principle that the strict respect of the separation of police powers takes precedence over the factual considerations inherent to each local situation. Thus, the legal principle of the separation of powers alone seems to be the basis for cancellations. It does not mean that the administrative judge would not recognize the danger of glyphosate.

In consequence, mayors are seeking other legal grounds to protect their fellow citizens and the local environment from exposure to pesticides. This is the case of the mayor of La Montagne, who adopted a new anti-pesticide order based on the concept of waste, in January 2021. On February 22, 2021, Eric Piolle, the ecologist mayor of Grenoble, also published a municipal order on the same basis, as did the mayors of a dozen municipalities in the Ile-de-France region, members of the "Anti-Pesticide Mayors" alliance. In its press release, the alliance explains that "the pesticide substances deposited in water, gardens, houses and people's lungs without their knowledge are toxic waste. Those who release them are therefore responsible for managing and disposing of them... The police powers attributed to the mayor to act on neighborhood nuisance and waste give us full competence". Indeed, since mayors have jurisdiction over waste, this new model order provides them with a new basis for action on pesticides. The prefects of the departments of the concerned municipalities will of course bring these orders about litigation on these new orders, but this time the administrative judge could make different decisions. And indeed, the administrative judge of the Nantes court refused on March 1, 2020 to suspend the order of the mayor of La Montagne.

## 2. The criminal judge confronted with symbolic activities

Activists carry out symbolic actions in order to alert the authorities and public opinion to the dangers of pesticides for human health and the environment. For example, urine sampling operations to assess the population's exposure to glyphosate have been organized throughout France. However, symbolic activities may sometime be criminal in nature, which leads to criminal prosecution of the offenders. The criminal judge is then faced with a dilemma. Indeed, the offenders often claim that they have acted because of a "state of necessity", which compelled them to their symbolic actions in order to alert the public.

French jurisprudence has traditionally considered that a scientific uncertainty about the dangers of GMOs does not allow to condemn an offender of an "illegal" activity (Cass., crim., 25 May 2016). In August 2017, the Criminal Court of Foix wondered whether scientific uncertainty about the dangers of GBHs could be recognized to preclude the verdict of activists who had degraded cans of glyphosate-based herbicides in stores. The judge therefore referred several questions to the Court of Justice of the European Union related to the observance of the precautionary principle by the European regulation on pesticides. He questioned the Court on the fact that it is the petitioner himself who decides what he calls "active substance" of his product and focuses his application for authorization on this single substance, while the finished product contains several substances. He also asked the CJEU whether the European regulation complies with the precautionary principle in that it exempts the products as placed on the market and as consumers and the environment are exposed to them from toxicity analysis. As noted above, the response that the European judge sent on October 1, 2019 is very important, since it explains without saying so that the European Regulation is not applied correctly. Indeed, EFSA does not take the "cocktail effect" of the constituents of herbicides into account in its evaluations, as prescribed by the European Regulation. This order of the CJEU thus shows that no pesticide is assessed according to the requirements of the regulation, which questions the legality of the marketing authorizations of all pesticides.

In another case, the Criminal Court of Orleans ordered the acquittal of activists who had put up posters on MP office of Marianne Dubois, on the grounds of state of necessity. The MP was criticized by the activists for her absence during the vote of May 29, 2018 on the amendment against glyphosate at the National Assembly.

The criminal judge is therefore beginning to take into consideration the risks to the environment and human health put forward by glyphosate activists in cases likely to affect the economic interests of producers and distributors of plant protection products.

## 3. The judicial judge confronted with health and environmental damages

In matters of GBH, the criminal judge, as well as the civil judge, is also confronted with cases in which individuals and groups sue pesticide producers because of damage caused to their health or to the environment.

In 2009, the Court of Cassation definitively sentenced Monsanto and Scotts France to a €15,000 fine for false advertising of Roundup. Both companies claimed that the product they manufactured and distributed was biodegradable and "left the soil clean". The NGO Eaux et Rivières de Bretagne, which had filed a civil suit, had argued that glyphosate had been classified as "dangerous for the environment", including the aquatic environment, by the European authorities since 1991. The NGO used this litigation to ask the government to ban advertising for pesticides intended for individuals.

Similarly, the Court of Guingamp sentenced the company Shopix to pay damages to the same organization because of a 2014 breach of this ban.

