# MEMBER STATES' DISCRETION IN EMERGENCY PESTICIDE AUTHORISATIONS: THE ROLE OF THE EU PRINCIPLES OF GOOD ADMINISTRATION AND THE PRECAUTIONARY PRINCIPLE IN SHAPING BETTER NATIONAL ADMINISTRATIVE PRACTICES

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*The misuse of emergency pesticide authorisations under Article 53 of Regulation 1107/2009 by EU Member States systematically undermines the Regulation's core objective of prioritising health and environmental protection over improving plant production. The Member State authorities competent to decide on these authorisations lack independence and transparency safeguards and thereby frequently succumb to industry pressure, authorising pesticides without rigorous scientific scrutiny. With the intent to analyse how Article 53 can be realigned with the objective of Regulation 1107/2009, this article proposes leveraging the principles of good administration and the precautionary principle. To that end, it examines how the Court of Justice has interpreted and applied good administration principles to impose obligations of impartiality and transparency on Member States' authorities when acting within the scope of EU law. Additionally, it examines how the Court has resorted to the precautionary principle to guide the discretion of national competent authorities towards higher health and environmental standards in the context of pesticide authorisation procedures. However, recognising the uneven application of these principles across national administrative systems, this article ultimately argues that the EU should translate these principles into specific measures.*

## 1 INTRODUCTION

In the *Pesticide Action Network Europe and Others* (*PAN Europe*) case, the Court of Justice of the European Union (CJEU) was asked whether Article 53 of Regulation 1107/2009 (the Plant Protection Products Regulation or PPPR) allows the controversial practice of granting emergency authorisations for plant protection products, commonly referred to as pesticides, containing active substances that are expressly prohibited under EU law.[1] The Court concluded that this practice is incompatible with the objectives of the Regulation, emphasising that even emergency authorisations under Article 53 should be consistent with the precautionary principle and the Regulation's objective of giving priority to the protection of health and the environment over the improvement of plant production.[2]

One of the merits of this judgment is that it draws attention to Article 53 of Regulation 1107/2009. Originally conceived as a mechanism to allow Member States to place

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[1] Case C-162/21 *Pesticide Action Network Europe and Others* EU:C:2023:30.

[2] ibid paras 47-48.

plant protection products on the market for limited and controlled use in emergency situations, by way of derogation from the ordinary approval procedure, Article 53 has gradually become a routine unlawful procedure.[3] This provision has been used to repeatedly authorise the same products year after year, or to introduce products containing active substances that are still not approved or banned at the EU level.[4] In other words, emergency authorisations have evolved into a mechanism for bypassing standard EU regulatory procedures and placing pesticides on the market without the crucial safeguards that ordinary procedures provide. Nevertheless, the European Commission and the Member States have maintained an ambiguous stance toward reforming Article 53's implementation.[5] This paralysis stems from various factors, especially political and economic constraints. Notably, under the current system, agricultural lobbies can easily influence emergency authorisation procedures. Therefore, they have exerted pressure to maintain the current flexibility of the derogation regime.[6]

Against this backdrop, this article argues that the EU legal framework provides the necessary tools to reconcile Article 53 with the overarching objectives of Regulation 1107/2009. To this end, it illustrates that, according to the EU principles of good administration and the precautionary principle, as interpreted by the CJEU, national competent authorities are required to implement essential procedural safeguards and ensure that pesticide authorisations are consistent with the public interest in protecting health and the environment. At the same time, considering the limits of a consistent and effective application of these principles across the administrative systems of the Member States, this article suggests proceduralising these principles within EU law.

To develop this argument, section 2 begins with an overview of the procedures for placing pesticides on the market under Regulation 1107/2009. Subsequently, section 3 examines the factors that have allowed for the use of Article 53 emergency authorisations in ways that conflict with both the provision's intended scope and the objective of Regulation 1107/2009. Specifically, this section illustrates that the Member States' authorities responsible for deciding on these authorisations lack the safeguards of independence and

[3] Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC [2009] OJ L309/1, recital 2 and Art 53. The list of emergency authorisations can be accessed at the following link: <https://ec.europa.eu/food/plant/pesticides/eu-pesticides-database/ppp/screen/home> accessed 30 October 2024.

[4] European Parliamentary Research Service (EPRS), 'Regulation (EC) 1107/2009 on the Placing of Plant Protection Products on the Market: European Implementation Assessment' (European Parliament 2018) <https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2018)615668> accessed 30 October 2024, Annex I-9.

[5] In response to a question from a Member of the European Parliament, the Commission has stated that it is following up with Member States regarding authorisations granted after the Court's ruling. Additionally, the Commission has reminded Member States that authorisations granted before the ruling should be withdrawn in accordance with their national legal procedures. European Parliament, 'Derogations for the use of pesticides that were banned for health and environmental reasons' (Question for written answer E-003023/2023, 12 October 2023) <https://www.europarl.europa.eu/doceo/document/E-9-2023-003023_EN.html#def2> accessed 30 October 2024. However, following the Court's ruling, the Commission has not yet adopted a formal position. European Commission, 'Summary report of the Informal Technical Meeting on emergency authorisations after the Judgment of 19 January 2023 in case C -162/21 (Pesticide Action Network Europe and Others vs. Belgium)' (13 February 2023).

[6] Banned pesticides still in use in the EU, 'Report: Banned pesticides still in use in the EU' (*Pesticide Action Network*, 2023) <https://www.pan-europe.info/resources/reports/2023/01/banned-pesticides-still-use-eu> accessed 12 February 2025.

transparency necessary to check and balance the pesticide industry's control over emergency procedures. To address these deficiencies, section 4 examines how the EU principles of good administration can create positive obligations for Member States' authorities when enforcing EU law, especially in terms of impartiality and transparency. This section also analyses how the precautionary principle has been successfully applied by the Court of Justice to increase health and environmental standards in the context of pesticide authorisation procedures. Against this background, section 5 concludes by highlighting that while these EU legal principles can recalibrate national administrative practices in pesticide authorisations, possible deficiencies in their implementation across Member States' administrative systems risk undermining the effectiveness of this approach. Therefore, the last section suggests operationalising the measures required by these principles within EU law.

## 2 PLACING PESTICIDES ON THE MARKET: FROM NORMAL TO EMERGENCY SITUATIONS

Pesticides are important for agriculture to protect plants and their products from harmful organisms and are therefore an essential component of food and agricultural production systems.[7] At the same time, their use creates some externalities. While the use of pesticides increases agricultural productivity, pesticides also pose significant risks to human and animal health, the environment and ecosystems.[8] For these reasons, it is crucial to establish a regulatory framework that balances these competing interests in the use of pesticides.

Considering these elements, the EU has established a legislative framework to regulate the use of pesticides.[9] At a time when EU lawmaking was influenced by the 'Better Regulation' initiative, which aimed to simplify legislation and administration,[10] the EU developed its pesticide regulatory framework guided by the precautionary principle.[11] Based on the Sixth Community Environment Action Programme, this framework aims to increase

[7] European Commission, 'Report from the Commission to the European Parliament and the Council. Evaluation of Regulation (EC) No 1107/2009 on the placing of plant protection products on the market and of Regulation (EC) No 396/2005 on maximum residue levels of pesticides' [2020] COM/2020/208 final; and European Commission, 'Commission staff working document: Drivers of food security' SWD (2023) 4 final, 67.

[8] European Environmental Agency (EEA), 'How pesticides impact human health and ecosystems in Europe' (2023) <https://www.eea.europa.eu/publications/how-pesticides-impact-human-health> accessed 30 October 2024; Luca Carisio, Noa Simon Delso, and Simone Tosi, 'Beyond the urgency: pesticide Emergency Authorisations' exposure, toxicity, and risk for humans, bees, and the environment' (2024) 947 Science of the Total Environment 174217; and Commission, 'Drivers of food security' (n 7) 67.

[9] The current EU legislative framework on pesticides consists of four key legislations: Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC [2005] OJ L70/1; 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 [2009] OJ L309/71; Regulation 1107/2009 (n 3) governing the placing of plant protection products on the market (PPPR); and Regulation (EC) No 1185/2009 of the European Parliament and of the Council of 25 November 2009 concerning statistics on pesticides [2009] OJ L324/1. In literature, Emanuela Bozzini, *Pesticide Policy and Politics in the European Union: Regulatory Assessment, Implementation and Enforcement* (Palgrave Macmillan 2017) 5-8.

[10] Interinstitutional agreement on better law-making [2003] OJ C321/1; and European Commission, 'Communication from the Commission to the Council and the European Parliament: Better Regulation for Growth and Jobs in the European Union' COM (2005) 0097 final.

[11] David Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States* (Princeton University Press, 2012) 274-275.

the level of protection of human and animal health and the environment, while enhancing the competitiveness of the EU internal market and ensuring food safety.[12] In this context, Regulation 1107/2009 lays down the main rules for the placing of plant protection products on the market, including rules for the approval of active substances (components that control harmful organisms), safeners (substances that reduce the effects of active substances) and synergists (substances that enhance the activity of the active substance) which plant protection products contain or consist of.[13]

Under normal circumstances, for plant protection products' market placement, Regulation 1107/2009 establishes a dual authorisation procedure: to be finally authorised at the Member State level, a product must contain active substances that have previously been approved at the EU level.

