



Countering illegal PPPs

Bratislava; Oct 2017

ECPA anti-CF expert group (ACEG)

ECPA...

...represents the **highly innovative, R&D-driven crop protection industry** in Europe

- 22 multinational companies; 32 national associations; 26,000 people

...advocates **policies and legislation that foster innovation**

- giving Europe's farmers the tools they need to help meet the world's growing food demand

...promotes good agricultural practices through **Hungry for Change projects**

ensuring safe and affordable food;
safeguarding water; enhancing biodiversity,
protecting the health of farmers and the public



Our national association members

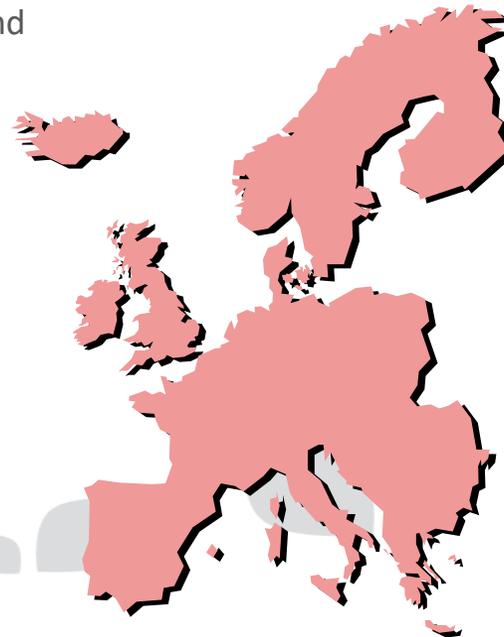
-  Austria
-  Belgium
-  Bulgaria
-  Croatia
-  Cyprus
-  Czech Republic
-  Denmark
-  Finland
-  France
-  Germany
-  Greece
-  Hungary
-  Ireland
-  Italy
-  Kazakhstan
-  Latvia
-  Lithuania
-  Netherlands
-  Norway
-  Serbia
-  Slovakia
-  Slovenia
-  Spain
-  Sweden
-  Switzerland
-  Poland
-  Portugal
-  Romania
-  Russia
-  Turkey
-  UK
-  Ukraine

Anti-Counterfeit Initiatives are developed in almost all ECPA National Associations (including Russia, Ukraine, Kazakhstan)...

... and in collaboration with CropLife International

2014: Regionalisation of country projects; creation of “knowledge hubs”

- **South-East Europe (SEE Hub):**
BG, RO, GR, (TR)
- **Visegrad Hub:** CZ, HU, PL, SK



European Commission (DG SANTE) ad-hoc study on counterfeit & illegal PPPs in EU results released on March 2nd 2015



- **Objectives:** Identification of patterns of trade in illegal and counterfeit products within and entering EU, and an assessment of existing control measures and regulatory framework within EU.

http://ec.europa.eu/food/plant/pesticides/authorisation_of_ppp/index_en.htm

Key findings:

illegal pesticides represent around 10% of EU market

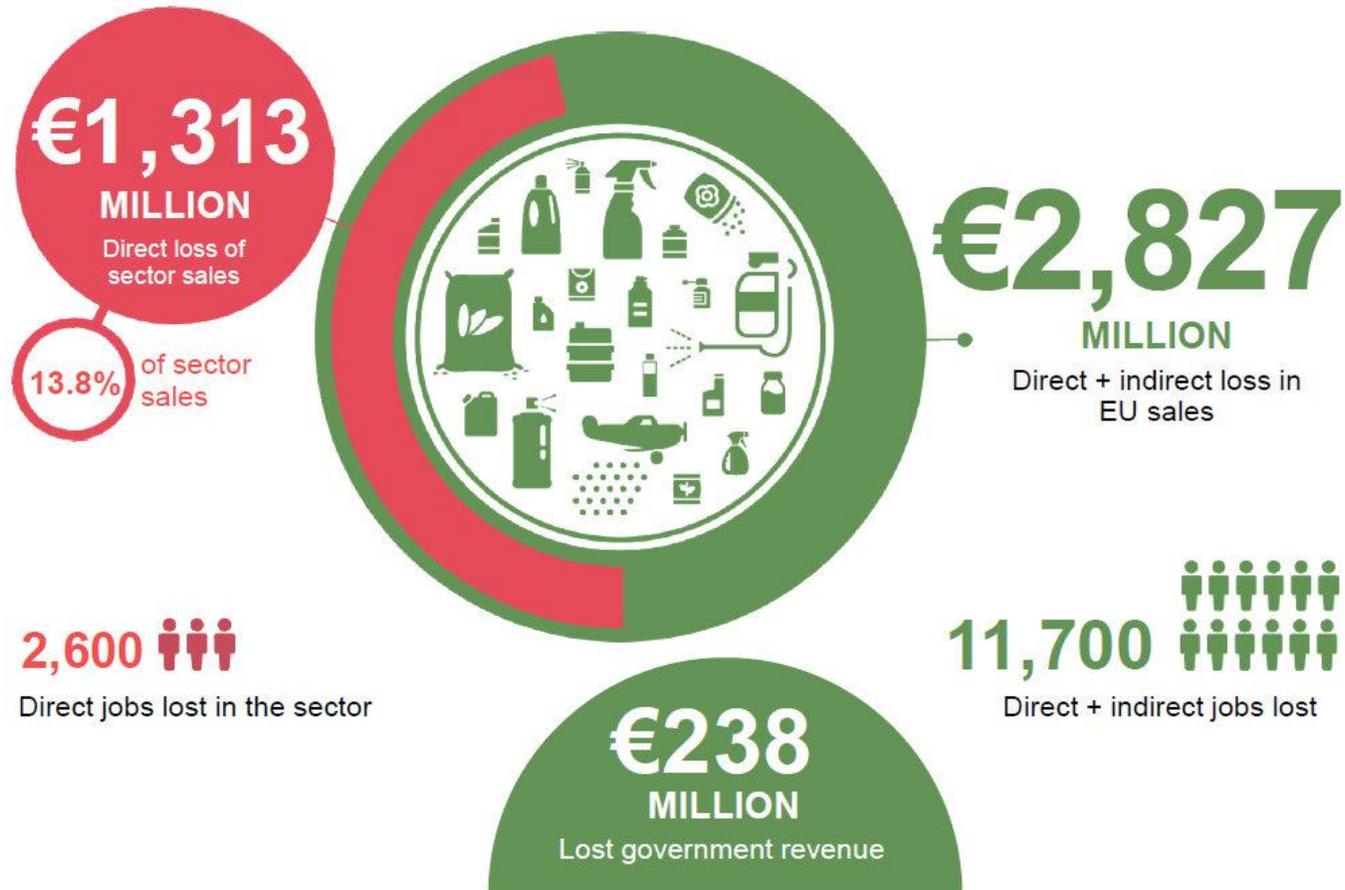


publication:
08.02.2017

Focus on 5 big
economies: ES, DE, IT,
UK, FR

<https://euipo.europa.eu/ohimportal/en/web/observatory/ipr-infringement-pesticides-sector>

The economic cost of IPR infringement in pesticides



Criminals are some of the industry's
biggest competitors in many European countries!