The judge is sometimes more reluctant to recognize environmental and health damage caused by GBHs. Indeed, the Court of Cassation refused to recognize the damage suffered by two plaintiffs due to the death of their pony because of ingestion of glyphosate. Recently, after testifying at the International Monsanto Tribunal, a moot court organized by civil society to determine whether Monsanto's activities are in breach of fundamental human rights, a private citizen sued Monsanto and Novajardin because she attributes her son's birth defects to in utero exposure to a glyphosate-based product.

## German and Austrian criminal judges and glyphosate

Environmental NGOs have filed complaints against the competent authorities that carried out the studies and reports on the risks associated with the use of glyphosate, which they claim were clearly illegal, but which nevertheless allowed the European Commission to renew the authorization of glyphosate in the European Union despite a lack of agreement between Member States. Complaints have been filed in France, Italy, Portugal, Germany (1) and Austria (2).

### 1. Germany



On March 2, 2016, a complaint had already been filed with the German public prosecutor by Global 2000, an Austrian NGO for environmental protection, as well as by other groups opposed to pesticides (Nature & Progrès Belgique, Générations futures, Pesticide Action Network (PAN) Germany, PAN UK, PAN Europe and WeMove Europe) against Monsanto, the German Federal Institute for Risk Assessment (BfR) and the European Food Safety Authority (EFSA). The complaint sought to force an investigation into the scientific evidence on which the defendants relied to support the authorization to continue using glyphosate. The plaintiffs called it a "scientific fraud" because the risks were deliberately and strongly underestimated, especially when compared to other studies, more numerous but from the academic field instead of industry studies, which show that glyphosate is carcinogenic. Despite Monsanto's reputation for scientific falsification, the public prosecutor did not want to open an investigation for fraud and did not allow the case to be tried before a German criminal judge.



After the extension of the authorization of glyphosate in the European Union in 2017, another complaint was filed before the German public prosecutor on December 4, 2017 by Global 2000 against the BfR and the EFSA, in an attempt to have those responsible for this decision based on "scientific heresy" sued in a criminal court. The plaintiffs wanted the prosecutor to open investigations for fraud, personal injury, public poisoning, contamination of soil and water supplies, and unauthorized exploitation of copyrighted works. They consider that the European Commission agreed to renew the authorization of glyphosate on the basis of a BfR report plagiarized from the study descriptions and conclusions that were part of the dossier submitted to EFSA by the applicants, the so called Glyphosate Task Force. The plaintiffs therefore claimed that BfR and EFSA did not carry out an independent, objective and transparent assessment of the submitted studies, in particular of the studies from the academic literature. Despite the evidence provided by the groups that the report was neither objective nor comprehensive, the public prosecutor did not consider that the acts described in the complaint constituted a criminal offence that could have led to a conviction. The case has therefore been stopped in Germany...

### 2. Austria



The case has not been tried in Austria either. On December 4, 2017, a complaint was filed by Global 2000, Pesticide Action Network Europe, Pesticide Action Network Germany and Générations Futures before the Vienna Economic and Corruption Prosecutor against BfR and EFSA with the same goal as in Germany: to criminally invalidate the conclusions of BfR and EFSA on the non-carcinogenicity of glyphosate. The plaintiffs argued that the agencies had violated their obligation to make an independent, objective, transparent and scientifically sound decision on the evaluation of the application for an extension of the authorization of glyphosate. While NGOs alleged corruption, the prosecutor did not follow the case, denying it a criminal trial.

Complaints filed in France, Italy and Portugal did not lead to a trial either. The lack of independent evaluation and suspicion of corruption revealed by NGOs in the EU did not seem enough to any criminal conviction, and more importantly, to cancel the five-year renewal of the authorization to use glyphosate in the European Union.



## Glyphosate imposed on the Walloon Region



In Belgium, an appeal was filed on June 26, 2017 by the Belgian association of the industry of plant protection products before the Council of State in Brussels against the order issued by the Walloon government on March 30, 2017, to ban the use of plant protection products containing glyphosate. Greenpeace Belgium has filed a civil suit to defend the position of Wallonia, the Belgian association of distributors of plant protection products, for its part, has filed a civil suit to offer its support to the pesticide industry. On January 21, 2021, the court unfortunately considered that the Walloon order was illegal due to the fact that it prohibited, in a general manner and for a significant period of time, the use of any plant protection product containing glyphosate throughout the territory of Wallonia, even though the Belgian federal state had prohibited its sale to individuals.

