

[Nina Finger](#), Regulatory Business Development Manager for Eurofins Agrosience Regulatory, gives her overview of the proposal of the Sustainable Use Regulation and her expert opinion on the proposed changes from the existing Sustainable Use Directive.

The proposal for the new Sustainable Use Regulation (SUR) was made publicly available on 22 June 2022¹.

The first and most obvious change is that the new document is designed as a Regulation and not as a Directive anymore.

Following the adoption of the Sustainable Use Directive (SUD) in 2009, it quickly became apparent that the need for Member States (MS) to transpose EU law into domestic law was one of the greatest challenges of the new SUD, resulting in serious deficiencies in the implementation, application and enforcement across MS. The aim of the new SUR proposal is to harmonize national pesticide-use policies² and to ensure that they are not only consistent across MS but also in line with other environmental and chemicals Union Policies (e.g. F2F strategy)³. Following the evaluation of the effectiveness of the SUD it was concluded that a Regulation would be better suited to achieve these envisioned targets.

The SUR consists of three main pillars:

- 1) Definition of Reduction Targets on Union and MS level,
- 2) Guidance on the development of National Action Plans (NAPs) and
- 3) Obligations linked to Integrated Pest Management (IPM).

These pillars are flanked by mandatory monitoring, documentation and reporting responsibilities.

Reduction targets:

In contrast to the SUD, the proposal for the new SUR includes both Union and MS reduction targets. The definition of Union reduction targets for use and risk of chemical Plant Protection Products (PPP) and the timeline for achievement of these reductions are taken from the Farm to Fork Strategy:

- Union reduction target 1: to reduce by 50% the use and risk of chemical pesticides by 2030
- Union reduction target 2: to reduce by 50% the use of more hazardous pesticides by 2030

As a reference for measuring progress, the average of the years 2015 – 2017 is proposed.

National reduction targets have to be adopted within 6 months after the date of application of the SUR:

- National reduction target 1: to reduce the use and risk of chemical pesticides by 2030
- National reduction target 2: to reduce the use of more hazardous pesticides by 2030

The proposal for how these targets are derived acknowledges that there are differences between MS with respect to intensity of pesticide use. In addition, some MS may already have very stringent protection levels and therefore may have already been able to reduce the use and risk associated with chemical pesticides. Therefore, there are no fixed uniform mandatory targets proposed in the SUR. Instead, a legislative formula is proposed using a “weighted intensity of use and risk of chemical PPP” approach⁴.

This approach takes into account national differences in sales and use of chemical PPP, differences in hazard of different chemical active substances used within the MS and already achieved reductions of chemical PPP on national level. Thus, for MS, which in the past already implemented very ambitious reduction targets and/or have already very low values for intensity of use and risk, the national reduction targets may be as low as 35%⁵. In contrast, for MS which in the past did not already implement very ambitious reduction targets and/or have very high national values for intensity of use and risk, the national reduction target may be as high as 67.5%⁶.

In sum, the national reduction targets of all MS have to reach the defined Union reduction targets.

¹ Proposal for a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115, COM(2022) 305 final, Brussels, 22/06/2022.

² COM(2022) 305 final, p. 2.

³ COM(2022) 305 final, p. 3-7.

⁴ COM(2022) 305 final, Art. 5, Nr. 5, p. 38.

⁵ COM(2022) 305 final, Art. 5, Nr. 8, p. 38.

⁶ mid-point between the figure related to intensity, which at a maximum may be 65%, and the figure related to use and risk, which as a maximum shall not surpass 70%; COM (2022) 305 final, Art. 5 Nr. 5 and Nr. 6, p. 37-38.

National Action Plans (NAPs)

NAPs have to be adopted within 18 months after the date of application of the SUR. They define the national reduction targets and provide additional information on aspects relevant for implementation, such as mandatory inspections for application equipment, measures to reduce illegal use of PPP, increase of organic farming area, support for non-chemical methods and support for RD&I of non-chemical pest control measures.

In addition, NAPs have to contain information on chemical active substances which are most relevant on national level⁷. The SUR proposal suggests that

- at least 5 active substances have to be named which have a strong influence on national reduction targets,
- a list of crops where these are most widely used and the estimated treated area has to be provided, together with
- a list of pests against which these active substances are used,
- any available non-chemical alternatives have to be listed,
- and measures/actions have to be named which are suitable to address potential obstacles in using non-chemical alternatives.