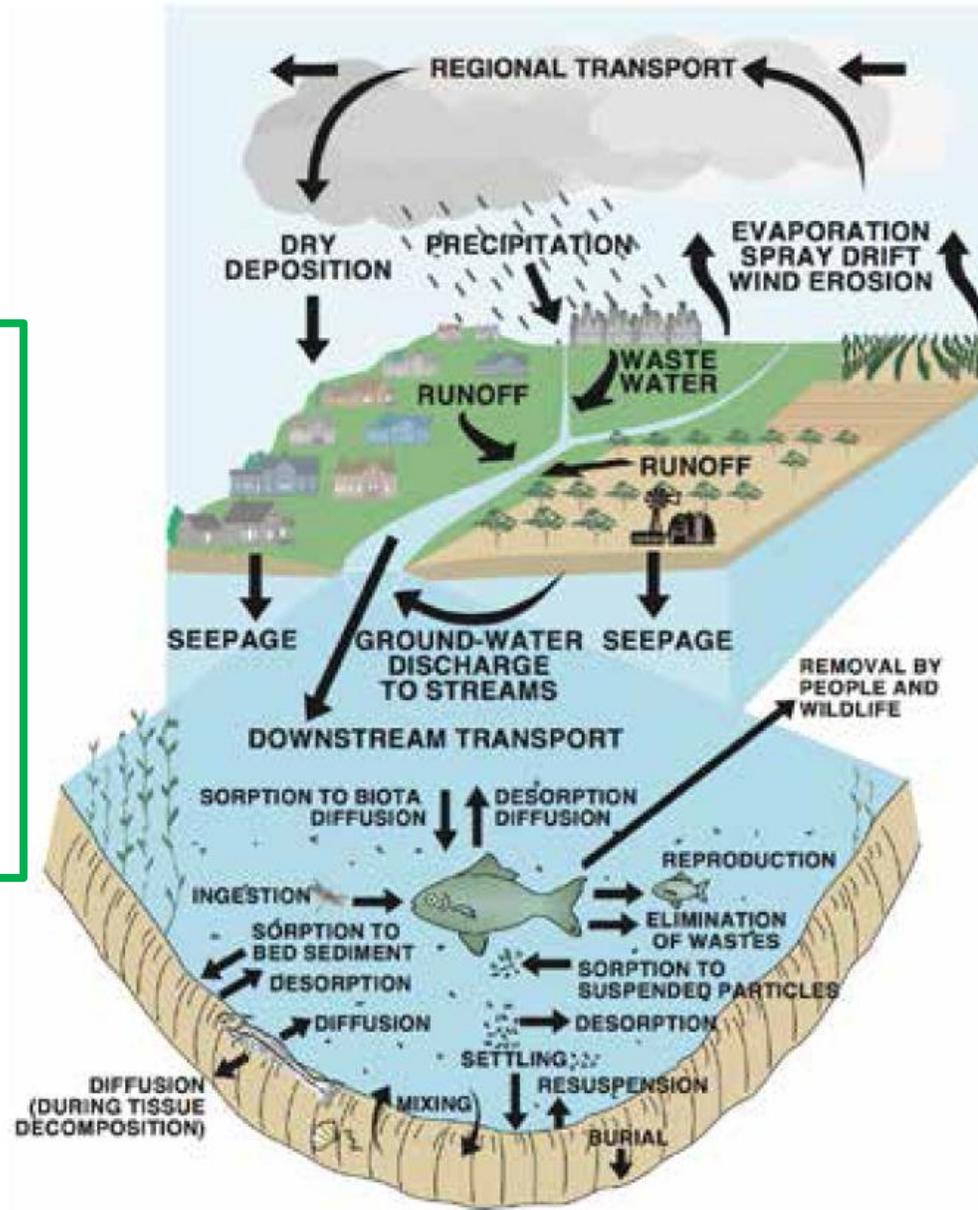
If illegal pesticides
were produced by
a single company
they would be the

4th or 5th
largest
company in
the industry



Environmental fate of pesticides

Graphic 2.
Pathways for pesticides
introduction into
environmental systems



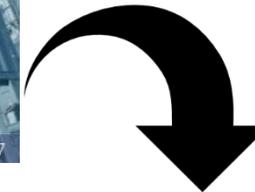
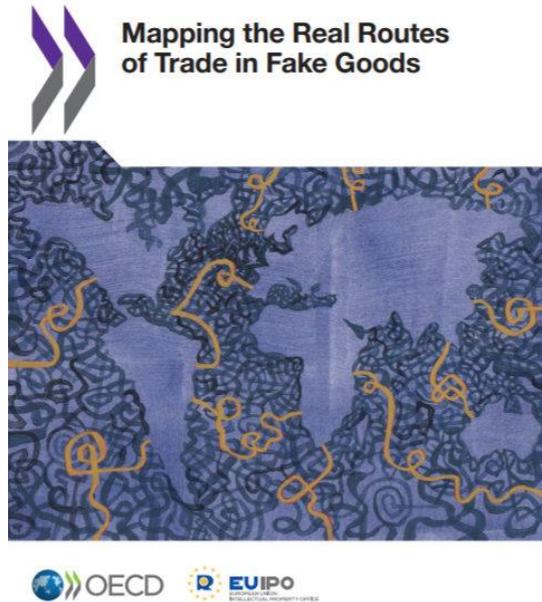
Authorised pesticides; environmental fate thoroughly tested and understood

What increases in environmental damage are caused by counterfeit / illegal pesticides?