This ordinary procedure starts with the submission of a dossier by an applicant seeking approval for an active substance to the national competent authority of the designated Rapporteur Member State (RMS).[14] This dossier must contain extensive documentation demonstrating the safety of the substance for humans, animals and the environment. In particular, Regulation 1107/2009 imposes on the producer of these substances the responsibility to prove that these substances do not cause any hazard.[15] As an interim note, it is relevant to highlight that Regulation 1107/2009 applies a hazard-based approach to the authorisation of active substances.[16] This means that, when a substance meets one of the cut-off criteria set out in Article 4 of that Regulation, the evaluation stops at the hazard identification stage and the assessment does not proceed to the further steps of the risk assessment, which typically include exposure assessment and risk characterisation.[17]

Once the dossier has been submitted, the approval process for the active substance continues with the authority of the RMS assessing the admissibility of the application. This evaluation starts with a completeness check of the dossier, followed by a preliminary assessment.[18] The authority then prepares a draft assessment report (DAR), which is submitted to both the Commission and the European Food Safety Authority (EFSA).[19] At this stage, EFSA carries out the risk assessment of the active substance, in collaboration with the RMS. At the end of this evaluation phase, EFSA forwards its conclusions to the Commission, which acts as a risk manager.[20] The Commission prepares a review report, including a draft Regulation for either approval or non-approval of the substance. This draft is discussed in the Standing Committee on Plants, Animals, Food and Feed (PAFF

[12] Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme [2002] OJ L242/1, Art 7.
[13] Regulation 1107/2009 (n 3) Arts 1(1) and 1(2).
[14] ibid Art 7.
[15] ibid Art 8(1).
[16] EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) Annex II-22. The authors emphasise that strong public sentiments against pesticides, especially the fact that they are man-made hazards with severe health implications, have led to the adoption of strict standards based on a strong interpretation of the precautionary principle. This approach is different from the one typically employed in other food-related policy areas.
[17] Hazard identification represents the first phase of the scientific risk analysis process. Case T-13/99 *Pfizer Animal Health SA v Council of the European Union* EU:T:2002:209 para 156; and Ragnar E Lofstedt, 'Risk versus Hazard – How to Regulate in the 21st Century' (2011) 2 European Journal of Risk Regulation 149, 153-154.
[18] Regulation 1107/2009 (n 3) Art 9.
[19] ibid Art 11.
[20] ibid Art 12.

Committee). If the Committee gives a favourable opinion, the Commission can then proceed to formally adopt the Regulation listing the approved substance.[21]

The list of approved substances contained in the Commission's Regulation allows pesticide manufacturers or other applicants to register plant protection products containing the approved essential substances for their placement on the market. This second phase takes place mainly at Member State level and is carried out by national competent authorities.[22] Generally, an applicant seeking to place a pesticide on the market must apply for authorisation in each Member State where the pesticide is intended to be placed.[23] The dossier must contain all the data required by the Implementing Regulation 284/2013.[24] The respective national competent authorities then evaluate the dossier. At the same time, companies wishing to place their product on the markets of multiple EU countries can apply for national authorisation in one Member State and then apply for mutual recognition in other Member States. Applications for mutual recognition can be made either in parallel or in sequence.[25] To facilitate mutual recognition and to avoid duplication of work and reduce administrative burden, Regulation 1107/2009 establishes three geographical zones (North, Centre and South) based on comparable agricultural, plant health and environmental conditions.[26] In this context, each Member State can still establish its own procedures for product authorisation while respecting the essential conditions and criteria set in the Regulation.[27]

By way of derogation from this two-stage ordinary procedure, Article 53 of Regulation 1107/2009 also allows plant protection products to be placed on the market under significantly less stringent conditions and safeguards than those prescribed above. Designed as a rapid, temporary, and last resort procedure for emergency situations, Article 53 essentially allows national competent authorities to authorise products for up to 120 days when there is a risk that cannot be contained by other reasonable means. If approved, the use of the product must remain limited and controlled.[28] The national authority must also immediately inform the other Member States and the Commission, providing detailed information on the measures taken and the considerations relating to consumer safety.[29] At this stage, the Commission may request an opinion, or scientific or technical assistance from EFSA, which must respond within one month. On the basis of this opinion, the Commission may decide whether the Member State may extend, withdraw or amend the measure.[30]

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[21] Regulation 1107/2009 (n 3) Art 13.
[22] A list of the Member States' competent authorities is available at the following link: <https://food.ec.europa.eu/plants/pesticides/approval-active-substances-safeners-and-synergists_en> accessed 30 October 2024.
[23] Regulation 1107/2009 (n 3) Art 33(1).
[24] Commission Regulation (EU) No 284/2013 of 1 March 2013 setting out the data requirements for plant protection products, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market [2013] OJ L93/85.
[25] Regulation 1107/2009 (n 3) Arts 40(1) and 40(2).
[26] ibid Annex I.
[27] ibid Arts 29, 36 and 37.
[28] ibid Art 53(1).
[29] ibid Art 53(2).
[30] ibid Art 53(3)

While Regulation 1107/2009 establishes separate procedures for normal and emergency circumstances for pesticide authorisation, the practical implementation of this Regulation suggests that this distinction has become increasingly blurred. The next Section illustrates how Article 53 has become almost a routine procedure, often used in breach of the conditions set out in the provision.

## 3 HOW THE EXCEPTION HAS BECOME ROUTINE

Regulation 1107/2009 fully harmonises the approval of active substances while leaving the Member States the responsibility to authorise plant protection products according to national conditions, in light of harmonised criteria.[31] In this context, Member States can also exercise their autonomy by resorting to emergency authorisations under Article 53 in response to specific national circumstances such as environmental threats to plant production and ecosystems that cannot be mitigated by other reasonable means. However, contrary to both the explicit wording of the provision and the underlying objectives of Regulation 1107/2009, evidence suggests that Article 53 has become a routine practice, extending beyond its intended application to emergency circumstances.[32]

A major concern is the prevalence of repeated authorisations of the same product through emergency authorisation requests rather than through ordinary procedures.[33] Many derogations are renewed year after year, transforming *de facto* what should be a short-term emergency measure into a long-term solution.[34] Yet, many approvals concern products containing EU-approved active substances.[35] However, contrary to the spirit of Article 53, emergency authorisation requests do not relate to special circumstances, do not mention alternative products that may be used to contain the danger[36] and do not contain specific risk mitigation measures that would limit and control the use.[37] Furthermore, in clear contrast with the Commission's guidance document on Article 53, these authorisations are not replaced by either minor use extensions under Article 51 or standard authorisations.[38] Lastly, resorting to Article 53, pesticide manufacturers have unlawfully placed pesticides containing substances prohibited at EU level on the market.[39]

These misapplications of Article 53 are due to a complex interplay of economic, political and regulatory factors. In the current pesticide-dependent agricultural production system, national emergency authorisation procedures have become a reliable alternative to

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[31] Proposal for a Regulation of the European Parliament and of the Council concerning the placing of plant protection products on the market [2006] COM/2006/0388 final, points 331-332.
[32] A detailed analysis of Article 53 can be found in study conducted by Milieu Ltd and IEEP in Annex I to EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4).
[33] ibid Annex I-36 and 37.
[34] ibid 56, 57 and Annex I-9.
[35] ibid Annex I-28 and 29.
[36] ibid Annex I-33. One can read that 'less than one-third of derogations granted in 2017 (27%) referred explicitly to special circumstances in the text of the notification form. Around 18% of the derogations referred specifically to the control of a new or growing pest'.
[37] ibid Annex I-34.
[38] European Commission, 'Guidance on Emergency Authorisations According to Article 53 of Regulation (EC) No 1107/2009' (SANCO/10087/2013 rev 1, 2021) 6.
[39] EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) 59; and European Parliament, 'European Parliament resolution of 16 January 2019 on the Union's authorisation procedure for pesticides' (2018/2153(INI)).

time-consuming and cumbersome ordinary pesticide authorisation procedures.[40] Moreover, the inadequate or ineffective EU oversight of national practices likely contributes to the misuse of emergency procedures beyond the scope of Article 53. While the Commission has the possibility under Article 53(2) and (3) of Regulation 1107/2009 to request an opinion from EFSA and to decide on the extension, amendment, or withdrawal of emergency authorisations, this supervisory capacity has so far been little used.

Parallel to these considerations, this section specifically illustrates that the misapplications of Article 53 are the result of two key factors: firstly, the absence of independence requirements for national competent authorities within Regulation 1107/2009; and secondly, the lack of transparent procedures.

These two factors are largely linked to the complex trade-off between the Member States' autonomy and the necessity to achieve the EU policy objectives in the system of decentralised administrative enforcement of EU law. On the one hand, the principle of institutional autonomy gives the Member States the flexibility to fulfil their EU membership obligations in accordance with their individual constitutional and administrative frameworks.[41] As a result, when implementing EU law, each Member State determines which national bodies are competent to enforce EU law and which procedures apply to the enforcement of that law at the national level.[42] This approach is deliberately designed to accommodate the domestic organisational and administrative structures of each individual Member State.[43] On the other hand, this autonomy might represent an obstacle for the EU to reach its policy objectives, as Member States might establish enforcement structures that do not necessarily allow for an effective implementation of EU policies.[44] In response, the EU legislator may lay down structural and procedural arrangements related to the decentralised enforcement of EU legislation by Member States' administrations.[45] As an intermediate note, it should be recalled that although these interventions are currently

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[40] EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) Annex I-36 and 37. The authors highlight that 'the large number of derogations for PPPs undergoing an authorisation procedure, together with a large number of repeated derogations, suggests that Article 53 derogations are also used to fix structural problems occurring in authorisation procedures'.

