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For the attention of: Bernard Van Goethem, Director of Directorate G "Management of food, animal and plant crises"; Sabine Juelicher, Director of Directorate E "Food and Feed Safety, Innovation" of DG SANTE of the European Commission

**Subject: Ministerial decree of 13 February 2018 - violation of European legislation on pesticides by the Italian government in the management of the Xylella crisis - High priority**

Dear Director,

In the interest of the non-profit organisations "DiEM25" and "The Good Lobby", in person of their respective legal representatives Emanuele Dolce and Alberto Alemanno who sign the present, I submit to the European Commission the evident differences between the recent legislation adopted by the Italian Government to deal with the Xylella crisis in the Puglia region and the Union law on pesticides.

In particular, the Italian legislation appears to be in conflict with EU law in relation to three main points: i) infringement of European legislation on the use of imidacloprid; ii) violation of European legislation on the use of acetamiprid; iii) failure to notify national legislation to the European Commission.

### **1. Violation of European legislation on the use of imidacloprid**

The decree of the Italian Ministry of Agricultural, Food and Forestry Policies of February 13, 2018 - Cd "Martina Decree" - provides for measures for the emergency prevention, control and eradication of the Xylella fastidiosa bacterium in Italy. In particular, the decree requires farmers to make four mandatory phytosanitary treatments (page 91), two in the May-August period and two in the September-December period. The active ingredients authorised for such treatments (page 90) include, inter alia, Imidacloprid and Acetamiprid, pesticides considered suitable for effectively counteracting the spread of *Philaenus spumarius*, the vector insect of the

bacterium *Xylella*. In this regard, the Martina decree seems to recommend the use of the two active principles where it is specified that plant protection treatments against the common olive parasites must be carried out with "authorized insecticides, with good/excellent efficacy against *Philaenus spumarius* [..] or with acetamiprid "(p.92).

The decree also prescribes that the implementation of phytosanitary measures is mandatory pursuant to letter g), paragraph 1 of the art. 50 of Legislative Decree 214/2005; the same are scheduled and extended not only to the infected areas but also to the buffer zones (border area of the infected zone having a width of 10 KM) and to the containment areas (20 km of the area infected by the border of the buffer zone).

The use of both of these active substances does not appear to comply with EU law for the following reasons.

A) In 2013, scientific results already showed a danger to the agricultural ecosystem deriving from the use of imidacloprid. The Commission Implementing Regulation n. 485/2013, showed, there was a "high acute risk for bees deriving from exposure to dust released by different crops, from the consumption of residues present in pollens and contaminated nectar of some crops and exposure to maize guttation liquid. "In the light of this evidence, the European Commission with Article 1 of the aforementioned Regulation No. 485/2013 amended the Implementing Regulation (EU) No. 540 / 2011, in the part where, in Annex I, it indicated the active substances approved for use in plant protection products. Following this change, "olives - European Olea", in accordance with the provisions of Annex I of Regulation no. 485/2013, were included among the crops for which the prohibition of the use of imidacloprid was introduced for "the treatment by ground or foliar application, except in cases where they are grown in greenhouses and with the exception of leaf treatment after flowering ".

B) The provision in question therefore allows the use of imidacloprid only in the case where the crops are grown in greenhouses and with the exception of the leaf treatment after flowering. It is therefore clear that this exception cannot be applied in relation to the Pugliese olive tree, notoriously not grown in greenhouses and for which the Martina decree provides for two obligatory treatments to be carried out during the period of maximum flowering of the olive tree (from May until first half of June).

C) It should be noted that these restrictive measures have recently been further tightened by the European Commission with the Implementing Regulation no. 783 of 29 May 2018 with which the absolute prohibition of the use of imidacloprid outside greenhouse crops was ordered, in order to increase the level of protection of the agricultural ecosystem and, in particular, of bees.

## **2. Violation of European legislation by the use of acetamiprid**

▣ With regard to the active ingredient Acetamiprid, the Implementing Regulation no. 540/2011, most recently amended in January 2018 with the Implementing Regulation no. 113, authorises its use until February 28<sup>th</sup> 2033.

The regulation, however, recommends that Member States pay particular attention to the use of acetamiprid in relation to risks for: (i) aquatic organisms, bees and other non-target arthropods; ii) birds and mammals; ii) consumers; iv) the operators, also stating that "the conditions of use must include risk mitigation measures, where appropriate".

In this regard, the Martina decree does not appear to include any analysis or assessment of such risks related to the use of acetamiprid as required by the aforementioned 2018 regulation. This omission is particularly important when considering that the mandatory phytosanitary treatment provided by the decree is claimed to be required to comply with the provisions of Directive 2009/128 / EC, which establishes a regulatory framework for Community action for the sustainable use of pesticides. This directive, in fact, aims to reduce the risks and impact of use of pesticides on human health and the environment, promoting the use of integrated pest management (PM) and alternative approaches or techniques, such as non-chemical alternatives to pesticides.

In particular, the Directive requires Member States to adhere to the principles of the C.d. 'Integrated Protection', which requires "careful consideration of all available plant protection methods and subsequent integration of appropriate measures to discourage the development of populations of pests which maintain the use of plant protection products and other forms of intervention at levels that are justified in economic and ecological terms and which reduce or minimise risks to human health and the environment. The primary objective of "integrated defence" is the production of healthy crops with methods that disrupt agricultural ecosystems as little as possible and promote natural phytosanitary control mechanisms ".

▣ In light of this definition, the Martina decree does not seem to include any "careful consideration of all available phytosanitary protection methods" and, in the same way, it does not seem to have carried out a careful analysis of "methods that disrupt agricultural ecosystems as little as possible." On the contrary, the decree seems to encourage the use of those substances that most disturb the agricultural ecosystem, threatening the health of bees, operators and consumers. .

## **3. Failure to notify national legislation to the European Commission**

Finally, as regards the burden of notification to the Commission of the Member State, Article 16 (2) of Directive 29/2009 / EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and

against their diffusion in the Community. This provision requires national authorities to inform the Commission of all protective measures taken or planned to combat the appearance of harmful organisms. In that regard, it is not clear that the aforementioned Martina decree was notified to the Commission.

For these reasons, the European Commission is asked to intervene by calling on the Italian Government to comply with EU law on phytosanitary measures.

In thanking you for your attention, we take this opportunity to offer you and your staff our best regards.

Avv. Mario Pagano

manuele Dolce      **The Good Lobby**  
Alberto Alemanno



DiEM25

Emanuele Dolce