Source:

US Geological Survey, 2000

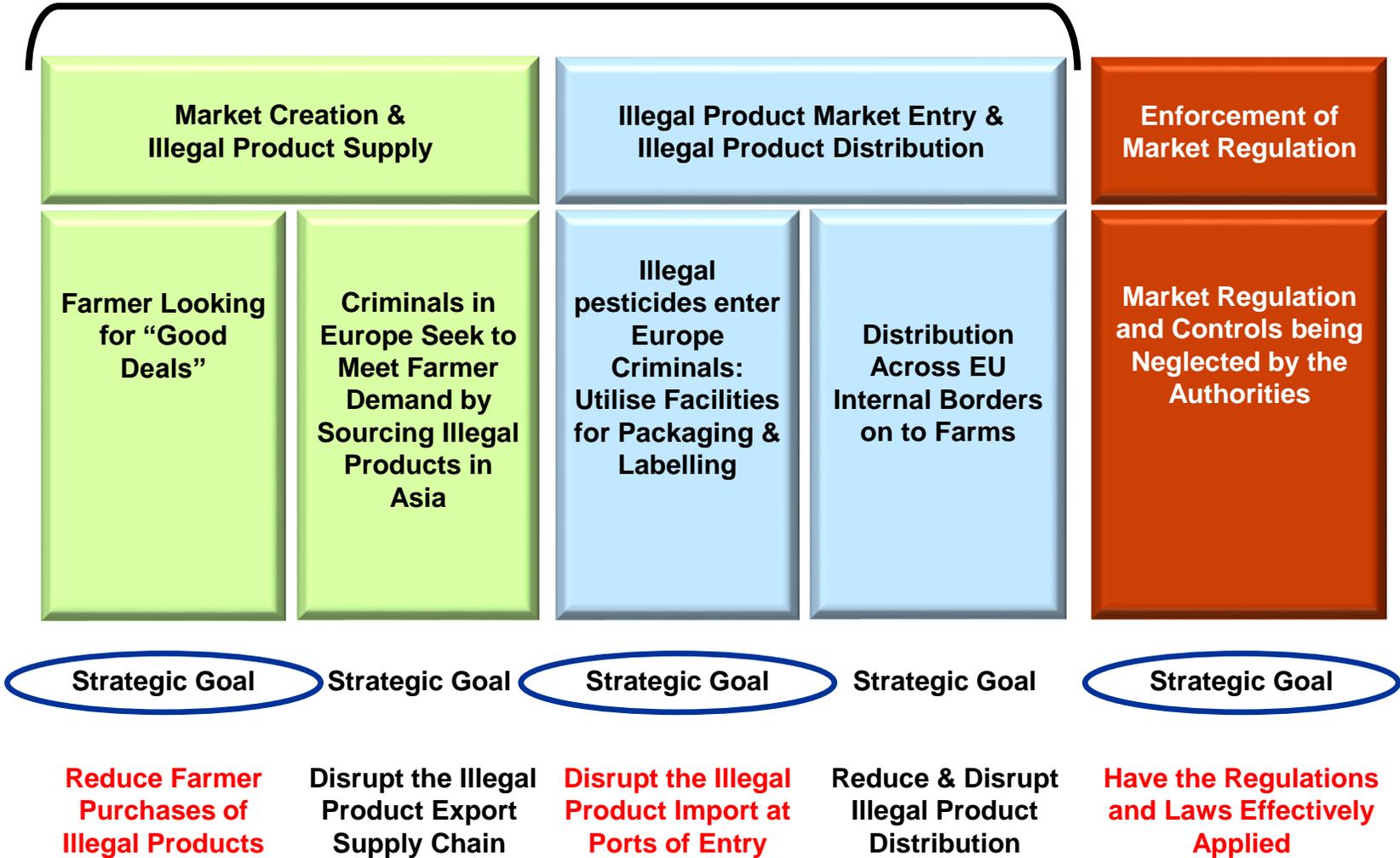
Publications



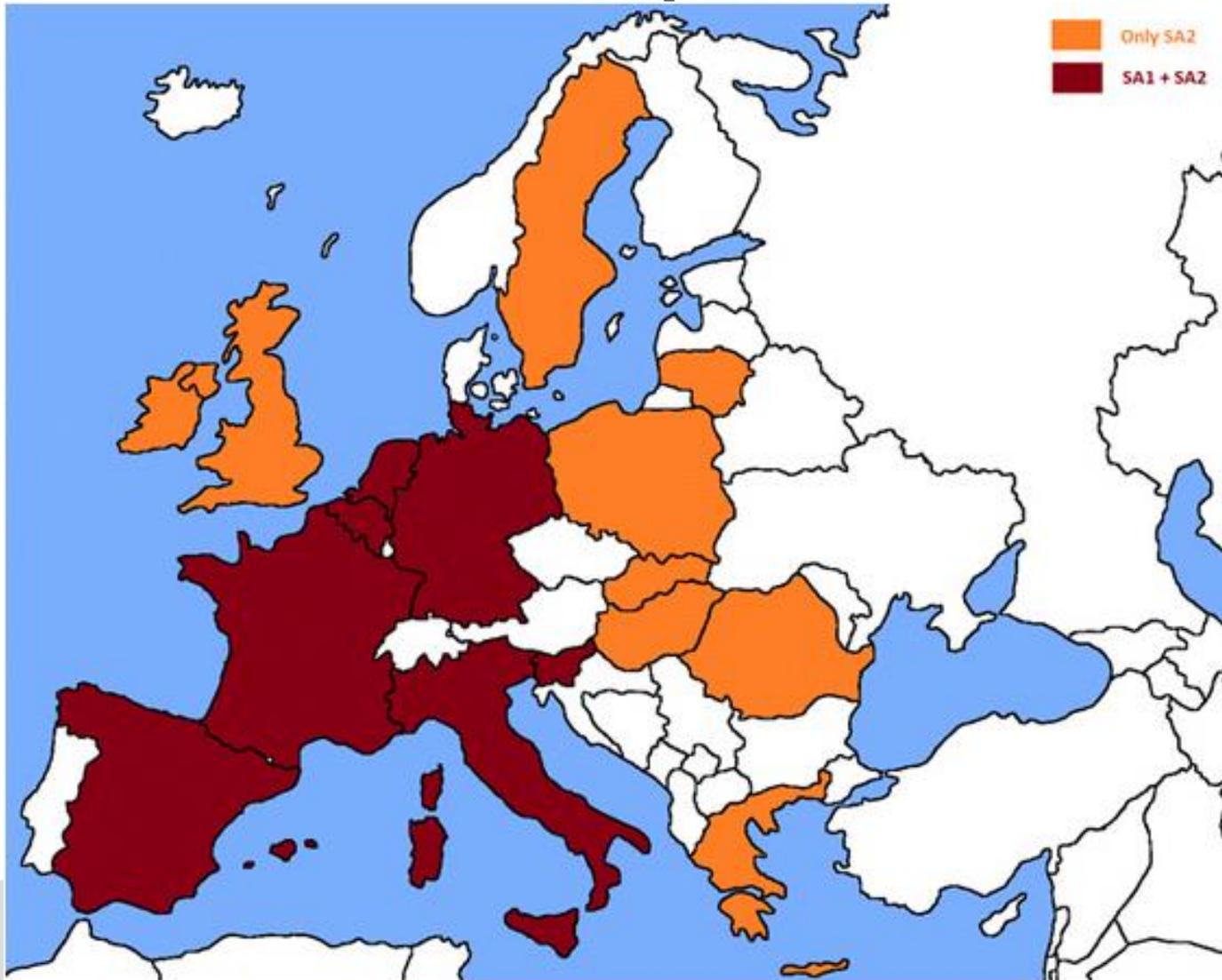
The financial implications of IPR crime aside, counterfeits almost always represent some form of risk to consumer welfare, because there are invariably scant quality controls or certification protocols in place during manufacture. This affects the tobacco, food or pharmaceutical industries, but also has less obvious consequences in the form of the health dangers associated with substandard (flammable) clothing, dangerous toys, inferior sports shoes or ineffective sunglasses, all of which, if used in good faith, threaten end users with potentially serious and ongoing health risks. IPR crime also affects the environment. Counterfeit pesticides often contain toxic substances that may contaminate soil, water and food.