Time is an important parameter in the fight against pesticides, and decisions from the EU institutions take generally a few years. National justice may sometimes offer more perspectives in terms of time.



## II. JURISPRUDENCE ON GLYPHOSATE AND GLYPHOSATE-BASED HERBICIDES OUTSIDE THE EU

### North America

#### 1. United States



The issue of GBHs is obviously particularly thorny in the United States, between the issues of maximizing agricultural yields in a hyper-intensive system on the one hand, and the considerable ecological and health damage associated with the use of these pesticides on the other; the economic interests of Monsanto, which was an US company until it was bought out by the German company Bayer and is the main producer of glyphosate-based herbicides, must also be considered.

With regard to the litigation before the American courts, three major issues stand out: recognition of the link between direct exposure to products containing glyphosate - in particular the herbicide Roundup - and environmental and health damage - often non-Hodgkin's lymphoma (NHL); transparency of information on the dangers of glyphosate based herbicides and products containing it in a residual manner; and transparency of the companies and of the regulator with regard to the policies for testing the safety of these products.





More than 125,000 petitions have been filed across the country, particularly by farmers or families of farmers who have developed NHL, in an effort to have the dangers of repeated exposure to glyphosate recognized. The recent recognition by the American courts of the link between glyphosate and these cancers has been achieved through a few resounding decisions, which have been impressive because of the amount of damages required from the company. The first plaintiff was Dewayne Johnson, a gardener suffering from terminal NHL. This was the first case because of his condition and his slim chances of survival. In a lengthy legal saga in San Francisco Superior Court, a popular jury ordered \$289.2 million in damages, which was later reduced to \$39 million by the judge. In *Hardeman v. Monsanto*, a California court ordered Monsanto to pay the plaintiff \$75 million in punitive damages and \$5.3 million in compensation for past and future medical expenses, reduced to \$20 million by the judge. In 2019, in the first of a series of joined cases "Roundup Judicial Council Coordination Proceedings", Monsanto is condemned to pay, as compensatory damages, \$2 billion to the Pilliods couple, later reduced to \$69.3 million. The Court considered that Roundup is the probable cause of the illness of the couple and points to the "malice" of the company.

Faced with a considerable number of complaints and the results of the first three trials, which recognized Monsanto's responsibility and malice each time, the judge ordered the plaintiffs' and defendants' lawyers to meet quickly to consider settlements outside the courts. A deal that settles the Roundup, dicamba and PCB lawsuits in the U.S. for more than \$10 billion is proposed by Bayer for all but the 3 first claims, which are under appeal. In September 2020, a final settlement is reached with three major law firms representing tens of thousands of plaintiffs. This final settlement of more than \$11 billion is reached for on-going legal cases. To try to resolve future Roundup cancer litigation, Bayer announces on February 3, 2021, a new \$2 billion plan, which would compensate "qualified plaintiffs" over a four-year period. The new proposal is immediately opposed by law firms and legal scholars, who say "the proposed settlement seriously undermines access to justice for millions of people in the proposed class, would prevent Monsanto's victims from holding it accountable, and would reward Monsanto in many ways." The proposal is awaiting the judge's decision.

While the recognition of the carcinogenic nature of glyphosate has been acknowledged in the U.S. courts, there is also litigation that has sought to gather information about testing and authorization processes involving federal agencies, and which is symptomatic of the lack of transparency in the assessment process.

As examples, United States Right To Know (USRTK) requested all communications between the Environment Protection Agency (EPA) and Monsanto, particularly during the validation processes, as well as the exchanges of correspondence between the Food and Drug Administration (FDA) and the EPA regarding possible glyphosate residues in food, on May 22, 2018, in the District Court of Washington. A year later, on July 8, 2019, the same group is requesting before the same court the communications of the State Department related to glyphosate, after the renewal of its authorization for five years by the European Commission. These two cases have not yet been decided.

The suspicion that federal administrations and agencies intervened in favor of the registration or export of glyphosate is revealed in a case recently filed by the Center for Biological Diversity (CBD). It declares that it has seen documents that show the intervention of the US Department of Commerce with Thai authorities to prevent the ban on the import of glyphosate that had been decided by the Thai government and validated by the country's judges. CBD says that the department acted as an "agent" of Bayer and Monsanto in this case.