[40] ibid 56 and 57.

[41] The precise content and scope of institutional autonomy under EU law remain unclear. However, references to institutional autonomy can be found in the Court of Justice's case law. For instance, most recently, Case C-796/19 *European Commission v Republic of Austria* EU:C:2020:920 paras 60-61; and Case C-378/19 *Prezident Slovenskej republiky* EU:C:2020:462 para 38. Furthermore, literature also refers to institutional autonomy, often together with the more well-developed concept of procedural autonomy. Annetje Ottow, 'The different levels of protection of national supervisors' independence in the European landscape' in Suzanne Comtois and Kars de Graaf (eds), *On judicial and quasi-judicial Independence* (Eleven International Publishing, 2013) 139; and Andrea Biondi and Giulia Gentile, 'National Procedural Autonomy' in Hélène Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law* (Oxford University Press 2019).

[42] On the difference between implementation and enforcement of EU law, see Jan Jans, Roel de Lange, Sacha Prechal, and Rob Widdershoven, *Europeanisation of Public Law* (1st edn, Europa Law Publishing 2007) 13.

[43] Dionyssis G Dimitrakopoulos, 'The Transposition of EU Law: 'PostDecisional Politics' and Institutional Autonomy' (2001) 7 European Law Journal 442, 444.

[44] Robert Schütze, *European Constitutional Law* (2nd edn, Cambridge University Press 2016) 334.

[45] Stefan Kadelbach, 'European Administrative Law and the Law of a Europeanized Administration' in Christian Joerges and Renaud Dehousse (eds), *Good Governance in Europe's Integrated Market, Collected Courses of the Academy of European Law* (Oxford University Press 2002) 169-170; and Stéphanie De Somer, 'The Europeanisation of the Law on National Independent Regulatory Authorities from a Vertical and Horizontal Perspective' (2012) 5 Review of European Administrative Law 93.

widespread in many policy areas, they remain an interference with the autonomy of the Member States and therefore, are allowed under certain conditions. More specifically, once it has been established that the EU has the competence to act under the principle of conferral,[46] the exercise of that competence is governed by the principles of subsidiarity and proportionality.[47] Despite their questionable effectiveness in limiting EU regulatory intervention,[48] both principles are meant to act as safeguards to protect the autonomy of the Member States against overly expansive and intrusive EU regulatory initiatives.[49]

Considering this framework, it can be noticed that the enforcement of Regulation 1107/2009 is also delegated to national competent authorities; yet this Regulation imposes only minimal structural requirements on these authorities compared to other sectors.[50] Article 75 of that Regulation concerning competent authorities prescribes the appointment of a sufficient number of suitably qualified and experienced staff,[51] but it does not impose any formal condition to ensure the independence of these authorities.[52] In terms of independence, Article 36(1) regarding the examination of applications in the context of the ordinary authorisation procedure simply declares that Member States must carry out 'an independent, objective and transparent assessment in the light of current scientific and technical knowledge'.[53]

The omission of detailed independence requirements for national competent authorities when acting within the scope of Regulation 1107/2009 not only deviates from other EU sectoral regulatory interventions but also highlights inconsistencies across different levels of governance within the same policy domain. National administrative bodies entrusted with the enforcement of EU law have historically been granted varying degrees of independence across different sectors as an essential condition for fostering their specialised expertise, protecting their decision-making processes from short-term political and market

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[46] Article 5(2) TEU.

[47] Article 5(3) and (4) TEU. In literature, Koen Lenaerts, 'Proportionality as a Matrix Principle Promoting the Effectiveness of EU Law and the Legitimacy of EU Action' (Keynote speech, ECB Legal Conference 2021: Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow, 25 November 2021) <https://www.ecb.europa.eu/press/conferences/shared/pdf/20211125_legal/ECB-Symposium_on_proportionality_25_November_2021.en.pdf> accessed 7 November 2024, 3-5.

[48] Rob Widdershoven, 'National Procedural Autonomy and General EU Law Limits' (2019) 12(2) Review of European Administrative Law 5, 13-14. Specifically, on the limited judicial application of subsidiarity compared to proportionality, Robert Schütze, 'Subsidiarity after Lisbon: Reinforcing the Safeguards of Federalism?' (2009) 68(3) The Cambridge Law Journal 525, 532-534; Paul Craig, 'Subsidiarity, a Political and Legal Analysis' (2012) 50(1) Journal of Common Market Studies 72, 75-77; Xavier Groussot and Sanja Bogojević, 'Subsidiarity as a Procedural Safeguard of Federalism' in Loïc Azoulai (ed), *The Question of Competence in the European Union* (Oxford University Press 2014) 234

[49] In more detail, Koen Lenaerts and José A Gutiérrez-Fons, 'A Constitutional Perspective' in Robert Schütze and Takis Tridimas (eds), *Oxford Principles Of European Union Law: The European Union Legal Order: Volume I* (Oxford University Press 2018) 115-117.

[50] For an overview on the evolution of EU law's interference on Member State authorities competent to enforce EU law, Stéphanie De Somer, 'EU impulse' in Stéphanie De Somer (ed), *Autonomous Public Bodies and the Law* (Edward Elgar, 2017) 23; and Pietro Mattioli, 'The Quasi-Judicial Role of National Competent Authorities: an Ambiguity that the Principle of Effective Judicial Protection could help address?' (2024) 17(2) Review of European Administrative Law 99.

[51] Regulation 1107/2009 (n 3) Art. 75(3).

[52] ibid Art 75. In more detail on the independence of national competent authorities, EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) Annex III-81-85.

[53] Regulation 1107/2009 (n 3) Art 36(1).

pressures and enhancing the overall quality and impartiality of their decisions.[54] In this regard, the growing scope of EU integration has usually led to the gradual embedding of stricter degrees of independence for national administrative entities within the EU legislative framework.[55]

At the same time, the omission of independence safeguards in the context of Regulation 1107/2009 highlights an inconsistency between the limited independence of national authorities competent to authorise pesticides and the heightened independence scrutiny applied in the context of EFSA. In particular, this claim is illustrated by the recent debate regarding the independence and conflicts of interest of the members of 'Article 36 organisations',[56] which are specific organisations designated by Member States to assist EFSA in carrying out scientific tasks.[57] Considering that these organisations perform activities that typically fall within EFSA's competence but are executed at the national level, concerns were raised about whether these organisations operate with the same level of independence as EFSA's members when performing the same tasks. For instance, criticism has been directed at EFSA for the insufficient screening of potential conflicts of interest within these organisations, as well as the lack of clarity and consistency in the criteria used by Member States to designate them.[58] In response to these concerns, the EFSA 2024 Independence Policy recently extended the same transparency and independence requirements to individuals from Article 36 organisations as those applicable to EFSA's own scientific Working Groups when performing equivalent tasks.[59]

Another factor significantly contributing to the misuse of emergency authorisations is the limited transparency of the Member States' emergency authorisation procedures. Far from being an issue restricted to Article 53's procedures, concerns over the transparency of decision-making processes can be considered a common problem underpinning EU risk regulation.[60]

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[54] Mark Thatcher, 'Regulation after delegation: independent regulatory agencies in Europe' (2002) 9(6) Journal of European Public Policy 954; Matthew Flinders and Jim Buller, 'Depoliticization, Democracy and Arena Shifting' in Tom Christensen and Per Laegreid (eds), *Autonomy and Regulation: Coping with Agencies in the Modern State* (Elgar Publishing 2006) 58-59; and Christel Koop and Chris Hanretty, 'Political Independence, Accountability, and the Quality of Regulatory Decision-Making' (2018) 51(1) Comparative Political Studies 38.

[55] In relation to national competent authorities' independence, literature distinguishes different forms of independence. On the difference between formal and de facto independence: Martino Maggetti, 'De facto independence after delegation: A fuzzy-set analysis' (2007) 1(4) Regulation & Governance 271, 271-272; and Fabrizio Gilardi and Martino Maggetti, 'The independence of regulatory authorities' in David Levi-Faur (ed), *Handbook of Regulation* (Edward Elgar 2010) 202-204. On the difference between independence from market parties, political independence and complete independence: Ottow (n 41) 140-142.

[56] The term 'Article 36 organisations' originates from Article 36 of Regulation 178/2002, which is entitled 'Networking of organisations operating in the fields within the Authority's mission'. More information is available at <https://www.efsa.europa.eu/en/partnersnetworks/scorg> accessed 10 February 2025.,

[57] Economisti Associati, 'Review of the Decision of the Executive Director of the European Food Safety Authority on Competing Interest Management – Executive Summary Report' (22 April 2021) 9. The authors of the report highlight how EFSA aims to increasingly rely on Article 36 organisations to act as working groups.

[58] Ellen Vos, Annalisa Volpato, and Guido Bellenghi, 'Independence and transparency policies of the European Food Safety Authority (EFSA)' (2023) PE 740.080, 22-23.

[59] EFSA, 'EFSA's policy on independence' (2024) <https://www.efsa.europa.eu/en/corporate-pubs/efsas-independence-policy#documents> accessed 10 February 2025.