ECPA anti-CF strategy framework

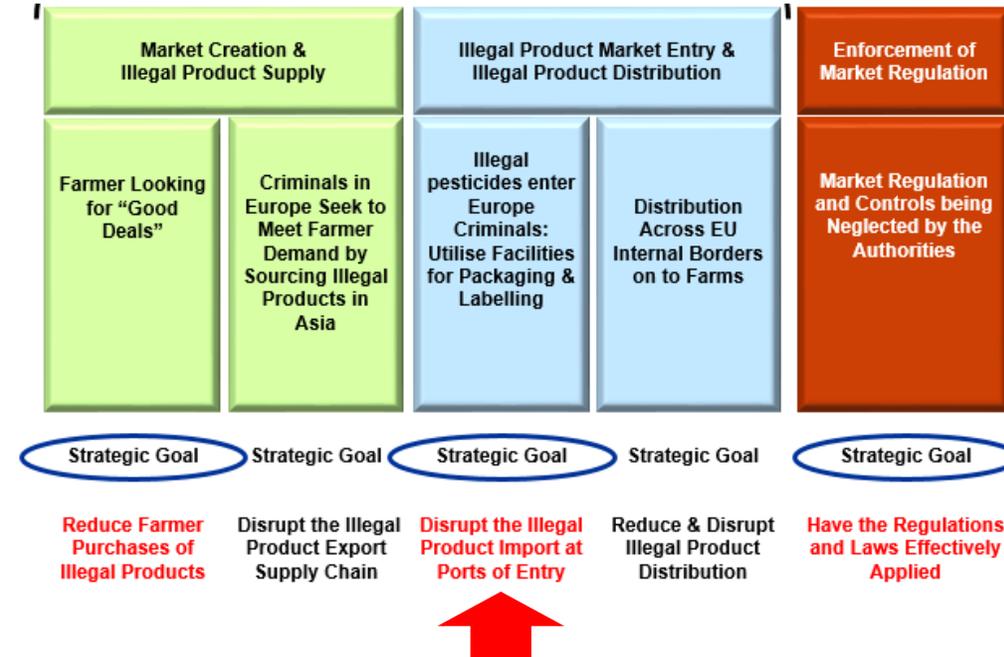
IMPACTS CYCLE



Overview of Operation Silver Axe; countries in Op SA I and II



SA1= Operation Silver Axe I / SA2= Operation Silver Axe II



Overview of Op SA II; outcome

122 TONS OF ILLEGAL OR COUNTERFEIT PESTICIDES SEIZED DURING OPERATION SILVER AXE II

06 July 2017

Press Release



Europol, together with OLAF, has supported an intensive coordinated international operation carried out at major seaports and airports and at the land borders of Belgium, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Romania, Slovak Republic, Slovenia, Sweden, Spain, United Kingdom and the action leader Netherlands. During the 10 days of the Operation Silver Axe II, competent authorities from these 16 EU countries were involved in inspecting over 940 shipments of Plant Protection Products.

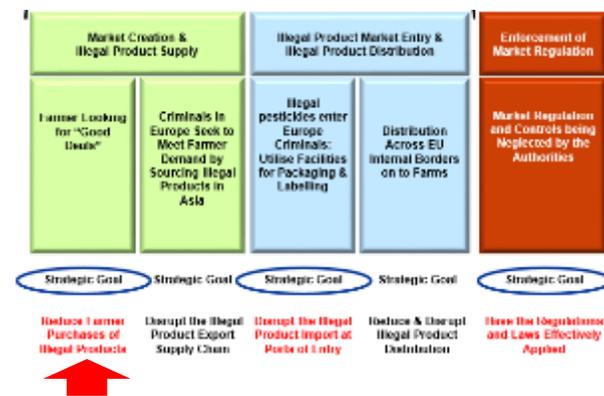
The operation is targeting the emerging menace of illicit pesticides, being focused on their sale and placing on the market (imports), including infringements of intellectual property rights such as trademarks, patents and copyright, as well as the substandard pesticides. As a result, the various law enforcement agencies in the participating countries discovered almost 122 tons of illegal or counterfeit pesticides, detecting 48 cases¹ which led also to the initiation of further investigations by the authorities.

"This operation demonstrates once again that working with coordinated efforts is the key element for successful results against criminal businesses who compromise the health and safety of our citizens in their rush for easily gained money. Europol will continue to support the cooperation of law enforcement agencies with the plant protection industry. Our contributions based on the intelligence



- 16 EU country authorities cooperating
- >940 shipments inspected
- 122 tons of illegal or counterfeit pesticides
- detecting 48 cases¹ which led to initiation of further investigations by authorities