This lack of transparency is prompting several plaintiff groups to take legal action directly targeting the authorization of glyphosate: *CBD v. US Fish and Wildlife Service*, filed on February 19, 2016 in the Northern District Court of California is a case in which CBD accused the federal agency of failing to conduct assessments of the impacts of various substances on a variety of protected species, including the delta smelt and the alameda snake. It concludes with a settlement that commits the Fish and Wildlife Service to use impact studies of glyphosate among others, on 1,500 protected plants and species. A more recent, as yet untried, litigation was filed in January 2020 with the 9th District Court of Appeal in San Francisco. A coalition of farmworkers sued the EPA for failing to consider the cancer risks, the development of "superweeds", and off-field hazards associated with glyphosate use and exposure when it renewed the authorization of glyphosate from 2020 on. Agricultural lobbies are not to absent in litigation aimed at countering pesticide control measures. In 2018, wheat growers from the National Association of Wheat Growers went to trial to prevent the State of California from requiring cancer risk labeling on food products in the U.S. District Court for the Eastern District of California in Sacramento. The decision ruled against the State of California, but it has been appealed by the Attorney General of the State of California (*National Association of Wheat Growers v. Zeise et al.*)



The issue of transparency in relation to GBHs covers three levels of information: information provided by Monsanto on the risks associated with the use of and exposure to GBHs, honest information on these same risks from retailers, and, more specifically in the food sector, the mention of the presence of glyphosate residues in processed food products.

Litigation regarding misleading information about the safety of the herbicide is quite extensive. As early as November 1, 1996, a legal proceeding launched by the Office of Fraud and Consumer Protection resulted in a decision recognizing that Monsanto's claim that the herbicide was "safer than table salt" was deceitful.

More recently, cases are trying to force Monsanto to recognize and declare the environmental impacts and the risks associated with the development of cancers from glyphosate. In Jones et al v. Monsanto, the plaintiffs claim that Monsanto falsely assured consumers that Roundup products target an enzyme not found in people or pests. However, Roundup's active ingredient, glyphosate, attacks an enzyme also found in the beneficial intestinal bacteria of humans and some animals. In another pending case, Peterson et al v. Monsanto, the company is accused of withholding crucial information about the dangers of its product.

When it is not Monsanto directly, plaintiffs have also turned to dealers of glyphosate-based herbicides to ensure risk information: two class actions have been filed and are awaiting trial, one against the distributor Home Depot, the other against Loewe's Home. The plaintiffs claim that the recommendations on the products, which are limited to inviting users to keep them out of reach of children and warn that they can "sting the eyes", do not mention their real danger.

Another group of legal actions refers to the presence of glyphosate residues in food products sold as "All (or 100%) natural". In 2016, an initial settlement was reached between General Mills food company and the Organic Consumers Association, resulting in the company removing the sentence "made from 100% natural oat grains" from the packaging of their cereal bars. The petition in Mounira Doss v. General Mills, Inc. goes further, and sues General Mills, producer of Cheerios cereals, for not disclosing glyphosate residues in the products, even though IARC has classified the substance as genotoxic and a probable carcinogen.

Numerous lawsuits have been filed in recent years against food companies and are still awaiting a verdict: In Stecker et al v. PepsiCo and Quaker Oats Company, the companies are still being sued for selling supposedly "healthy" products that contain glyphosate residues. Bob Red Mill's, the Prêt à Manger restauration chain, and Citrus World Inc. are other examples of targets of these legal actions.

GBHs litigation has been very active in recent years in the United States; among the many areas of litigation, along with the judicial recognition of the link between the development of cancer and NHL and exposure to Roundup, the issue of transparency along the whole downstream chain, including retailers and the food industry, is becoming central. Monsanto, a major producer of HBGs, is not the only target through which the legal battle is raging. Still the numerous lawsuits from Roundup victims are the ones that are hurting Bayer the most, considering the astronomical sum of money that their resolution is likely to entail, after Bayer's overvalued and disputed purchase of Monsanto.



## 2. Canada

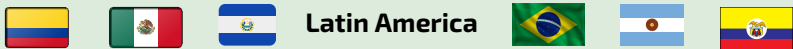


Glyphosate, declared by its manufacturer as the active ingredient in its herbicides, is the most commonly used herbicide molecule in Canada, since Glyphosate-based herbicides represent more than 60% of all pesticides sold in Canada.