Following the same logic, NAPs also have to contain information on crops which are most relevant on national level⁸. The SUR proposal suggests that

- at least 5 crops have to be named which have a strong influence on national reduction targets,
- the percentage of biological pest control used on these crops and suggestions how this percentage can be increased have to be listed,
- and a proposal of measures/actions suitable to address potential obstacles in using non-chemical alternatives has to be included.

Integrated Pest Management:

In the SUD, the main legal obligation of the MS was to “establish or support the establishment of the necessary conditions for the implementation of integrated pest management”⁹, such as e.g. providing professional users with all necessary information and tools for decision making. However, actually using IPM was not mandatory.

In contrast, in the proposal of the SUR, it is clearly stated that “professional users shall apply IPM”¹⁰ following the rules defined in the SUR. IPM shall be prioritized and chemical PPP application shall be a last resort. All available non-chemical pest control measures have to be considered before chemical PPP are to be used. The decision to use chemical PPP needs to be justified by a decision-support system or a trained advisor, and both the decision making process, the application itself and the observed level of success have to be documented in an electronic system.

For all crops covering at least 90% of the national agricultural area legally binding crop specific rules have to be defined¹¹ that then are to be used as a decision-support. Within 2 years after date of entry into force of the SUR these crop specific rules have to be adopted and enforced.

Opinion:

The key aims of the new SUR proposal are to harmonize national pesticide-use strategies, to ensure similar levels of protection of the environment as well as human health across MS and to facilitate a more level playing field among pesticide users and proper functioning of the internal market¹². If these aims will be achieved remains to be seen.

The proposal applies the principle of proportionality, acknowledging that sustainable use of pesticides is a Union effort and some MS may already have taken care of their share of the responsibility in the past. Thus a heavier burden is placed on MS who either have a higher intensity of use and risk of chemical PPP or who, historically, have not implemented very stringent protection targets.

⁷ COM(2022) 305 final, Art. 9, Nr. 1, p. 42.

⁸ COM(2022) 305 final, Art. 9, Nr. 3, p. 42.

⁹ Art. 14, Nr. 2, sentence 1 of Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (Text with EEA relevance); OJ L 309, 24.11.2009, p 71.

¹⁰ COM(2022) 305 final, Art. 12, Nr. 1, p. 45.

¹¹ COM(2022) 305 final, Art. 15, Nr. 3, p. 48.

¹² COM(2022) 305 final, p. 8.

If MS are slow and no targets are reported to the EU Commission by the given timeline, then the national reduction target will be set automatically. This ensures that timelines for target setting and implementation of national pesticide-use strategies are harmonized across all MS.

The EU Commission assesses both the national reduction targets as well as the national action plans proposed by the MS. The Commission may then make recommendations for more ambitious target setting. There is currently a provision for MS to disagree with these recommendations and justify their approach. However, from the proposal it is not clear how and in what form the EU Commission can actually force MS to set more ambitious reduction targets or adjust their NAPs.

Application and enforcement of the SUR will be at individual farmer level. National differences with respect to active substances that strongly influence national reduction targets may result in one active substance being black-listed in one MS but not in another. Similarly, national differences in crops that strongly influence national reduction targets impact the definition of crop specific rules and may result in more stringent measures for these crops in one MS compared to another. In the context of national reduction targets ranging from 35% to almost 70% depending on MS, pressure on farmers may be more heavy in one MS compared to another. How these differences between MS may create a fair and level internal market is not entirely clear. It is therefore considered essential that the new CAP which is due to be implemented beginning of 2023 contains suitable financial instruments to support farmers in balancing out differences resulting from the SUR.

Apart from that, the need to apply IPM, the mandatory decision-support system with legally binding crop specific rules, and the requirement to keep chemical PPP as a last resort option, may slow down the decision making process at farm level. In addition, the mandatory documentation of rationale for decision, application and level of success, creates an additional administrative burden for the farmers. It is essential that farmers actually have options to choose from and crop specific rules are not guided by what we wish for but by the toolbox that is realistically currently available to farmers.

Conclusion:

Overall, the new SUR aims for very strict protection goals in line with the goals defined in the Farm to Fork Strategy. These very strict goals and all associated equally strict measures to ensure that the goal are reached, will unarguable be good for the protection of the environment and human health. However, it is equally unarguable, that they create additional burden for the farmers. In order for the SUR to be successfully implemented, all national measures should be ambitious but still realistic on farm level. In addition, all measures need to be flanked by suitable financial instruments supporting the farmers in the transition to a greener agriculture.