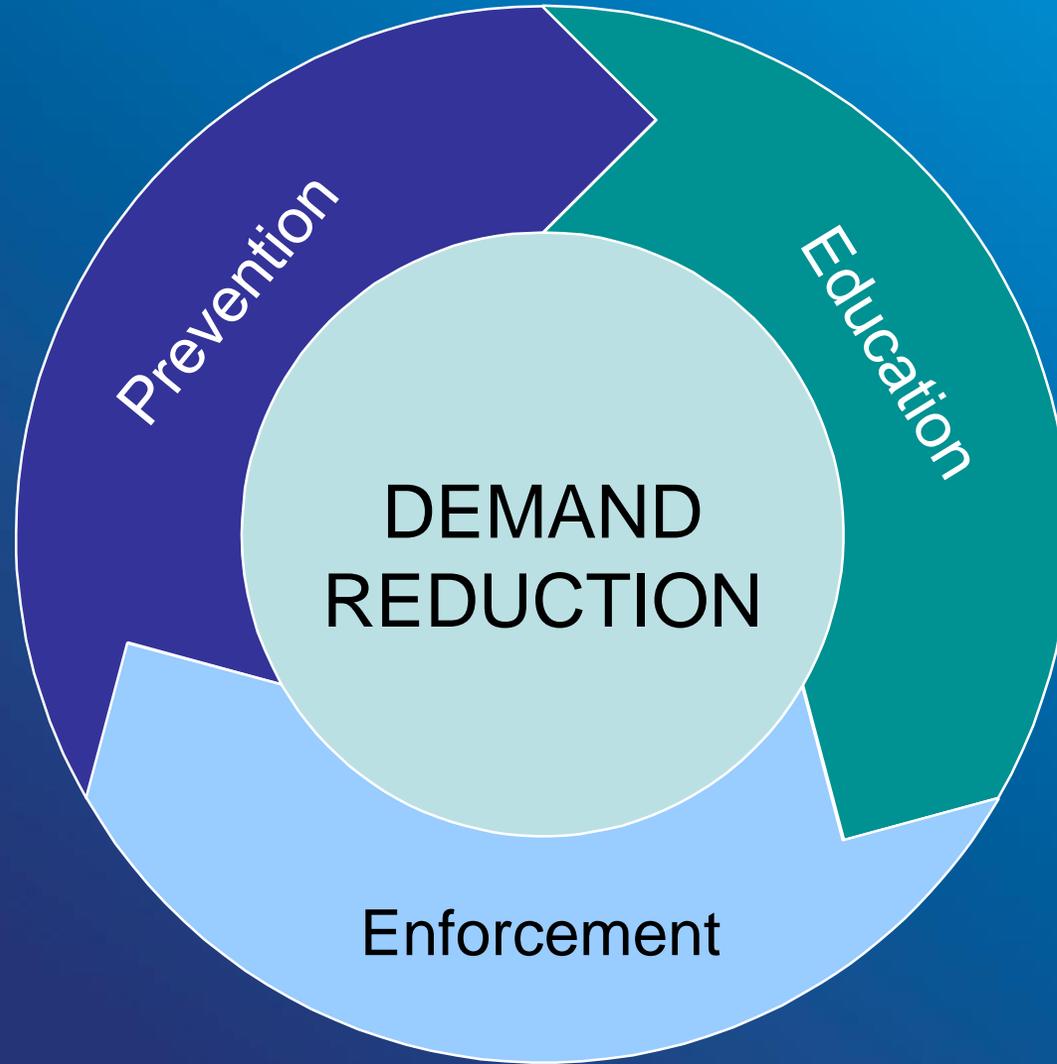
Reducing demand; awareness raising to farmers by authorities (police and pesticide)



Police Scotland – “despite enforcement activities the increase in the illicit market place across all counterfeit products has been exceptional.”

- Enforcement activities have had limited impact on illicit trade which continues to grow rapidly
- Has to be accepted that a **change of focus must take place** to diversify **efforts into the 3 work streams incorporating Prevention, Education and Enforcement**
- To reduce illicit trade an **effective awareness raising campaign** has to be implemented incorporating the agricultural community, agronomists, sales staff and warehouse personnel, highlighting the harm of illicit goods, the benefits of legitimate trade and how to identify suspect goods through the 4Ps (Price, Packaging, Place and Product)
- **Prevention work** must be implemented **by both industry and regulators** to target harden all available network vulnerabilities

DEMAND REDUCTION CIRCLE



POLICE SCOTLAND

AWARENESS RAISING

The McCoy
KRIPLIV SCOTLAND FAKE FRAZZ

DON'T PUT YOUR FARM AT RISK FROM COUNTERFEIT AND ILLICIT PESTICIDES...

...KNOW THE DANGERS!

Scottish Air & Insect Trade Group
POLICE SCOTLAND
EUROPOL

WHAT ARE ILLEGAL PESTICIDES?

- Illegal pesticides are being passed off as legitimate pesticide products, for example as counterfeits/fakes or through misuse of parallel trade permits. This is a dangerous and illicit trade which is damaging the credibility of the legitimate free movement of authorised products (parallel trade) within the EU.
- There is a trend towards importing active ingredients or formulations into the European Union (EU) in order to produce unauthorised packaged pesticide products intended for illegal sale.
- The manufacture and distribution of illicit pesticides involving organised criminal gangs is increasing across the world.
- Asia and Eastern Europe are the main illicit manufacturing bases of illegal pesticides. In addition, illegal pesticide products, ready for sale, are directly imported into the EU.
- Illegal pesticides are unvetted and unapproved for sale in the EU as they have not complied with the strict safety and quality standards required for product authorisation in Europe.
- Genuine crop protection products require years of research, development and testing to prove safety to human health and the environment. This is not the case for illegal pesticides.
- Illegal pesticides are unregulated and uncontrolled, so there is no way of knowing what ingredients they contain. This may pose genuine risks to health, the environment and the food chain integrity.

REPORTING INCIDENTS

If you, your family, wildlife, or the environment have been affected by exposure to pesticides you are strongly advised to report it. Such incidents are taken very seriously but they need to be reported as soon as possible after the incident for an effective investigation to be undertaken. The information obtained from these schemes alerts the Chemicals Regulation Division (CRD) to any issues as they arise and could result in a reassessment of pesticide product approvals. Evidence obtained is also used to enforce legislation on the responsible use of these chemicals.

WHICH IS THE CORRECT ENFORCING AUTHORITY FOR YOU?

Health and Safety Executive inspectors will normally investigate all pesticide incidents involving ill health where these occur in places such as factories and farms (the first list of premises in the table below). Local Authority (LA) inspectors are responsible for investigating incidents at other places. The department to contact depends on the type of incident that you wish to report. For incidents involving the Environment you should contact SEPA.

For further information please check the Health & Safety Executive website: <http://www.hse.gov.uk/pesticides>

ALWAYS REPORT SUSPICIOUS PRODUCTS AND SUPPLIERS
Crimes helpline: 0800 555 53377

Alternatively you can contact the independent charity
Counterfeits anonymously on 0800 555 111

1. An estimated 7-10% of all pesticides on the European market are illegal. 2. The UK is estimated to lose £100m of sales to the estimated 200,000 tonnes of illegal pesticides. 3. Europe consumes the highest amount of counterfeit and illegal pesticides. 4. Britain's 4,000 pesticide grower days in the field share a common theme: to protect the environment, farmers look for a pesticide that is safe for the user, the environment and the food chain. 5. Environmental risks such as water pollution and impacts on biodiversity. 6. Pesticides are not safe for the environment. 7. Pesticides are not safe for the user. 8. Pesticides are not safe for the environment. 9. Pesticides are not safe for the environment. 10. Pesticides are not safe for the environment.