Before pesticides can be imported, sold or used in Canada, they must be approved by Health Canada's Pest Management Regulatory Agency (PMRA) under the Pest Control Products Act. The PMRA re-assessed the risk of glyphosate in 2017 and concluded that the levels detected in food do not pose a health risk to Canadians. Health Canada granted continued registration of glyphosate-containing products for sale and use in Canada for 15 years, until 2032. This reassessment is being contested in the federal court. Groups have filed 7 notices of opposition to the reassessment, considering that the studies used were influenced by Monsanto. They asked the federal Minister of Health to establish an independent panel to review the re-registration decision. After the Minister rejected the request, the groups asked the federal court to conduct a judicial review of the Minister's decision, but the court found on February 13, 2020 that no scientifically founded doubt had been raised by the groups. An appeal against this decision has been filed since.

In addition, various legal proceedings in several Canadian provinces have been initiated in 2019 and 2020, including class actions, due to diagnoses of non-Hodgkin's lymphoma among Roundup users, similar to the high-profile trials that have taken place in the United States.

As for Montreal, the city had pledged to ban the use of glyphosate by the end of 2019 but its promise has been postponed.



The many lawsuits against Monsanto's GBH have less resonance in Latin America, and countries such as Argentina, Brazil, Uruguay, Paraguay, Peru and Colombia continue to use glyphosate-based herbicides on a massive scale. In Brazil, they are widely used in the GMO soybean plantations of the first economic and agricultural power in Latin America.

Nevertheless, the Federal Public Ministry obtained the suspension of the registration of any new glyphosate-based product for 30 days, pending a "toxicological reassessment" by the Agência Nacional de Vigilância Sanitária (ANVISA), the Brazilian Health Regulatory Agency, on August 3, 2018. The Advocate General of the Union filed an appeal against this decision on August 24, within a time frame short enough to allow the court to reverse its initial decision. It did so on September 4, 2018, basing its decision on the government's argument that banning glyphosate would harm the country's economy.

Argentina has adopted an agricultural model based on GMO soybean monocultures doused with pesticides such as GBHs, despite the increase in cancers and birth defects in farming areas. In the lack of a national legislation, some mayors have issued municipal orders to regulate aerial spraying. But these rules are generally contested by the big farmers. In a decision from April 2, 2008, the Provincial Criminal Court of Buenos Aires reiterated the ban on aerial spraying of pesticides on soybean fields, in application of a provincial regulation that expressly prohibits aerial spraying of pesticides within 2 km of homes. Similarly, in a decision issued on August 8, 2012, the Supreme Court of the Province of Buenos Aires ruled on the illegality of an agricultural business that had contravened the local rule prohibiting pesticide spraying of within 1,000 meters of homes. The Court therefore considered that there was a reasonable doubt about the dangers to the population of spraying pesticides near living areas.

In Colombia, the situation is quite specific. The country is a major producer of coca, a plant used to make cocaine, of which the country is a major exporter. The government has used glyphosate-based herbicides for decades to eliminate coca crops. This use has led to a conflict with neighboring Ecuador. Ecuador asked the International Court of Justice (ICJ) to rule that Colombia had violated its obligations under international law by depositing glyphosate based herbicides in Ecuador's territory, and to order Colombia to respect Ecuador's sovereignty and territorial integrity. It also asked the Court to order Colombia to compensate it for the damage or loss suffered. The deposit of herbicides was due to aerial spraying on its territory by Colombia, in the vicinity of Ecuador's territory. This could have led the Court to base a prohibition of such spraying in the vicinity of another States' territory on the obligation of non-damaging use of the territory. But an agreement was reached between the two countries on September 9, 2013, so Ecuador withdrew from the proceeding and as well as Colombia, and the Court removed the case from the docket on September 13, 2013. This agreement provided for the establishment of a zone in which Colombia could not conduct aerial spraying, created a joint commission to ensure that spraying conducted outside this zone did not actually result in the deposition of herbicides in Ecuadorian territory, and provided for the gradual reduction of the width of the said zone in the absence of such deposition.

In June 2003, the Superior Administrative Court of Cundinamarca ruled that aerial spraying of herbicides to eradicate coca and poppy crops violated Colombia's constitutional rights to a healthy environment, safety and public health.



As a result, the court had ordered the suspension of aerial spraying of potent glyphosate-based herbicides until the government complied with an environmental management plan for the eradication program and conducted a series of mandatory studies designed to protect human health and the environment. Then in 2014, Colombia's Constitutional Court ordered the Ministry of Health and the Ministry of the Environment to stop spraying glyphosate if evidence showed it posed a health risk. In 2015, following the IARC's conclusion that glyphosate "probably" caused cancer in Humans; Colombia cancelled its aerial spraying program.