[60] Alie de Boer, Marta Morvillo, and Sabrina Röttger-Wirtz, 'Fragmented Transparency: The Visibility of Agency Science in European Union Risk Regulation' (2023) 14(2) European Journal of Risk Regulation 313, 314.

The recent glyphosate saga has illustrated the public's struggle to access scientific data and information related to EU level active substance authorisations.[61] In that context, in response to mounting public pressure, the EU has taken specific measures to enhance transparency in food chain risk assessment through the adoption of Regulation 2019/1381.[62] However, while this Regulation introduces more rigorous disclosure requirements and public engagement mechanisms at the EU level, these heightened transparency standards do not affect Member States when they implement EU law.[63] Again, this gap involuntarily creates a two-tiered system of accountability, where EU level procedures face increased scrutiny, whereas national authorities retain considerable discretion in their decision-making processes.

Nevertheless, Article 53's procedural design choices might appear in line with the inherently urgent and nationally specific nature of emergency authorisations, which resist the establishment of detailed harmonised procedures. At the same time, Member States' emergency pesticide authorisation procedures exhibit transparency deficiencies that cannot be ignored. Decisions often lack clear and comprehensive justification and public access to relevant technical information remains limited. More precisely, national emergency authorisations are normally published, but applications, their evaluations, and the scientific risk assessments contained therein are not always publicly available.[64] When interested parties gain access to these decisions, they nevertheless find that the information provided is not sufficiently detailed. The documentation submitted and the reasons provided by the authorities, such as evidence of exceptional circumstances and lack of alternatives to mitigate risk, as well as the scientific data underlying the risk assessment, are poorly justified or non-existent.[65] Furthermore, there is insufficient openness in the decision-making process, coupled with inadequate stakeholder participation. This is particularly evident in the absence of robust third-party consultation procedures.[66]

The limited transparency of national emergency procedures, coupled with the lack of independence of national authorities, contributes to the creation of an institutional environment that is vulnerable to two important issues. Firstly, these elements foster conditions that allow undue industry influence over the decision-making processes of national authorities.[67] The affected ability of national competent authorities to correctly

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[61] Marta Morvillo, 'The General Court Orders Disclosure of Glyphosate-related Scientific Studies: Tweedale, Hautala, and the Concept of Environmental Information in the Context of Plant Protection Products' (2019) 10(2) European Journal of Risk Regulation 419, 425-426.

[62] Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain [2019] OJ L231/1.

[63] Regarding the potential implications of Regulation (EU) 2019/1381, see Claire Robinson et al, 'Achieving a High Level of Protection from Pesticides in Europe: Problems with the Current Risk Assessment Procedure and Solutions' (2020) 11(3) European Journal of Risk Regulation 450; and de Boer, Morvillo, and Röttger-Wirtz (n 60) 323.

[64] EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) Annex I-53. The research conducted shows that 'none of the selected Member States publish the applications and related evaluations (e.g. assessment of alternatives and justifications) or any other documents. The representative of one CA stated that they provided such information on request (e.g. the application, evaluation), except where it relates to confidential information on the composition of the product'.

[65] ibid Annex I-59.

[66] ibid Annex I-54 and Annex III-23 and 25; and Robinson et al (n 63) 470-472.

[67] EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) Annex I-62: 'A large share of the Article 53 authorisations granted in 2017 (38%) were requested by agricultural or forestry companies and associations, 31% were requested by PPP manufacturers or the seed industry, 23% were

balance industry interests with public ones is generally referred to as 'regulatory capture'.[68] This phenomenon is a common concern for national competent authorities operating in the framework of Regulation 1107/2009.[69] For example, when applying for an authorisation to place plant protection products on the market under the ordinary procedure, the applicant submits a dossier containing a range of data and studies on the product. Pesticide manufacturers often possess significant detailed knowledge about the products that they intend to place on the market. Conversely, national authorities often face constraints, such as limited budgets and resources and insufficient technical expertise, making them rely on industry-provided data. Other interested parties, including farmers, typically have the least access to technical information about pesticides. The result of this process is that the industry can easily gain control over pesticide authorisation procedures.[70] In the context of Article 53's procedures, the even more limited access to information intensifies information asymmetries between the industry and national authorities, on the one side, and the public, on the other side. Coupled with a lack of independence, the 'black box' in which these procedures take place allows the industry to submit insufficient scientific data and to influence the authorities' outcomes without adequate public scrutiny.[71]

Secondly, the lack of transparency in decision-making of Member State authorities is also problematic because it undermines the very democratic foundations of public authorities' decisions. Access to information and stakeholders' participation, which are at the foundations of transparency, are meant to ensure public participation in the decision-making, legitimacy of public actions, and accountability of those decisions.[72]

To conclude, this section seeks to reveal that the misapplication of Article 53 stems from a critical gap in the institutional design of national competent authorities when acting within the scope of Regulation 1107/2009. The absence of independence and transparency safeguards exemplifies the ongoing tension between Member State autonomy and the need for EU harmonised administrative arrangements for the domestic enforcement of EU law, which is a key condition for the EU to see its policy objectives fully achieved. As a result, this article asks: what legal tools can the EU leverage to address systemic shortcomings in the implementation of Article 53 of Regulation 1107/2009? The following section addresses this inquiry by looking at the EU principles of good administration and the precautionary principle.

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requested by authorities, and a small number by other types of applicants, such as agricultural and agronomy research institutes and consultants (6%) or producers of animal health products or feed (1%)'.

[68] This article defines regulatory capture as a phenomenon in which national competent authorities responsible for authorising plant protection products are influenced by the pesticide industry's interests. This undue influence compromises the authorities' ability to maintain an appropriate balance between industry interests and the imperative to protect public health and the environment. More generally, Richard A Posner, 'The Concept of Regulatory Capture: A Short, Inglorious History' in Daniel Carpenter and David A Moss (eds), *Preventing Regulatory Capture Special Interest Influence and How to Limit It* (Cambridge University Press 2013) 49-50; and EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) Annex III-18.

[69] EPRS, 'Regulation (EC) 1107/2009: European Implementation Assessment' (n 4) Annex III-23.

[70] ibid Annex III-18-20.

[71] Bruno Latour, *Science in Action. How to Follow Scientists and Engineers through Society* (Harvard University Press 1988); and Julien Bois, 'Taking the law seriously while acknowledging its social embeddedness: an Actor-Network Theory approach of EU law' (2024) ORBi-University of Liège <https://hdl.handle.net/2268/317536> accessed 30 October 2024.

[72] Case T-716/14 *Antony C. Tweedale v European Food Safety Authority* EU:T:2019:14 paras 54 and 91; Martino Maggetti, 'Legitimacy and accountability of independent regulatory agencies: A critical review' (2010) Living Reviews in Democracy 1, 4; and de Boer, Morvillo, and Röttger-Wirtz (n 60) 317.

# 4 THE PRINCIPLES OF GOOD ADMINISTRATION AND THE PRECAUTIONARY PRINCIPLE AS TOOLS OF EU ADMINISTRATIVE DESIGN: INSIGHTS FROM THE COURT OF JUSTICE CASE LAW

This section first examines the role of the EU principles of good administration in setting procedural standards, in particular impartiality and transparency, for Member States' administrations when enforcing EU law. Subsequently, it explores how the Court of Justice has leveraged the precautionary principle to impose higher standards of health and environmental protection within pesticide authorisation procedures. Ultimately, this section concludes by showing how the good administration and precautionary principles might together account for a possible solution to address the misapplications of Article 53 of Regulation 1107/2009.

## 4.1 GOOD ADMINISTRATION

Good administration is primarily recognised as a fundamental right within the EU legal framework.[73] Article 41 of the EU Charter of Fundamental Rights (CFR) establishes the right to good administration, encompassing several subjective individual rights.[74] These include, inter alia, the obligation to give reasons and the right for individuals to have their matters handled impartially, fairly and within a reasonable time. At the same time, this provision highlights certain principles of good administration, which are instead primarily reflected in the case law of the Court of Justice.[75]

Prior to the formal codification of this right, the Court had already invoked various principles of good administration to assess the legality of EU administrative actions. Some procedural rights, such as the right to be heard, to have access to files and the obligation of the administration to give reasons, were already well established before their codification in Article 41 CFR.[76] In this context, it is important to note that the rights under Article 41 CFR are not formally binding on Member State administrations. This provision is explicitly framed

[73] On the notion of good administration, Päivi Leino, 'Efficiency, Citizens and Administrative Culture. The Politics of Good Administration in the EU' (2014) 20(4) European Public Law 681; Hanns Peter Nehl, 'Good Administration as Procedural Right and/or General Principle?' in Herwig C H Hofmann and Alexander H Türk (eds), *Legal Challenges in EU Administrative Law* (Edward Elgar Publishing 2009) 322-323; and Takis Tridimas, 'The general principles of EU law and the Europeanisation of national laws' (2020) 13(2) Review of European Administrative Law 5.

[74] Jürgen Schwarze, 'European administrative law in the light of the Treaty of Lisbon: introductory remarks' (European Parliament, Directorate General for Internal Policies 2011) <https://www.europarl.europa.eu/thinktank/en/document/IPOL-JURI_NT(2011)432777> accessed 20 October 2024, 15-18.