WHAT ARE PARALLEL IMPORTS?

Any parallel product sold into the UK must be identical to one approved and registered elsewhere in the EU, a parent product. To be identical, among other things the parallel import must have been manufactured by or with the consent of the same company that manufactured the parent product. This ensures that only products that have been subject to the EF's rigorous regulatory review are placed into the UK market.

Illicit parallel products are repackaged as genuine parent product parallels, but actually contain cheap fake unbranded imports.

Several parallel products have been found in the UK market place.

9 TIPS FOR RECOGNISING COUNTERFEIT AND ILLICIT PESTICIDES

- Legal with safety symbols
- Counterfeit without symbols
- Check the accreditation of advisers recommending said/supplies crop protection products. They should be a FASIS-registered agronomist
- The price is significantly lower, ask your supplier/merchant where the product came from
- Is the cap the correct colour and securely sealed?
- Check that the product detailed on the invoice and delivery note matches the product ordered and delivered
- Are the appropriate safety symbols clearly displayed?
- Does the packaging look professional, is it tamper-proof and securely sealed and does it have a full label written in English
- Is the label secure or overlaid?
- If you are familiar with the product, ensure the colour and appearance is as expected. A parallel import should look the same as the UK reference product
- The hologram does not exist or is different from the original
- The logo/trademark are different from the original

Finally, if you are still unsure about the approved status of a pesticide product, check the label for details of the producer, approved holder and official authorisation. Look for it on the CRD database and check the (outlet) for full details of the product. You could also contact the manufacturer or your adviser for assistance.

LEGISLATION

All pesticides used in the United Kingdom must be authorised by the Chemicals Regulation Directorate (CRD) of the Health and Safety Executive (HSE). EU legislation harmonises the registration of plant protection products across member states and ensures that they are safe to use. Once an active substance is on the EU approved list, pesticide products containing that substance can be approved by member states for sale and use in that country. It is illegal to market or use a product introduced from another EU member state unless CRD has granted a Parallel Trade Permit confirming that it is identical to (including made by the same company) as a product already authorised in the UK.

DO NOT PURCHASE OR USE COUNTERFEIT OR ILLEGAL PESTICIDES. IF YOU DO, YOU ARE BREAKING THE LAW AND YOUR CROP, PEOPLE AND THE ENVIRONMENT WILL BE AT RISK.



POLICE SCOTLAND

THROUGH THE DUE DILIGENCE OF THE UK FARMING COMMUNITY THIS IMMERGING THREAT HAS NOT MANIFESTED SIGNIFICANTLY IN OUR COUNTRY BUT WE MUST BE VIGILANT



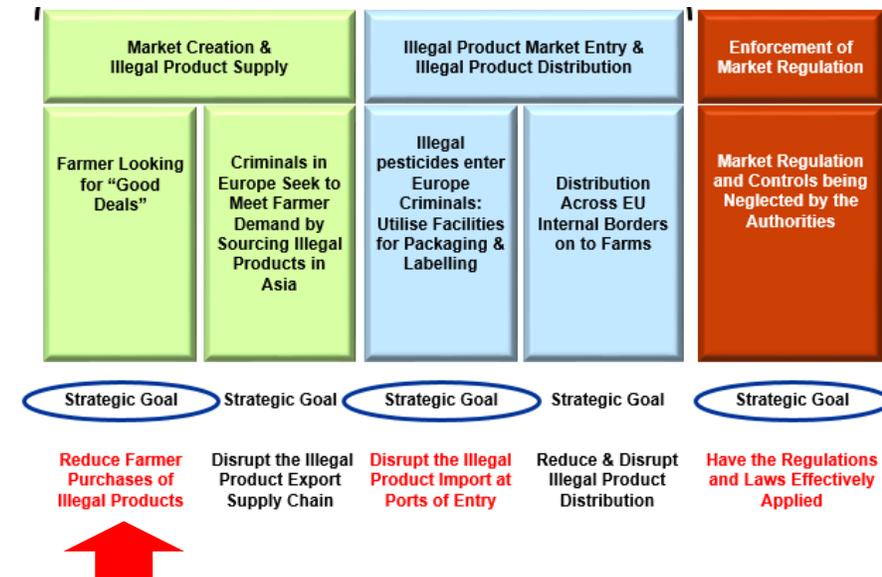
Farmer awareness; industry and authorities working together?

Example from national association (PSOR) in Poland

- Can authorities and industry work together to ensure that farmers are fully aware of the threat from illegal pesticides?

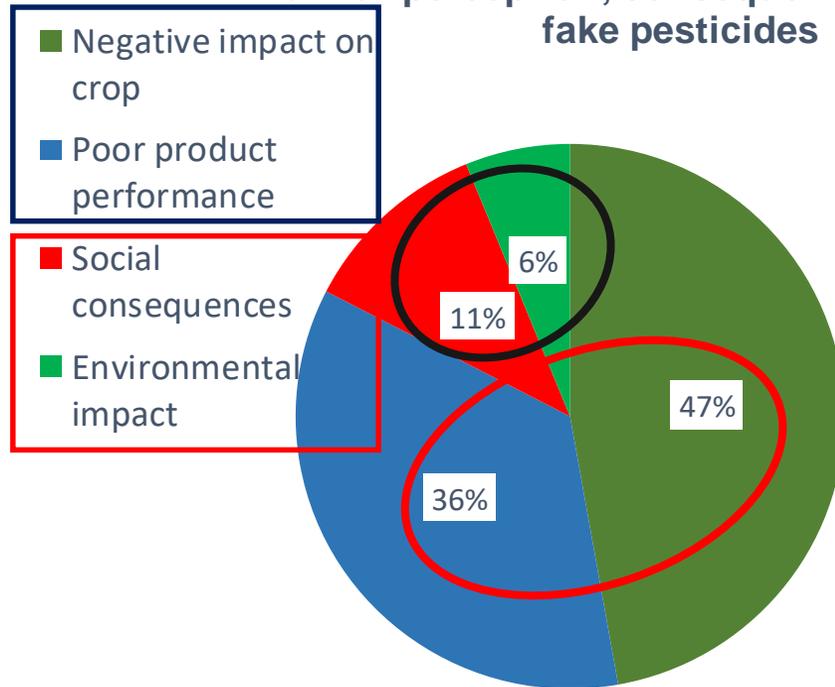
Essential that farmers know how to recognise and:

- buy legitimate products
- report illegal products



Serious issue; lack of farmer* awareness on negative consequences of using illegal pesticides on environment and society

Farmer perception; consequences from using fake pesticides



*"They compare and if it works out, they make a decision to buy again next year."
"And the price is a criteria here and it works out so why not I"*

"Not long ago someone was here and said that some representative, chemical one I think, that sometimes these chemicals... some chemical had been better than the original one."

