

## CASE INFORMATION \_\_\_\_\_

### **Demand for state oversight of pesticide exports**

Bayer, one of the biggest chemical corporations in the world, sells highly dangerous pesticides in India through subsidiaries such as Bayer CropScience AG. However, the company does not sufficiently ensure that the users are informed of the dangers and necessary precautions. This applies, for example, to the export and sale of Nativo 75 WG. In Europe, the Bayer group sells this toxic product only with the required warning: “suspected of damaging the unborn child”. This warning is not included on the same product after it is exported to and made available in India.

This was revealed in a Monitoring Report submitted to the Food and Agriculture Organisation of the United Nations (FAO) and World Health Organisation (WHO) by the European Center for Constitutional and Human Rights (ECCHR) and its partner organizations.

In its export and distribution of pesticides, Bayer not only violates its own promises and the International Code of Conduct of the FAO but also breaches Indian and German law. Bayer did not react to the disclosure of these issues. In fact, Bayer continues to sell the pesticides in India without sufficient warning. Therefore, ECCHR and its partners are now taking action at national level in Germany and India and submitted complaints against the sale of Nativo in both countries.

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### **No warning of health risks on German pesticides sold in India**

The pesticide Nativo contains the active ingredients Tebuconazole and Trifloxystrobin. It is produced in Germany and exported to India where it is repackaged and marketed. When the active ingredient was registered in the EU, Tebuconazole was classified as suspected of reproductive toxicity. Accordingly, the warning “suspected of damaging the unborn child” is mandatory in Europe. Under the Indian Insecticides Act, pesticides must contain “necessary and sufficient” warnings to adequately prevent risk to humans or animals. In the case of Nativo, women in particular are to be protected from the potentially harmful effects. However, this information doesn’t exist on products, which were still available in the Indian state Punjab in the year of 2016.

The label also doesn't give information on application, symptoms of poisoning, first aid, necessary protective equipment, disposal and warnings on the re-use of packaging.

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## **ECCHR: German authorities do not use control and sanctions sufficiently**

The German authorities must monitor overseas activities of companies situated here and intervene in cases of human rights violations. Under the German pesticide laws, pesticides may only be exported if the container is labeled with warnings necessary for the protection of human health. The German authorities, for example the Chambers of Agriculture of the federal states in Germany are obliged to control compliance with the law and intervene when a violation is suspected. In light of the lack of information on the end product in India it is questionable whether the warning was on the exported containers.

In the case of Nativo, the ECCHR filed a complaint to the relevant body at the Chamber of Agriculture for North Rhine-Westphalia in Bonn on the possible violation of national export rules. Besides imposing a fine, this governmental agency can also take measures to prevent or end violations of the law. In particular it can prohibit companies from exporting Nativo without adequate warnings.

The state obligation to exercise oversight and apply sanctions follows from international conventions and principles. According to the FAO Code of Conduct, countries exporting pesticides must ensure that good trading practices are followed in the export of these goods, especially with countries that have not yet established adequate regulatory schemes. The UN Human Rights Committee unambiguously [asked](#) Germany to set out clearly the expectation that all businesses domiciled in its jurisdiction respect human rights standards throughout their operations.

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## **Indian Ministry of Agriculture investigates on Bayer-subsidary**

Human rights activists are also taking action against Nativo in India. Under Indian law, it is a crime to import or sell misbranded pesticides. This can lead to prison sentences of up to two years or fines. A pesticide is misbranded if its label does not contain a warning or caution which may be necessary and sufficient to prevent risk to humans or animals. Accordingly, it is necessary to indicate known health hazards. Consequently, the warning of reproductive toxicity that is

necessary in Europe and found on Nativo packages in the UK and Switzerland is necessary in India as well.

The Indian citizen movement Swadeshi Andolan therefore filed what is known as a revision petition to the Indian Ministry of Agriculture in New Delhi. The ECCHR supported the petition with legal expertise. With the petition the activists call upon the government to prohibit the sale of Nativo, quash Nativo's registration and initiate criminal investigations against Bayer. In July 2016, the Ministry of Agriculture opened investigatory proceedings against Bayer subsidiary Bayer CropScience Ltd. (India), a hearing is planned for October 2016.

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## **The myth of the safe use of highly hazardous pesticides**

Labels are important for informing farmers about dangers, necessary protective equipment and other protective measures. Nevertheless, labels alone cannot sufficiently warn of the specific dangers of pesticides. The safe use of highly hazardous pesticides requires several precautions to be taken equally and at the same time. To ensure the safe use of pesticides such as Nativo, access to relevant information is not enough, in fact, also the necessary protective equipment must be available for purchase locally, it must be affordable and suitable for use under local climatic conditions. In the hot humid climate of the Punjab it is almost impossible to work while wearing non-breathable protective equipment. In rural areas like the Punjab where pesticides are widely used, access to health care and the capacities of the health system often are limited.

Manufacturers must ensure that their pesticides are used safely. Under the FAO Code of Conduct, the pesticides industry should halt sales if it is not certain that the end user implements the necessary safety measures.

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## **Women and children are particularly exposed to the dangers**

Women absorb more pesticides through the skin than men and are therefore particularly vulnerable to the dangers of pesticides if they cannot protect themselves sufficiently. During pregnancy and breastfeeding they may pass on the chemicals in pesticides to their children. Children are particularly vulnerable to the harmful effects. Because they are smaller and are still developing, the substances have an even greater effect on their bodies. Their metabolisms are also faster, meaning they can absorb substances more quickly. The contact with

pesticides during certain stages of development may stunt or permanently impact their development.

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## Human rights responsibility of states and pesticide manufacturers

The Monitoring Report by the ECCHR shows that Bayer operates with double standards given that consumers are essentially left without any protection against dangers that Bayer would never allow in Germany. The UN Special Rapporteur on Hazardous Substances also expressed great concern over the ongoing human rights impacts of highly-hazardous pesticides in his statement after his visit to Germany. He called on the German government to include in its National Action Plan on Business and Human Rights clear due diligence obligations for chemicals companies.

ECCHR and its partner organizations call upon Bayer to immediately halt the sale of highly poisonous pesticides in India. But the German government must take action as well. It has the extraterritorial human rights obligation to encourage businesses like Bayer that are based in Germany to respect human rights throughout their overseas operations. This obligation includes ensuring tighter export controls and prohibiting the export of pesticides to countries where it is known that those pesticides lead to severe harm to health and the environment.

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<p>Safety information <b>Nativo 75WG</b> Contains 250 g/kg (25.0 % w/w) trifloxystrobin and 500 g/kg (50.0% w/w) tebuconazole.</p>	<p><b>Warning</b> Causes serious eye irritation <b>Suspected of damaging the unborn child.</b> Very toxic to aquatic life with long lasting effects. Wear protective gloves/protective clothing/eye protection/face protection. IF exposed or concerned: Call a POISON CENTER or doctor/physician. Dispose of contents/container to a licenced hazardous-waste disposal contractor or collection site except for empty clean containers which can be disposed of as non-hazardous waste. Contains trifloxystrobin. May produce an allergic reaction. To avoid risks to human health and the environment, comply with the instructions for use.</p>
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# EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



Extract from the Nativo 75WG label authorized for sale in the UK



Photograph of Nativo 75WG package bought in Punjab, without hazard phrase

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[www.ecchr.eu](http://www.ecchr.eu)