[75] Herwig CH Hofmann and Bucura C Mihaescu, 'The Relation between the Charter's Fundamental Rights and the Unwritten General Principles of EU Law: Good Administration as the Test Case' (2013) 9(1) European Constitutional Law Review 73; Herwig C H Hofmann, Gerard C Rowe, and Alexander H Türk, 'General Principles Framing European Union Administrative Law' in Herwig C H Hofmann, Gerard C Rowe, and Alexander H Türk, *Administrative Law and Policy of the European Union* (Oxford University Press 2011) 190 et seq.

[76] For an overview of the CJEU's case law on good administration, see HP Nehl, 'Good Administration as Procedural Right and/or General Principle?' (n 73) 323

in terms of EU institutions, bodies, offices and agencies.[77] However, national administrations must apply the principles of good administration when they act within the scope of EU law, including those principles now codified in Article 41 CFR.[78] Moreover, the Court has also declared that the right to good administration itself, as enshrined in Article 41 of the Charter, reflects a general principle of EU law.[79] Therefore, when enforcing EU law, national authorities must now generally respect the rights of individuals under Article 41 CFR.[80]

Against this background, to fully understand how good administration may impact national competent authorities when enforcing EU law, it is essential to delve into the CJEU's case law. The Court has extensively relied on the principles of good administration to establish and reinforce procedural safeguards that would limit the discretionary powers of public authorities, ensuring that these powers conferred on them by EU law are exercised in a manner consistent with public interests and EU law's objectives.[81] In this regard, the case law of the Court has referred to the impartiality, transparency and accountability of national administrative actions.[82] For instance, one can first notice that good administration requires Member State administrations 'to conduct a diligent and impartial examination of all the relevant matters' using the most complete and reliable information possible for that purpose, including scientific knowledge.[83] Furthermore, the principles of good administration also include the obligation to provide adequate reasons.[84] In this regard, the Court often refers to the duty to state reasons to highlight the transparency and accountability of decision-making, and the Court therefore facilitates judicial review of administrative decisions.[85] The duty to

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[77] Tobias Lock, 'Article 41 CFR Right to good administration' in Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford Academic, 2019) 2205. In this regard, also the Court: 'it is clear from the wording of Article 41 of the Charter that it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union'. See, Case C-249/13 *Khaled Boudjlida contro Préfet des Pyrénées-Atlantiques* EU:C:2014:2431 para 32 and case law cited.

[78] Hanns Peter Nehl, *Principles of Administrative Procedure in EC Law* (Hart Publishing 1999) 15; and Steve Peers et al, 'Article 41; in *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021) 1125, 1126; and Case C-249/13 *Khaled Boudjlida* (n 77) paras 32-34 and case law cited.

[79] For instance, Case C-604/12 *H.N v Minister for Justice, Equality and Law Reform* EU:C:2014:302 para 49.

[80] Joined Cases C-141/12 and C-372/12 *YS v Minister voor Immigratie, Integratie en Asiel and Minister voor Immigratie, Integratie en Asiel v M and S* EU:C:2014:2081 para 68. The Court has clarified that the fact that Article 41 CFR represents a general principle of EU law does not imply that individuals can derive directly a national right from it.

[81] Or Brook and Katalin J Cseres, 'Priority Setting as the Blind Spot of Administrative Law Enforcement: A Theoretical, Conceptual, and Empirical Study of Competition Authorities in Europe (2024) 87(5) The Modern Law Review 1209, 1237.

[82] Joana Mendes, 'Good Administration in EU Law and the European Code of Good Administrative Behaviour', (2009) 9 EUI LAW <https://hdl.handle.net/1814/12101> accessed 30 October 2024, 5.

[83] Case C-446/18 *AGROBET CZ, s.r.o. v Finanční úřad pro Středočeský kraj* EU:C:2020:369 para 44; and Opinion of Advocate General Kokott in Case C-162/21 *Pesticide Action Network Europe and Others* EU:C:2022:650 para 39. On the use of scientific knowledge, Case T-13/99 *Pfizer Animal Health SA* (n 17) para 172. The Court states that 'It follows that a scientific risk assessment carried out as thoroughly as possible on the basis of scientific advice founded on the principles of excellence, transparency and independence is an important procedural guarantee whose purpose is to ensure the scientific objectivity of the measures adopted and preclude any arbitrary measures'.

[84] Hofmann and Mihaescu (n 75) 84; Ingrid Opdebeek and Stéphanie de Somer, 'The Duty to Give Reasons in the European Legal Area: a Mechanism for Transparent and Accountable Administrative Decision-Making? A Comparison of Belgian, Dutch, French and EU Administrative Law' (2016) 2 Rocznik Administracji Publicznej 97, 102.

[85] Ellen Vos, 'Independence, Accountability and Transparency of European Regulatory Agencies' in Damien Geradin, Rodolphe Muñoz, and Nicolas Petit (eds), *Regulation through agencies: A new Paradigm of European*

state reasons allows interested parties to have access to the reasons that led the authority to adopt a particular measure, enabling them to challenge that decision before the competent court, but also to enable the courts to review the legality of those decisions.[86] In this regard, it is quite usual that the Court connects the duty to state reasons to other fundamental principles. For instance, the Court has explained 'the obligation of the administration to state reasons for a decision which are sufficiently specific and concrete' is a corollary of the principle of respect for the rights of the defence.[87] Furthermore, the Court has also clarified that if the judicial review guaranteed by Article 47 CFR is to be effective, the person concerned must be able to ascertain, either by direct examination or request, the reasons upon which the decision is taken.[88]

### 4.2 THE PRECAUTIONARY PRINCIPLE

The EU has incorporated the precautionary principle into various EU policy areas, including environment, food safety, public health and consumer protection.[89] Regulation 1107/2009 also declares that the precautionary principle applies across the entire regulatory framework.[90]

Generally, scholars agree that the risk-averse approach of food-related policies represents a regulatory response to food safety crises, such as the bovine spongiform encephalopathy (BSE or mad cow disease) outbreak and to other public concerns about potential hazards associated with contemporary farming methods, among other factors.[91] In these areas of high scientific uncertainty, where 'there are reasonable grounds for concern that potential hazards may affect the environment or human, animal or plant health, and when at the same time the available data preclude a detailed risk evaluation',[92] the precautionary principle operates as a risk management tool for decision-making at both the EU and Member State levels.[93] Precaution allows risk managers to take protective

*Governance* (Edward Elgar Publishing 2005) 120, 125; Opdebeek and de Somer (n 84) 97; Melanie Fink and Giulia Gentile, 'Article 41: the right to good administration' in Alexandra Giannopoulou (ed) *Digital rights are charter rights (*Amsterdam: Digital Freedom Fund 2023).

[86] Case C-46/16 *Valsts ieņēmumu dienests v 'LS Customs Services', SIA* EU:C:2017:839 paras 39 and 40; and Case C-721/21 *Eco Advocacy CLG v An Bord Pleanála and others* EU:C:2023:477 para 33 and case law cited. The Court recalls that 'the obligation to state reasons for decisions adopted by the national authorities is particularly important, since it puts their addressees in a position to defend their rights under the best possible conditions and decide in full knowledge of the circumstances whether it is worthwhile to bring an action against those decisions. It is also necessary in order to enable the courts to review the legality of those decisions'. Moreover, it must be mentioned that transparency is by itself a principle of EU law. In this regard, Koen Lenaerts, "'In the Union We Trust": Trust Enhancing Principles of Community Law' (2004) 41(2) Common Market Law Review 317, 320-321; and Paul Craig, 'Transparency' in Paul Craig, *EU Administrative Law* (Oxford University Press 2018) 400.

[87] Case C-230/18 *PI v Landespolizeidirektion Tirol* EU:C:2019:383 para 57 and case law cited.

[88] Case C-300/11 *ZZ v Secretary of State for the Home Department* EU:C:2013:363 para 53.

[89] Joanne Scott, *Legal Aspects of the Precautionary Principle: A British Academy Brexit Briefing* (The British Academy 2018) 9.

[90] Regulation 1107/2009 (n 3) recital 8 and Art 1(4).

[91] Joakim Zander, The Application of the Precautionary Principle in Practice: Comparative Dimensions (Cambridge University Press 2010) 77; Vogel (n 11) 63-66.

[92] Communication from the Commission on the precautionary principle, COMM(2000), 8.

[93] Nicolas de Sadeleer, 'The Precautionary Principle in EC Health and Environmental Law' (2006) 12(2) European Law Journal 139, 140-141; Zander (n 91) 79-92; Nicolas de Sadeleer, 'Precautionary principle in EU Law' (2010) AV&S, 173; and Didier Bourguignon, 'The Precautionary Principle—Definitions, Applications and Governance' (European Parliament Think Tank 2015)

measures when faced with plausible risks to human health or the environment, even in the absence of definitive scientific evidence.[94]

However, despite its widespread use as a regulatory tool in EU risk-oriented policies, the precautionary principle lacks a unified EU-wide definition. Furthermore, legal texts generally provide only a limited understanding of how the precautionary principle should be applied by risk managers.[95] Regulation 1107/2009 does not make an exception to that.