Consequences of using unregistered PPPs may be much more serious than losses of crops & farmers income.

If food containing illegal substances is detected on the market/or harm consumers the consequences are impossible to QUANTIFY

97% of consumers¹ would not eat apples treated with illegal pesticides

*200 cereal and fruit growers in Poland
¹150 consumers in Poland

From Market Research conducted by Kleffmann for anti-CF team in Polish national association



LEGAL PROTECTION PLANTS:

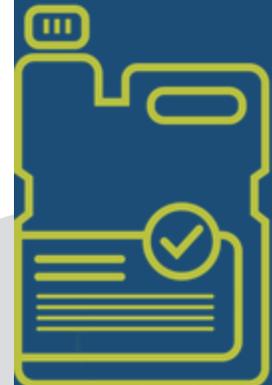
- ☑ They are registered in Poland by the **Minister of Agriculture and Rural Development**
- ☑ They contain a **label** in Polish
- ☑ When you purchase them you receive a VAT invoice, which serves as proof of purchase
- ☑ Before they were allowed to sell, they have gone through many years of research and testing, so your crops are safe
- ☑ If the measure does not work, you can make a complaint, despite the correct use
- ☑ You will receive subsidies and certificates

By buying the original means
you will gain many times

ILLEGAL PLANT PROTECTION PRODUCTS:

- ☐ They are not registered in Poland, you are **breaking the law**
- ☐ Often the product label is in a foreign language
- ☐ You will not receive a confirmation of purchase - VAT invoice
- ☐ Contain unpatched substances with unknown effect and influence on your health, yields, the environment
- ☐ If the medium does not work or you lose the crops you will be alone with the problem
- ☐ You will lose subsidies and certificates
- ☐ Residue in the crop is a loss of confidence to you as a food producer

Buying fakes
you pay twice



Website bezpiecznauprawa.org

WHAT ARE THE EFFECTS OF USING ILLEGAL PLANT PROTECTION PRODUCTS?

See for yourself!



VIEW



YOU RISK LOSING EU SUBSIDIES!

The use of illegal means is illegal. Irregularities are easily identified during random checks, and this means loss of EU grants and certificates.

YOU RISK LOSING THE AUDIENCE!

Processors and food producers count on quality. Can you afford the chance of contaminating your crops?



WHAT DO YOU RISK USING ILLEGAL PLANT PROTECTION PRODUCTS?

Illegal plant protection products are mostly fakes.



YOU RISK MANY PENALTIES!

Use and even possession of counterfeit plant protection products can cost you very much. You may also be subject to criminal liability .

YOU RISK LOSING YOUR CROPS!

Illegal substances contain unprocessed substances with unknown effect on the plants. They may not work and in extreme cases burn plants.



YOU RISK LOSING HEALTH AND ENVIRONMENTAL POLLUTION!

Illegal agents contain unknown or banned chemicals that can contaminate water and soil permanently and thus harm you and your environment. Can you afford this risk?



WHERE YOU BUY LEGAL

Plant protection products can be purchased in Poland at your chosen plant or internet shop authorized by the WIORIN.

[GO TO THE MAP](#)

BEZPIECZNA
UPRAWA

MAKE WISE DECISIONS

LEGAL VS. ILLEGAL

WHAT'S SAFE?

ORIGINAL OR A BUSINESS?

WHERE TO BUY?

VOJVODESHP

CITY

Whole Poland

Select city



Criminalisation of pesticide offences; related to illegal parallel trade

- Penalties for illegal imports
- Penalties for use of unauthorised PPPs
 - examples of laws from Germany



Criminalisation of pesticide offences; Germany(I)

Possible punishments in cases of illegal imports:

- **Withdrawal of the approval of expertise** (a must for professional bringing on the market (§ 9 para 1, para 3 PflSchG)).
- Misdemeanour with a **maximum penalty of €50,000** for bringing a **PPP** onto the market **without an authorisation**. Confiscation also possible (§ 68 para 2 no 1, para 3 in conjunction with § 28 para 1 PflSchG).
- Misdemeanour with a **maximum penalty of €50,000** bringing a **PPP** onto the market **without a parallel import approval** (§ 68 para 1 no 29, para 3 in conjunction with § 46 para 1 PflSchG).
- Misdemeanour with a **maximum penalty of €10,000** for violating rules concerning saving **records of purchase** (§ 68 para 1 no 30-35 in conjunction with § 49 para 1, 3, 4 PflSchG).
- **Revoking of the parallel import** approval if the holder of the approval obtained it by deception, threat or corruption (§ 50 para 1 no 1 PflSchG) or by transmitting false or incomplete information intentionally or being grossly negligent (§ 50 para 1 no 2 PflSchG).

Criminalisation of pesticide offences; Germany (II)

Withdrawal of parallel import approval in cases of:

- repeatedly violating rules concerning **saving records** of purchase (§ 50 para 2 sentence 1 no 1 PflSchG) or
- violating parallel import approval by **bringing another PPP onto the market** (§ 50 para 2 sentence 1 no 2 PflSchG) – one case is sufficient!

In cases concerning § 50 para 2 sentence 1 no 2 PflSchG of abusing the parallel import approval:

- **suspension for 2 years** for new parallel import approvals
- in cases of repeat offending, **suspension for 5 years** (§ 50 para 2 sentence 2 no 1 PflSchG)
- in cases of repeat offending, **withdrawal of all parallel import approvals** concerning the same reference PPP (§ 50 para 2 sentence 2 no 2 PflSchG)

Criminalisation of pesticide offences; Germany (III)

In the case of manufacturing, import within the EU or bringing onto the market a ppp

- which is **wrongly labelled** concerning identity or origin, **imprisonment up to 3 years or fine** (§ 69 para 2 no 2 in conjunction with § 31 Abs. 5 sentence 1 no 1 PflSchG)
- in another form of misleading designation, specification or layout, **imprisonment of up to 1 year or fine** (§ 69 para 3 in conjunction with § 31 para 5 sentence 1 no 2 PflSchG)
- “Illegal” product confiscation is also possible (§ 69 para 7 PflSchG)

