



EurEau
1975-2015

Water matters

TTIP and chemicals

TTIP negotiations on the authorisation of chemical substances and their impacts on water

Summary

EU legislation is built on the precautionary principle and on the control at source principle, both enshrined in Art. 191(2) of the Treaty on the Functioning of the European Union.

While the precautionary principle allows EU authorities to regulate a chemical substance even in the case of scientific uncertainty, in the United States of America (US) system, scientific evidence of harmful effects is needed before a substance can be regulated.

The European Commission negotiators on the chemicals chapter of the TTIP reiterated their willingness to work more closely with the US authorities to draw up rules that are compatible with each other, while safeguarding regulators' independence, the precautionary principle and the governments' right to regulate to protect citizens and the environment.

From EurEau's perspective, the Plant Protection Products Regulation, the Biocidal Products Regulation, and the REACH Regulation send the right signals regarding the hazard-based approach and the precautionary principles with regards to the protection of water resources.

While trying to enhance regulatory cooperation with the US authorities, EurEau trusts that the European Commission will promote the EU environmental standards throughout the negotiations, since elements concerning the placing on the market of chemicals deserve the utmost attention. The protection of water bodies (groundwater, surface water) in general and water resources used, or suitable to be used, for drinking water abstraction in particular should remain an essential goal of the European aquis.



1. Background

The European Union and the US are currently negotiating a Transatlantic Trade and Investment Partnership (TTIP) to get rid of tariff and non-tariff trade barriers, so as to facilitate the commercial exchange of goods and services between the two economic areas.

The first part of the TTIP deals with market access in the same way as other EU trade agreements already in place this. TTIP is unique as it paves the way to an enhanced form of regulatory cooperation between the US and the EU authorities, "breaking new ground for an EU trade deal" as the European Commission puts it¹.

Since the European Commission's impact assessment on TTIP only considers the economic dimension of the agreement, the consultancy ECORYS was mandated by DG TRADE to look into the possible environmental and social impacts of the TTIP and carry out a Trade Sustainability Impact Assessment. The report is due in the last quarter of 2015.

In the meantime, the European Parliament commissioned various studies to examine European legislation that is likely to be affected by the TTIP, from an agri-food sector perspective² as well as an environmental, public health and food safety³ one.

2. Differences between the EU and US legislation

The main differences between EU and the US legislation stem from their approaches to risk analysis.

EU legislation is built on **the precautionary principle and on the control at source principle**, both enshrined in Art. 191(2) of the Treaty on the Functioning of the European Union, stating that "*the Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay*".

So while the precautionary principle allows EU authorities to regulate a chemical substance even in the case of scientific uncertainty, in the US system scientific evidence of harmful effects is needed before a substance can be regulated.

The **precautionary principle** and the **control at source principle**

¹http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/contents/#_regulatory-cooperation.

²www.europarl.europa.eu/RegData/etudes/STUD/2014/514007/AGRI_IPOL_STU%282014%29514007_EN.pdf.

³www.europarl.europa.eu/RegData/etudes/STUD/2014/536293/IPOL_STU%282014%29536293_EN.pdf.



constitute the **underlying philosophy** behind cutting-edge and far-reaching European legislation on chemicals such as the **REACH Regulation** (Registration, Evaluation, Authorisation and Restriction of Chemicals, (EC) No 1907/2006), the **PPPs Regulation** (Plant Protection Products, (EC) No 1107/2009) and **Biocides Regulation** ((EC) No 528/2012).

EurEau has consistently advocated for the control at source principle, since end-of-pipe treatments are not sustainable in the long term. The precautionary principle is of utmost relevance so as to ensure water suppliers have access to adequate and reliable resources that are protected from contamination. Effective source control is important since it makes the sustainable use of water and nutrients in the circular economy possible.

3. TTIP negotiations and chemicals legislation

The European Commission negotiators on the chemicals chapter of the TTIP reiterated their willingness to work more closely with the US authorities to draw up rules that are compatible with each other, while safeguarding regulators' independence, the precautionary principle and the governments' right to regulate to protect citizens and the environment.

The European Commission negotiators made clear, in a hearing before the ENVI Committee of the European Parliament and anticipated in the EU position on chemicals⁴, that the US authorities are not willing to adapt their legislation on chemicals to the more advanced EU regulatory framework.