Against this background, the Court has provided considerable clarification on the application of the precautionary principle, including in the context of pesticide authorisations.[96] For instance, the *PAN Europe* case provides a relevant example of how the Court leverages the precautionary principle to enhance the standards of health and environmental protection in the context of Article 53's emergency authorisations.[97] More specifically, this case originates from a dispute over Belgium's temporary emergency approval of two pesticides containing the substances clothianidin and thiamethoxam for sugar beet seed protection. PAN Europe, the applicant in this case, argued that the use of these neonicotinoid insecticides has shifted towards a preventive approach known as seed coating or seed treatment. This method involves applying the insecticides to seeds before planting, rather than spraying crops after they have grown. Consequently, the applicant contended that this practice leads farmers to use treated seeds regardless of whether there is a demonstrated need or emergency for insect control in their fields. In addition, PAN Europe also noted that since 2013 the Commission has progressively restricted the use of the two insecticides due to their potential risks to bee populations. Under these circumstances, the Court unequivocally concludes that Article 53(1) must be interpreted as not permitting a Member State to authorise the placing on the market of plant protection products containing substances that have been expressly prohibited by an EU implementing regulation.[98] In its reasoning, the Court firmly embeds the precautionary principle as a fundamental basis for interpreting Regulation 1107/2009, emphasising its role in ensuring a high level of protection for human and animal health and the environment. By invoking this principle, it conclusively rejects any reading of the provisions of Regulation 1107/2009 that would undermine its objectives, i.e. authorising the placing on the market and use of products that have been expressly prohibited, and establishes a hierarchy of objectives where health and environmental protection takes precedence over improving plant production.[99] With this judgment, the Court underlines the importance of maintaining coherence between emergency measures and the broader regulatory framework for pesticides, underscoring that

<https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2015)573876> accessed 30 October 2024.

[94] Case C-236/01 *Monsanto Agricoltura Italia and Others* EU:C:2003:431 para 111; and Case C-487/17 *Criminal proceedings against Alfonso Verlezza and Other* EU:C:2019:270 para 57 and case law cited.

[95] Elizabeth Fisher, *Risk Regulation and Administrative Constitutionalism* (Hart Publishing 2007) 211-212; and Maria Weimer and Gaia Pisani, 'Expertise as Justification: The Contested Legitimation of the EU "Risk Administration"' in Maria Weimer and Anniek de Ruijter (eds), *Regulating Risks in the European Union* (Hart Publishing 2017).

[96] Kristel De Smedt and Ellen Vos, 'The Application of the Precautionary Principle in the EU' in Harald A Mieg (ed), *The Responsibility of Science. Studies in History and Philosophy of Science* (Springer, 2022) 175-176.

[97] Case C-162/21 *Pesticide Action Network Europe* (n 1).

[98] ibid paras 50 and 54.

[99] ibid paras 48 and 50.

emergency authorisations under Article 53 must not undermine the core principles of EU pesticide legislation.

The Court's application of the precautionary principle not only underscores the obligation of national authorities to prioritise health and environmental concerns but also extends to other crucial aspects.

Together with using this principle as a substantive legal standard to interpret Regulation 1107/2009,[100] there is various evidence of how the Court has also used the precautionary principle as a procedural principle for guiding risk managers' decision-making.[101] The *Sweden v Commission (Paraquat)* case has served as an important reference point in this regard.[102] Asked to review the Commission's decision to include the active substance paraquat in Annex I to Directive 91/414 (now replaced by Regulation 1107/2009),[103] the Court declared that 'the existence of solid evidence which, while not resolving scientific uncertainty, may reasonably raise doubts as to the safety of a substance, justifies, in principle, the refusal to include that substance in Annex I'.[104] Furthermore, the Court, again invoking the precautionary principle, highlighted that before a substance can be included in Annex I, 'it must be established beyond a reasonable doubt that the restrictions on the use of the substance involved make it possible to ensure that use of that substance will be in accordance with the requirements' laid down in EU law.[105] Through its case law, the Court has subsequently further clarified that the application of the precautionary principle under Regulation 1107/2009 requires two key steps: first, identifying potential health risks associated with active substances and plant protection products; and second, conducting a thorough health risk assessment based on the most reliable and up-to-date scientific data available.[106] If and when one of these conditions is met, the precautionary principle allows protective measures to be taken without waiting for the reality and seriousness of the risks

[100] In this sense, see also Case C-616/17 *Blaise and Others* EU:C:2019:800.

[101] Emiliano Frediani, 'The Administrative Precautionary Approach at the Time of Covid-19: The Law of Uncertain Science and the Italian Answer to Emergency' (2021) 17(3) Utrecht Law Review 6. In this regard, evidence suggests strong similarities between the principle of good administration and the precautionary principle. For instance, European Ombudsman, 'Decision in case 12/2013/MDC on the practices of the European Commission regarding the authorisation and placing on the market of plant protection products (pesticides)' (2016) <https://www.ombudsman.europa.eu/en/decision/en/64069> accessed 30 October 2024. The Ombudsman was called to review the Commission's procedures for approving active substances in pesticides, particularly the 'confirmatory data procedure', which allows substances to be approved while additional data is requested to verify their safety. In this context, it asserts that the precautionary principle, being a principle of good administration, prevents the Commission from approving active substances in cases where there is a potential risk to public health or the environment. Furthermore, Opinion of Advocate General Kokott in Case C-436/22 *Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL) v Administración de la Comunidad Autónoma de Castilla y León* EU:C:2024:83 paras 79-82.

[102] Case T-229/04 *Kingdom of Sweden v Commission of the European Communities* EU:T:2007:217; Giulia Claudia Leonelli, 'Judicial Review of Compliance with the Precautionary Principle from Paraquat to Blaise: "Quantitative Thresholds," Risk Assessment, and the Gap Between Regulation and Regulatory Implementation' (2021) 22(2) German Law Journal 184, 195-96.

[103] Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1991] OJ L230/1, Art. 5(1). This provision laid down the conditions for an active substance to be included in Annex I. A similar provision can now be found in Article 4 of Regulation 1107/2009.

[104] Case T-229/04 *Sweden v Commission* (n 102) para 161.

[105] ibid para 170.

[106] Case C-616/17 *Blaise* (n 100) para 46 and case law cited.

to become fully apparent.[107] In addition, these measures must be applied in accordance with the principle of proportionality.[108]

Most recently, in two judgments, *PAN Europe (Closer)* and *PAN Europe (Evaluation of Endocrine Perturbation Properties)*, the Court has also emphasised the importance of a scientifically rigorous approach to the authorisation of pesticides at the Member State level, with reference to the precautionary principle. Notably, it has pointed to the need to rely on the most relevant and reliable scientific and technical knowledge available at the time of the examination.[109] This position is maintained even in situations where such reliance might necessitate deviating either from the scientific risk assessment of a plant protection product conducted by another Member State, or from the EU level assessment of an active substance.[110] At the same time, in the *PAN Europe (Closer)* case, the Court has also used the precautionary principle in a manner that strengthens the capacity of individuals to challenge national competent authorities' plant protection product authorisations. In its ruling, the Court clarified that the most reliable scientific and technical data available constitutes admissible evidence for challenging the adequacy of plant protection product examinations. It declares that this possibility would be in line with the precautionary principle since it would allow for the attainment of the objective of Regulation 1107/2009, i.e. ensuring a high level of health and environmental protection.[111]

In conclusion, this section has illustrated, by reference to the Court of Justice case law on the principles of good administration and the precautionary principle, how both principles provide the conditions for realigning the application of Article 53 with the scope of the norm and the objective of Regulation 1107/2009. Firstly, drawing on the principles of good administration, the previous analysis has elucidated a series of obligations for the administrations of the Member States when enforcing EU law. These measures include the duty of national administrations to conduct a diligent and impartial examination of all the relevant matters using the most complete and reliable information, including scientific knowledge, to state the reasons for their decisions, and to provide access to information. Subsequently, the analysis has turned to the Court of Justice's application of the precautionary principle as both a condition to interpret the provisions of Regulation 1107/2009 and as a procedural principle to guide national competent authorities' discretion when authorising plant protection products, ultimately upholding high standards of health and environmental protection. In this respect, it is highlighted how the Court requires national competent authorities to conduct a thorough health risk assessment relying

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[107] Opinion of Advocate General Sharpston in Case C-616/17 *Blaise and Others* EU:C:2019:190 para 48.
[108] ibid; and Pavel Ondřejek and Filip Horák, 'Proportionality during Times of Crisis: Precautionary Application of Proportionality Analysis in the Judicial Review of Emergency Measures' (2024) 20 European Constitutional Law Review 27, 45-49.
[109] Case C-308/22 *Pesticide Action Network Europe (PAN Europe) v College voor de toelating van gewasbeschermingsmiddelen en biociden* EU:C:2024:350 para 70; and Joined Cases C-309/22 and C-310/22 *Pesticide Action Network Europe (PAN Europe) v College voor de toelating van gewasbeschermingsmiddelen en biociden* EU:C:2024:356 para 100.
[110] Joined Cases C-309/22 and C-310/22 *PAN Europe (Evaluation of Endocrine Perturbation Properties)* (n 109) para 97.
[111] Case C-308/22 *PAN Europe (Closer)* (n 109) paras 88 and 103. In more detail, Pietro Mattioli, 'How Can New Scientific and Technical Knowledge Affect the Authorisation of Plant Protection Products at Member State Level? Some Clarifications from the Court of Justice' [2025] European Journal of Risk Regulation 1, 3.

on the most relevant and reliable scientific knowledge available at the time of the examination.