Then in 2017, Colombia's Constitutional Court ordered again its suspension in an order that sought to protect an Afro-Colombian community in the remote Pacific region of Chocó that had been affected by the fumigation. However, under pressure, the Colombian government asked the Constitutional Court to allow GBH spraying, given the magnitude of the coca problem. The Colombian Constitutional Court declared in 2019 that the government could only resume spraying if it met certain conditions, such as the protection of natural reserves, consultation with the inhabitants of the areas to be sprayed, and studies on the risks to human health and the environment. When it considered that these conditions were fulfilled, the Duque government chose a Chinese chemical company to reintroduce spraying. But following an appeal from local groups, the administrative court of San Juan de Pasto ordered the suspension of aerial spraying of the herbicide on coca crops until the real and effective guarantee of the participation of the community, on May 27, 2020. The Court took into account the fact that the community has been shaken by the Covid-19 pandemic, as rural communities in Colombia often do not have reliable Internet, cell phone or radio service. But recent press reports suggest that aerial spraying may resume soon despite this decision.

In El Salvador, the parliament had voted in September 2013 to withdraw 53 pesticides from the market, including GBHs. However, this decision was partially cancelled by the then president, Mauricio Funes. He asked that eleven pesticides, out of the 53 products, would not be withdrawn, on the grounds that they were widely used and were not internationally banned. A technical committee was then set up, but the situation has not changed since then and glyphosate is still sold in El Salvador.

In January 2021, the Mexican government announced a three-year phase-out of glyphosate, despite strong pressure from the US and Bayer against this decision, as they did successfully with Thailand. This victory is the result of a struggle led by indigenous populations, small farmers' organizations and numerous groups. With this decision, Mexico has become a forerunner in Latin America.



Asia



Six Middle East countries, Oman, Saudi Arabia, Kuwait, United Arab Emirates, Bahrain and Qatar banned glyphosate in 2015 and 2016. Vietnam banned it in 2019.

On May 15, 2020, the Supreme Administrative Court of Thailand upheld a lower court's decision, rejecting a request by agricultural producers to revoke the glyphosate ban scheduled to take effect on December 1st, on the grounds that the ban had not yet taken effect and that the decision had therefore not caused harm to anyone. But the ban did not stand up to pressure from the United States and Bayer, and glyphosate was taken off the list of the banned pesticides and can still poison Thailand's rice fields (Asa Rak Mae Klong Group v. Ministry of Agriculture and Cooperatives).

In Bangladesh, the Supreme Court had the opportunity to issue a notable decision on January 5, 2020 as it ordered the government to implement a 90-day action plan to phase out the use of pesticides, including glyphosate, and introduce safe alternatives. And it did not stop there, as it also asked the relevant authorities of the government to raise awareness about the harmful effects of the use of glyphosate-based pesticides through print and electronic media.

In October 2015, Sri Lanka had banned imports of glyphosate. However, under pressure from the industry lobby and confronted with attacks from agricultural organizations for not conducting further scientific research and for causing the loss of 10% of the 300 million kilos of tea produced annually, the Sri Lankan government did an about-face. As a result, in July 2018 the government reauthorized imports of glyphosate but restricted its use to tea and rubber plantations.

Australia



In Australia, there has been extensive crop damage due to the use of glyphosate herbicides. On June 28, 2017, the Supreme Court of Victoria awarded damages to a grape grower for negligence and nuisance arising from damage to vineyards caused by his neighbor's use of glyphosate.



This decision was significant, particularly because of its scope and the amount of compensation awarded by the Supreme Court.

Many Australians who have been using Roundup have developed non-Hodgkin's lymphoma. The first Australian lawsuit against Monsanto was brought by a gardener from Melbourne, Michael Ogliarolo, who claims that his cancer was caused by Roundup. Despite the U.S. rulings, the Australian Pesticides and Veterinary Medicines Authority said in a statement in October 2019 that the "evidence presented in these trials was not strong enough to change the rules in this area in Australia." A recent class action against Monsanto is poised to test the status of the product in Australia. The class action, whose lead plaintiff is John Fenton, alleges that Monsanto knew or should have known that Roundup was inherently dangerous and that the company failed to provide proper directions for use.