In the case of import within the EU or bringing onto the market of a ppp which contains a substance or is **manufactured with a substance whose use is totally banned**, **imprisonment up to 5 years or fine** (§ 69 para 1 no 3 in conjunction with § 14 para 5 PflSchG). The attempt is punishable (§ 69 para 6 PflSchG)

Farmers and parallel imports of PPPs into Germany

🌱 Import for own use (§ 51 PflSchG):

- Must have a parallel import approval “for use on their own farm”
- Must have the instructions of the reference PPP in hand (no labelling concerning the rules of the Member State of destination is needed!)
- Must save records of proof of purchase, bills, delivery notes concerning the imported ppp for 5 years

🌱 Concerning cross-compliance rules the **use of PPPs without an authorisation is prohibited and can be punished with the reduction of direct payments**

🌱 **Imprisonment up to 1 year or fine**, for bringing professionally on the market **foodstuffs produced with unauthorised PPPs** in or on them (§§ 9 para 1, 59 para 1 no 6 LFGB = German act concerning food- and feedstuffs)

Destruction of seized products; significant problem for authorities and industry

Seizure of goods with TM or patent

- Under EU legislation, rights holder has to pay for storage and destruction
 - No deterrent effect created as those involved in supply of criminal product face no charges or penalties to deter them from their illegal activities

Products seized without TM or patent (no IP rights)

- Possible path forward
- Legislation and enforcement have to be improved
 - Should be the responsibility of importers/exporters to pay for storage and destruction of illegal pesticides – e.g. as in Hamburg
 - False declarations (goods, company holding registration, etc)
 - Declare illegal pesticides as toxic waste?

Counterfeiting needs a stronger Regulation 1107/2009

- The **Regulation 1107/2009** lays down rules for the authorization of plant protection products and for their placing on the market, use and control within the Community (article 2).
- Any amendment to that regulation, prohibiting the placing on the market and the use of illegal pesticides on one hand, and improving their control on the other hand, is highly desirable.



Parallel Trade (art. 52)

Solutions & Recommendations

- ▶ To **prohibit the parallel trade of parallel traded products** (no authorization cascade)
- ▶ To **limit the approval period** of parallel trade authorization, e.g. 1 year or by traded batch
- ▶ To **prohibit repackaging of small containers** (repackaging is already prohibited by national law in a couple countries)
- ▶ In case of repackaging to oblige the use of a different trade mark if legally possible but **at least to keep the original batch number and production date**
- ▶ To **mandatory inform**, by written notice, the owner of the trade mark 30 days before import of the (re-labelled) parallel traded product (**to prohibit the use of infringed trade marks**)



Manufacturers and Repackagers Solutions & Recommendations



- ▶ **Specific implementing measures on record-keeping pursuant to Article 67 of Regulation 1107/2009 are needed (5-year legal traceability requirements)**
- ▶ **Certification of each stakeholder in the supply chain and accurate records on EU level of their locations.**
- ▶ To permit monitoring by control authorities with on-site checks.
- ▶ In case of repacked parallel traded product it is crucial that name and address of repackaging and relabeling plants are stated in the application form for import and on the label.



Transport operators

Solutions & Recommendations

- In the frame of Article 68 revision of Reg. 1107/2009 (monitoring and control) or in a new delegated/implementing act to the Official Control Regulation 2017/625 (according to art. 24), to develop provisions for the transport operators and codes of good practices.
- Transport operators should **require authenticated identification** that enables them **to screen their customers**, and recognize and address abuses
- Transport operators should **establish contractual terms** with their customers **including an indemnity clause in the insurance contracts** (thus customers to bear costs of seizing and destruction of counterfeit goods)
- To complement the “certificate of export” supplied by authorities for legitimate pesticide exports with a “**declaration of authorization**” certifying the authorization of use in the EU country of destination.



Controls

Solutions & Recommendations



- Specific implementing measures on official controls pursuant to Art. 68 (monitoring and control) have not been established yet.
- To limit on country level the list of customs crossing points specialized in customs clearance of pesticides.
- Harmonized control measures, mainly in seaports at EU28 borders and in terms of uniform minimum frequency (amendment to act on Official Controls Regulation 2017/625, art. 24)
- To oblige national authorities to cooperate by communicating better with each other (particularly customs to cooperate with PPP authorities)
- OLAF& EUROPOL as official investigators to better support national customs, police and control authority by coordinating control actions between countries (ref. Silver Axe)
- Controls inside Member States should be considered an important complementary measure
- Shared solutions with third countries to address illegal trade.
- All online PPP retailers should be legally authenticated retailers operating in the EU
- Cooperate with payment processors and online advertising companies

Sanctions Solutions & Recommendations

- ▶ **Need to harmonize the sanctions/penalties** as much as possible between the EU countries **in relation with each criminal case type**
- ▶ **To define provisions about fines/penalties applicable to different infringements** in the frame of Article 139 of the Official Control Regulation 2017/625 or even by inserting an article in Reg. 1107/2009.
 - **Proportional sanctions** (fines/penalties) shall apply to all operators in an appropriate way
 - All sanctions should be **serious enough to offset the potential economic advantage of the infringer and deter future criminal activity.**



NEW ECPA Website



- Why pesticides?
- Stewardship
- Regulatory & Policy Topics
- Media
- Industry Resources
- Events
- About us
- Members login
- Contact Us
- Q

Product Life Cycle

Areas of action

Counterfeit & Illegal Pesticides

The global trade in counterfeit and illegal pesticides is growing. With increasing quantities of fake and illegal pesticides produced, marketed and sold by organised criminals around the world, counterfeit and illegal pesticides present real risks to farmer's health, the environment and the economy.

1. WHAT YOU NEED TO KNOW – THE BASICS
2. WHAT ARE COUNTERFEIT AND ILLEGAL PESTICIDES?
3. HOW DOES THE DANGEROUS TRADE IN COUNTERFEIT AND ILLEGAL PESTICIDES WORK?
4. HOW ARE COUNTERFEIT AND ILLEGAL PRODUCTS MARKETED?
5. WHAT ARE THE POTENTIAL RISKS ASSOCIATED WITH COUNTERFEIT AND ILLEGAL PRODUCTS?
6. CONSEQUENCES FOR FARMERS AND OTHER MEMBERS OF SOCIETY
7. FIXING THE PROBLEM: CLOSING LEGISLATIVE LOOPHOLES
8. FIXING THE PROBLEM: ENSURING A SAFE PESTICIDES MARKET
9. DID YOU KNOW?

<http://www.ecpa.eu/stewardship/counterfeit-illegal-pesticides>

Questions, comments?