However, the potential of these principles to function as EU tools for the institutional design of Member States' administrations when operating within the scope of EU law still faces significant limitations. The following section will specifically discuss how a persistently fragmented administrative law landscape across Member States jeopardises the effectiveness of these principles.

## 5 THE PRINCIPLES OF GOOD ADMINISTRATION AND THE PRECAUTIONARY PRINCIPLE IN ACTION

This section builds upon the previous analysis, which has highlighted that the principles of good administration and the precautionary principle, as interpreted and applied by the Court of Justice, mandate specific measures for national authorities in their enforcement of EU law. If effectively applied, these measures have the potential to realign the use of Article 53 with the scope and objectives of Regulation 1107/2009. Against this backdrop, this section first outlines the limitations of an approach that relies on these principles to effect changes in the administrative practices of the Member States. Subsequently, it suggests possible pathways to operationalise these principles.

### 5.1 MEMBER STATES' ADMINISTRATION AND EU LAW

The main problem with an approach that simply relies on the principles of good administration and the precautionary principle as EU tools of institutional design for national administrations enforcing EU law is related to the still diversified administrative systems of the Member States. The development of the Member States' administrations and administrative law reflects the distinct historical trajectories of each country, shaped by their unique state structures and tailored to address specific societal needs.[112] Under these circumstances, the administrations of the Member States generally follow their own administrative practices, which might not necessarily correspond to EU standards of good administration.[113]

At the same time, while Member States' administrative systems have developed as products of the nation-state, European integration has certainly contributed to their evolution.[114] For instance, the expansion in the number of interventions falling within the scope of the EU as 'a regulatory state', an idea first introduced by Giandomenico Majone,

[112] Sabino Cassese, *Il diritto amministrative: storie e prospettive* (Giuffre' editore 2010) 6-8; European Commission, Enora Palaric, Nick Thijs, and Gerhard Hammerschmid, 'A comparative overview of public administration characteristics and performance in EU28' (2018) <https://data.europa.eu/doi/10.2767/13319> accessed 30 October 2024, 36; and B Guy Peters, 'The Administrative Tradition Approach to Public Bureaucracy' in B Guy Peters, *Administrative Traditions: Understanding the Roots of Contemporary Administrative Behavior* (Oxford University Press 2021) 23.

[113] In more detail, Statskontoret, 'Good administration in European countries' (Statskontoret, 2023) <https://www.statskontoret.se/en/publications/publikationer/publikationer-2023/good-administration-in-european-countries/> accessed 15 October 2024.

[114] Sabino Cassese, 'New paths for administrative law: A manifesto' (2012) 10 International Journal of Constitutional Law 603, 605.

has had a significant impact on the role of the Member States' administrations.[115] While at the very beginning of its regulatory intervention, the EU started simply borrowing national independent agencies for the implementation of its market liberalisation policies, contemporary EU legislation routinely impacts the administrative organisation of the Member States.[116] Through expanding policy competences, the Union increasingly permeates sectors traditionally governed by domestic administrative law, necessitating structural, functional, and procedural adaptations at the national level.[117]

Considering this evolution, scholars generally agree that a body of administrative law in Europe has developed.[118] European administrative law is considered to encompass three main components. First, it includes rules and principles governing the execution of EU law by EU institutions. Second, it comprises the 'Europeanised' administrative law of the Member States, which involves national rules governing the enforcement of European law by national authorities. These rules are adapted to meet the requirements stipulated in EU law. Third, it includes rules that apply to cases even when they have no direct relation to EU law.[119] However, despite these significant developments, European administrative law does not yet encompass the entirety of the administrative law of the Member States. A comprehensive and uniform body of EU administrative law that applies to national administrations when enforcing EU law remains absent.[120] As a result, in the absence of Union law, Member States retain autonomy in determining the regulatory framework for implementing and enforcing EU law.[121]

Within this framework, one can assume that without EU law binding and uniform standards reflecting good administration principles applicable to national administrations in their execution of EU law, national administrations continue to follow their own practices

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115 Giandomenico Majone, 'The rise of statutory regulation in Europe' in Giandomenico Majone (ed), *Regulating Europe* (Routledge 1966) 40; Giandomenico Majone, 'Regulating Europe: Problems and Prospects' (1989) EUI Working papers No. 89/405, 8.

116 De Somer, 'EU impulse' (n 50); and Mattioli, 'The Quasi-Judicial Role of National Competent Authorities: (n 50).

117 Herwig C H Hofmann, Gerard C Rowe, and Alexander H Türk, 'The Idea of European Union Administration – Its Nature and Development' in Herwig C H Hofmann, Gerard C Rowe, and Alexander H Türk, *Administrative Law and Policy of the European Union* (Oxford University Press 2011).

118 Kadelbach (n 45); Edoardo Chiti and Joana Mendes, 'The Evolution of EU Administrative Law' in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (3rd edn, Oxford University Press 2021) 339; and Joana Mendes, 'Administrative law in the EU: the liberal constitutional paradigm and institutionalism as an imperfect alternative' in Carol Harlow, *A Research Agenda for Administrative Law* (Edward Elgar Publishing 2023) 283.

119 Kadelbach (n 45) 167.

120 To address the lack of a coherent legal framework governing administrative procedures in EU law, scholars have advocated for harmonised administrative procedural rules binding both EU institutions and Member State authorities when implementing EU law. In particular, Herwig C H Hofmann and Alexander H Türk, 'Legal Challenges in EU Administrative Law by the Move to an Integrated Administration' in Herwig C H Hofmann and Alexander H Türk (eds), *Legal Challenges in EU Administrative Law* (Edward Elgar Publishing 2009) 378. This call aligns with a broader academic proposal for the codification of rules on administrative procedures concerning the implementation of EU law. Paul Craig et al, *ReNEUAL Model Rules on EU Administrative Procedure* (Oxford University Press 2017). More generally, on the codification of EU administrative law, Carol Harlow 'Codification of EC Administrative Procedures? Fitting the Foot to the Shoe or the Shoe to the Foot' (1996) 2(1) European Law Journal 3, 19-22; Sabino Cassese, 'Shrimps, Turtles and Procedure: Global Standards for National Administrations' (2004) NYU IILJ Working Paper No. 2004/4.

121 Kadelbach (n 45) 169-170. On the relationship between institutional autonomy and EU administrative intervention, see Section 3.

and standards, which might not necessarily be aligned with the EU standards of good administration. In this regard, the EU sources of good administration primarily include Article 41 CFR and the European Code of Good Administrative Behaviour.[122] However, both sources formally apply to EU institutions and bodies, extending to national administrations only when they reflect general principles of EU law.[123] While national authorities are bound by the EU principles of good administration when acting in the scope of EU law,[124] this is not sufficient to harmonise administrative practices across the Member States. Therefore, it is not surprising that significant variations persist among Member States in areas such as impartiality, transparency and democratic participation with respect to the decentralised administrative enforcement of EU law, as well as in the application of the precautionary principle.[125] For instance, the misapplications of Article 53 illustrate how national authorities normally act irrespective of the good administration and precautionary principles as interpreted by the Court.[126] In this regard, despite the Court's efforts to clarify the scope of the precautionary principle, the threshold of scientific uncertainty for precaution continues to be decided on a case-by-case basis by the competent authorities.[127]

Nevertheless, while obstacles persist to a coherent application of the good administration and the precautionary principles, it has also been illustrated that the EU possesses the capacity to influence the administrative practices of the Member States.[128] Considering these circumstances, the next subsection argues for proceduralising these principles within EU law. This approach could address their inconsistent application across national pesticide authorisation procedures and thereby the persistent misuse of Article 53. Ultimately, this section concludes by underlining how the Court of Justice has also provided the foundations for increased scrutiny by interested parties of the pesticide authorisations of national competent authorities.

### 5.2 OPERATIONALISING EU PRINCIPLES

The principles of good administration and the precautionary principle, as emerging from the Court of Justice case law, require national authorities to implement specific measures when operating within the scope of EU law. However, obstacles still impede the effective and uniform application of these principles across Member States, consequently affecting the

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122 European Parliament, 'European Code of Good Administrative Behaviour' [2001]. For a broader overview of the role of the Code, see Mendes, 'Good Administration in EU Law' (n 82) 5-6.
123 Statskontoret, 'Good administration in European countries' (n 113) 15-18.
124 Sacha Prechal, 'Competence Creep and General Principles of Law' (2010) 3(1) Review of European Administrative Law 5, 11.
125 In particular, Statskontoret, 'Good administration in European countries' (n 113) 31. More generally, regarding national administrations' variations across the EU, see European Commission, Palaric, Thijs, and Hammerschmid (n 112).
126 The current uses of Article 53 stand in direct contradiction to the Court of Justice's jurisprudence, which affirms that 'when granting authorisations of plant protection products, the objective of protecting human and animal health and the environment should 'take priority' over the objective of improving plant production'. For instance, Case C-308/22 *PAN Europe (Closer)* (n 109) para 68.
127 Case T-13/99 *Pfizer Animal Health SA* (n 17) para 151.
128 In more details, on the limits of the EU regulatory intervention, i.e. national institutional autonomy, subsidiarity and proportionality, see Section 3. In this regard, the Court of Justice has also clarified that institutional autonomy as regards the organisation and the structuring of regulatory authorities must be exercised in accordance with the objectives and obligations laid down by EU law. Case C-424/15 *Ormaetxea Garai and Lorenzo Almendros* EU:C:2016:780 para 30 and the case-law cited.

implementation of these measures by national administrative authorities. To address this issue, this section argues that these principles should be codified in EU law, particularly through soft law instruments.[129] This codification should also be accompanied by increased oversight by the Commission. Additionally, this section considers a complementary approach. It emphasises the potential role of interested parties in challenging national competent authorities' pesticide authorisations. This claim is grounded in the most recent Court of Justice case law, which may provide new avenues for stakeholders' ability to challenge pesticide authorisations.