## Africa



Glyphosate-based herbicides are authorized in most African countries, particularly those in the West African region, and more broadly in the member countries of the Interstate Committee for Drought Control in the Sahel (13 countries), and are widely used in agriculture, mainly in cotton production. However, civil society voices have raised concerns and try to ban it. Togo is one of the few countries to have banned the import and marketing of glyphosate.

By an order of the Togolese Ministry of Agriculture, Animal Production and Fisheries dated December 19, 2019, the stakeholders in the agricultural sectors that were using glyphosate in the country have been warned that "the import, marketing and use of glyphosate and any product containing it" were prohibited throughout the territory of Togo.

## REGULATORY DEVELOPMENTS

Glyphosate and glyphosate-based herbicides are at the heart of debates in various countries around the world.

Several European countries have decided to ban glyphosate permanently.

Malta was the first country in Europe to ban glyphosate on its territory in 2016 before reversing its decision a few months later, considering that the ban was in contravention of European market rules. Its use was banned in public spaces in July 2019.

In Luxembourg, glyphosate has been banned since December 31, 2020. Glyphosate-based herbicides are banned from Luxembourg, according to the government's agreement from 2018. The ban has taken place in three phases: a withdrawal of the marketing authorization on February 1, 2020, a period of disposal of stocks until June 30, 2020 and then a grace period for the use of these products set to December 31, 2020.

In Austria, the Austrian parliament voted to ban glyphosate on July 2, 2019. This was an ambitious piece of legislation that made Austria the first country in Europe to take this step. The country is certainly already strongly oriented and aware of organic farming where it represents 24% of cultivated areas, the largest share in European countries. But the decision is based primarily on the precautionary principle. However, the Austrian government had to announce on December 9, 2019, that it would not implement the ban on this controversial herbicide yet. Voted for an implementation in January 2020, the bill has not been submitted to the European Commission for notification "so that the Commission and the Member States may comment," the government explained in a letter to the president of the parliament.

In some other European countries, a ban on GBHs is planned for the next few years. In Germany, for example, the government presented a law restricting the use of pesticides around waterways and in protected areas in September 2019 and endorsed phasing out glyphosate at the end of 2023, to stop the extinction of insects in the country. Its use will be severely restricted even before the ban.

In France, while Emmanuel Macron promised three years ago to phase out glyphosate by the end of 2020 at the latest, France has fallen behind and the government has given up on this goal under pressure from agricultural lobbies. Phasing out glyphosate in agriculture is now part of the official mantra, but there is no timetable and no milestone. Glyphosate-based herbicides are banned for individuals, and the railroad public company, SNCF, has declared that it will no longer use glyphosate to weed railroad tracks by the end of 2021 and will purchase new weed-killing trains that will use other substances, better at targeting more specifically the weeds that impede the movement of trains. However, this is only 0.5% of the volumes sold in France.

Over the past three years, rules to limit and ban glyphosate have been emerging throughout Europe. As in France, Italy, Norway and Belgium have introduced measures to ban the use of glyphosate-based herbicides by individuals for gardening.

While the European Commission will have to decide on the renewal of the authorization of glyphosate in 2022, it is to be hoped that the recent developments observed throughout the EU countries will influence the next negotiation and finally lead to a phase out of GBHs. In this regard, it will be interesting to observe whether Germany's recent decision to ban these herbicides will influence its vote. Indeed, the renewal of the marketing authorization for glyphosate for 5 years was obtained in 2017 only with the vote of the German Minister of Agriculture, against the instruction of his own government. Since then, the then minister has found a job in the agrochemical industry.

The October 2019 decision of the CJEU clarifying the assessment criteria for pesticides in Regulation (EC) No. 1107/2009 "concerning the placing of plant protection products on the market" should provide groups with the opportunity to challenge the European authorization of all pesticides, because it demonstrates that this regulation is actually never applied in the assessment performed by EFSA.

The International Monsanto Tribunal suggested that the massive use of Roundup could be qualified as ecocide if this crime were recognized in law. There is still much to be done to get GBHs off the market, but the growing recognition of the damage caused by glyphosate and GBHs in the scientific literature, in public opinion and in the courts can only push regulatory authorities towards more protective regulations, and shareholders of agrochemical companies towards divesting from these inherently toxic assets. A future without toxic pesticides is not only desirable for global health, it is possible and desirable.



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