Dating back to 1976, the Toxic Substances Control Act, TSCA, in fact, unlike REACH, does not foresee any general registration obligation for substances as a condition for their marketing nor does it include procedures comparable to the authorisation.

While the EU's REACH framework requires all chemicals on the European market to be registered with the European Chemicals Agency, including the submission of safety data, US legislation only requires the submission of safety data in very specific circumstances and allows chemicals that were on the market prior to 1976 to remain on the market without any testing or registration requirement whatsoever. Another important difference is that the TSCA imposes only a small number of specific restrictions (conditions on use or ban) on chemicals, giving the national authority the right to impose such restrictions if it determines that a chemical substance poses an unreasonable risk to human health or the environment⁵.

The legal framework governing plant protection products (PPP's) and biocides in the EU is also more progressive than the one in the US.

⁴www.europarl.europa.eu/meetdocs/2014_2019/documents/envi/dv/ttip_chemicals/_ttip_chemicals_en.pdf.

⁵www.europarl.europa.eu/RegData/etudes/STUD/2014/536293/IPOL_STU%282014%29536293_EN.pdf.



In the EU, authorisation to market a PPP or biocide depends mainly on stringent active substances cut-off criteria such as carcinogenicity, genotoxicity, reproductive toxicity, endocrine, disrupting properties **with regards to the assessment of impacts on human health** and persistence, bioaccumulation, toxicity, potential for long-range environmental transport **with regards to the assessment of fate and behaviour in the environment.**

US legislation requires an economic, social, and environmental costs and benefits analysis of the use of the pesticide prior to being placed on the market thus considering the **economic profitability** of the plant protection products.

Other differences relate to the scientific assessment, the implementation of the sanitary and phyto-sanitary rules, the marketing authorisation validity period etc., showing “the tendency in the US system to be willing to accept a certain degree of risk and thus to allow use of PPP’s and biocides and then revoke it if significant adverse impacts are found, rather than the EU approach postponing approval in the face of environmental or human health risk despite lack of scientific certainty.”⁶

EurEau supports the hazard-based approach on which the European legislation on chemicals is built, since it contributes to the protection of water bodies (groundwater, surface water) in general and water resources used, or suitable to be used, for drinking water abstraction in particular.

4. Why EurEau is concerned

For the water sector, an additional important step was fulfilled within the PPP’s Regulation by linking the objectives of the European Water Framework Directive (WFD) (2000/60/EC) with the withdrawal or amendment of authorisations of pesticides. In fact, Member States are obliged to review the authorisation when some obligations of the WFD, namely Art.4, relating to the environmental objectives, and Art.7 (2) and (3), relating to water used for the abstraction of drinking water, may not be achieved.

The Directive (2013/39/EU) on Priority Substances in the field of water policy reinforces also the coordination between the WFD and the REACH and the PPP Regulations in Art 7a.

We believe that the PPP’s Regulation, the Biocidal Products Regulation, and the REACH Regulation support the hazard-based approach and the precautionary principles with regards to the protection of water resources.

While trying to enhance the regulatory cooperation with the US authorities,

⁶Page 50 of the ENVI study.



EurEau trusts that the European Commission will promote the EU environmental standards throughout the negotiations, since elements concerning the placing on the market of chemicals deserve the utmost attention. The protection of water bodies (groundwater, surface water) in general and water resources used, or suitable to be used, for drinking water abstraction in particular should remain an essential goal of the European aquis.

The outcome of the TTIP negotiations should allow for chemical substances to be regulated (and the use restricted or banned) according to the current legal frameworks of the REACH or the PPPs Regulation, regardless of their origin.

About EurEau

EurEau is the voice of Europe's water sector. We represent drinking and waste water service providers from 27 countries in Europe, from both the private and the public sectors.

Our members are the national associations of water services in Europe. At EurEau, we bring national water professionals together to agree European water industry positions regarding the management of water quality, resource efficiency and access to water for Europe's citizens and businesses. The EurEau secretariat is based in Brussels, from where we coordinate the work of around 150 experts from member organisations and utilities and advocate common positions with EU decision makers.

Our members are fully committed to the continuous supply of clean water and its safe return into the water cycle. As gatekeepers of Europe's water, we have a role in raising awareness of threats to the water environment. With a direct employment of around 500,000 people, the European water sector makes a significant contribution to the European economy.



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