Regarding the first possibility, there are various ways for the EU to proceduralise the measures required by the principles of good administration and the precautionary principle. The most direct approach to addressing inconsistencies in the application of these EU principles would be through an amendment of Regulation 1107/2009, which would directly incorporate the necessary administrative rules into the Regulation.[130] Specifically, this could be achieved by utilising the second paragraph of Article 78 of Regulation 1107/2009, which pertains to amendments and implementing measures, thereby avoiding an overhaul of the entire existing framework of Regulation 1107/2009. While such legislative intervention might successfully pass the proportionality test[131] and the scrutiny of the Court, which in areas such as health and agricultural policy often affords a wide margin of discretion to the EU legislator,[132] this approach might be unrealistic in the near future. The EU's political agenda has witnessed a clear shift away from its previously robust green ambitions, suggesting a diminished commitment to environmental regulatory reforms, particularly in areas such as pesticide regulation.[133] Additionally, a deregulatory trend has gained prominence across the entire EU policy landscape.[134]

Considering these circumstances, this article proposes resorting to soft law instruments to introduce the necessary measures: for instance, the Commission's ongoing revision of the guidance document concerning emergency authorisations under Article 53 of Regulation

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[129] The term soft law is generally employed to denote non-binding instruments like recommendations, opinions, communications, guidelines, and other quasi-legal tools that lack formal binding nature and are not subject to judicial enforcement. For more details, see Linda Senden, *Soft Law in European Community Law* (Hart Publishing 2004) 55-56.

[130] Regulation 1107/2009 (n 3) Art 78(2). This provision states that 'any further measures necessary for the implementation of this Regulation may be adopted in accordance with the regulatory procedure referred to in Article 79(3)'.

[131] Takis Tridimas, 'The Principle of Proportionality: Review of Community Measures' in Takis Tridimas, *The General Principles of EU Law* (Oxford University Press 2006) 136.

[132] The Court has affirmed that measures adopted in policy areas like environment, health, and consumer protection are in breach of the proportionality principle only if the measure is 'manifestly inappropriate' having regard to the objective which the competent institution is seeking to pursue. For instance, Case C-331/88 *The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others* EU:C:1990:391 para 14.

[133] For instance, the European Commission officially withdrew the Sustainable Use of Pesticides Regulation (SUR) proposal after its rejection by the European Parliament and a lack of consensus in the Council. European Commission, Withdrawal of Commission proposals PUB/2024/302 [2024] OJ C, C/2024/3117. Furthermore, the new agriculture Commissioner Christophe Hansen affirmed that there is no intention of reviving pesticide reduction targets. More information – <https://www.euronews.com/my-europe/2025/02/20/pesticide-cuts-are-off-the-table-says-eu-agriculture-commissioner> accessed 20 February 2025.

[134] European Commission, 'A simpler and faster Europe: Communication on implementation and simplification' (2025) <https://commission.europa.eu/law/law-making-process/better-regulation/simplification-and-implementation_en> accessed 20 February 2025.

1107/2009.[135] In terms of necessary intervention, a crucial measure would be to establish a systematic requirement for uploading all supporting materials to the E-Submission Food Chain (ESFC) Platform.[136] While the current ESFC Platform requires applicants to submit basic information, such as type of danger and justification for necessity, it does not mandate the inclusion of supporting documents such as risk assessments, scientific studies or product-specific analyses,[137] limiting the possibility for interested parties to access relevant information concerning authorisations. This proposed intervention holds significant potential to enhance the transparency of national competent authorities' decision-making processes, which is widely recognised as a crucial counterweight to industry influence in regulatory procedures. It also serves as a fundamental element in reinforcing the democratic legitimacy of these processes by providing increased visibility and accountability.[138] Moreover, it is crucial that the Commission intensifies its efforts to ensure that Member States comply with Article 53's notification requirements. For instance, considering that informing the Commission and the other Member States is an obligation directly stemming from Article 53, the Commission could establish automated alerts for delayed submissions and periodic compliance reviews. Such measures would address the current practice of retroactive notifications.

At the same time, the Commission should develop binding templates for conflict-of-interest statements for the members of national authorities involved in authorisation decisions. This requirement could be operationalised by integrating these standardised declarations into the existing ESFC Platform. Such a measure would address the absence of explicit independence safeguards under Regulation 1107/2009 and counterbalance the disproportionate industry influence over pesticide authorisation procedures.[139]

In addition to these much-needed reforms, this Section also brings attention to the fact that the Court of Justice has recently established a possible pathway for stakeholders to contest insufficiently reasoned risk assessments under Regulation 1107/2009. In the *PAN Europe (Closer)* case, the Court has affirmed that interested parties have the possibility of raising any new scientific or technical knowledge that is relevant and reliable before the authorities and courts of the Member State concerned in order to challenge the authorisation

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[135] European Commission, 'Guidance on Emergency Authorisations According to Article 53 of Regulation (EC) No 1107/2009' (SANCO/10087/2013 rev 1, 2021).

[136] The ESFC has replaced the Plant Protection Products Application Management System (PPPAMS) since January 2023. However, the current guidance document does not acknowledge the replacement of the PPPAMS with the ESFC. More information on the ESFC system is available at <http://food.ec.europa.eu/plants/pesticides/authorisation-plant-protection-products/pppams_en> accessed 12 February 2025.

[137] More information on the guidance for applicants is available at <http://food.ec.europa.eu/plants/pesticides/authorisation-plant-protection-products/pppams_en> accessed 12 February 2025.

[138] Juli Ponce, 'Good Administration and Administrative Procedures' (2005) 12 Indiana Journal of Global Legal Studies 551, 554; Deirdre Curtin and Joana Mendes, 'Transparence et participation : des principes démocratiques pour l'administration de l'union européenne' (2011) 137 Revue française d'administration publique 101; and Craig, 'Transparency' (n 86) 356.

[139] Similarly, the European Ombudsman has recommended that if the Commission continues to rely on the European and Mediterranean Plant Protection Organization (EPPO), it should advocate for more rigorous conflict of interest policies and broader stakeholder participation beyond the pesticide industry. European Ombudsman, 'Decision on how the European Commission adopted a guidance document on comparative assessment in the context of the substitution of hazardous substances in pesticides' (case 177/2023/VB).

of a plant protection product in the territory of that Member State.[140] This approach, which is in line with the precautionary principle, contributes to the attainment of the objectives of Regulation 1107/2009.[141] With this ruling, the Court has not only underlined an obligation for national authorities to demonstrate they have evaluated all available most reliable scientific and technical data before granting authorisations but also highlighted a possible right for stakeholders to leverage scientific knowledge to demand an administrative or judicial review of pesticide authorisations.[142] By allowing stakeholders to introduce new evidence, the Court makes authorisations contingent on continuous scientific scrutiny, rather than one-time evaluations. Yet, the effectiveness of this pathway might also depend on improved transparency in national authorities' decision-making processes.[143]

## 6 CONCLUSIONS

This article has two objectives. Firstly, it intends to raise awareness of the use of emergency authorisations against the scope and objectives of Regulation 1107/2009. To that end, the first two sections are essentially focused on describing the procedures for placing plant protection products on the market as prescribed by Regulation 1107/2009 (section 2) and exposing systemic weaknesses in the current framework that have led to various misapplications of Article 53's emergency authorisation procedures (section 3).

Secondly, this article discusses legal solutions to address these misapplications of Article 53. As this article demonstrates, the EU legal order possesses the necessary tools to address the lack of independence and transparency safeguards under Article 53 of Regulation 1107/2009, notably the principles of good administration and precaution. By imposing obligations of conducting a diligent and impartial examination of all the relevant matters using the most complete and reliable information, including the most updated scientific knowledge, stating reasons for the decisions, providing access to information, and prioritising health and environmental protection, these principles have the potential to recalibrate the practices of national authorities competent to authorise pesticides.

At the same time, section 5 has also shown that simply formulating principles of good administration does not guarantee their uniform application across Member States. Therefore, the last section of this article argues that to ensure compliance with these principles, the EU must translate and proceduralise them into specific obligations. To that end, specific regulatory interventions are proposed in order to reinforce the independence and transparency of the Member States' pesticide emergency authorisation process. Ultimately, it is also highlighted how the Court of Justice has opened an important new avenue for challenging inadequately justified pesticide authorisations under Regulation 1107/2009. However, while this development represents a crucial advancement in ensuring the proper implementation of EU pesticide legislation, efforts are still needed to enhance transparency in pesticide authorisations across the Member States, ensuring that the

[140] Case C-308/22 *PAN Europe (Closer)* (n 109) para 110.
[141] ibid para 103.
[142] ibid paras 90 and 110.
[143] Mattioli, 'How Can New Scientific and Technical Knowledge Affect the Authorisation of Plant Protection Products at Member State Level?' (n 111) 7.

interested parties can access the necessary information to scrutinise and, when appropriate, challenge pesticide authorisations.

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