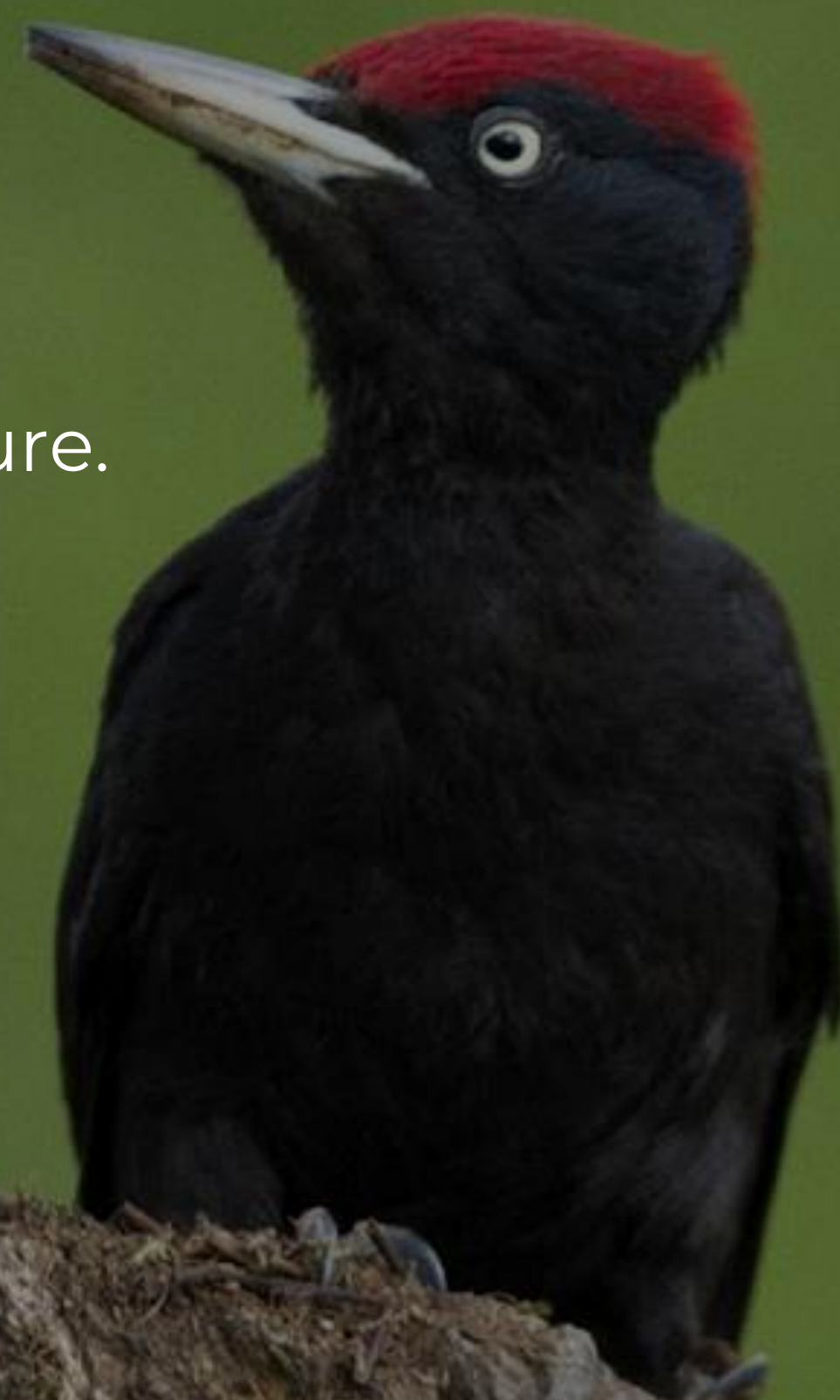


Law4Nature

Experienced lawyers delivering a sustainable protection of nature.



Injunctive relief

Action en cessation environnementale

Context

Belgium does not comply with EU Pesticide Regulation 1107/2009 in that it authorizes the marketing of pesticides that have not been the subject of a prior long-term toxicity study.

Action

Prohibitive or mandatory injunctions

Legal basis

- Law of 12 January 1993 regarding the right of action for environmental protection
- Article 17 of the Belgian Judicial Code
- New Municipal Law



Injunctive relief

Type of procedure

Summary proceedings (“*comme en référé*”), i.e. expedited format but where urgency is presumed and the judge rules on the merits of the case

Material jurisdiction

President of the Court of first instance

Territorial jurisdiction

To be determined depending on status of plaintiffs and defendants

Expertise

If possible, bring the claim in front of a court with environmental law expertise, e.g. Court of Mons

Duration

1 year (first instance) depending on backlog of seized court



Who can take action?

Legal entities

1

Non-profit organizations (*asbl/aisbl*) whose corporate purpose is the protection of the environment.

Public authorities

2

Municipalities and Regions, as regards their territory.

Citizens

3

Citizens can act in the name or on behalf of their municipality if the latter decides not to.

Public prosecutor

4



Who can take action?

Legal entities

1

Non-profit organizations (*asbl/aisbl*) whose corporate purpose is the protection of the environment. → **PAN Europe**

Speciality

PAN Europe's Articles of Association - Article 3:

Personal, direct and legitimate interest - Materiality

“the promotion of activities aimed at reducing and eliminating pesticides and other chemical products (...) and, in general, the prevention of the proliferation of all dangerous pesticides (...)”

Personal, direct and legitimate interest - Territory

“in Belgium and abroad (...)”



Who to take action against?

The State

The state governs the marketing of pesticides.

Walloon and Flanders Regions

The Regions govern the use of pesticides.

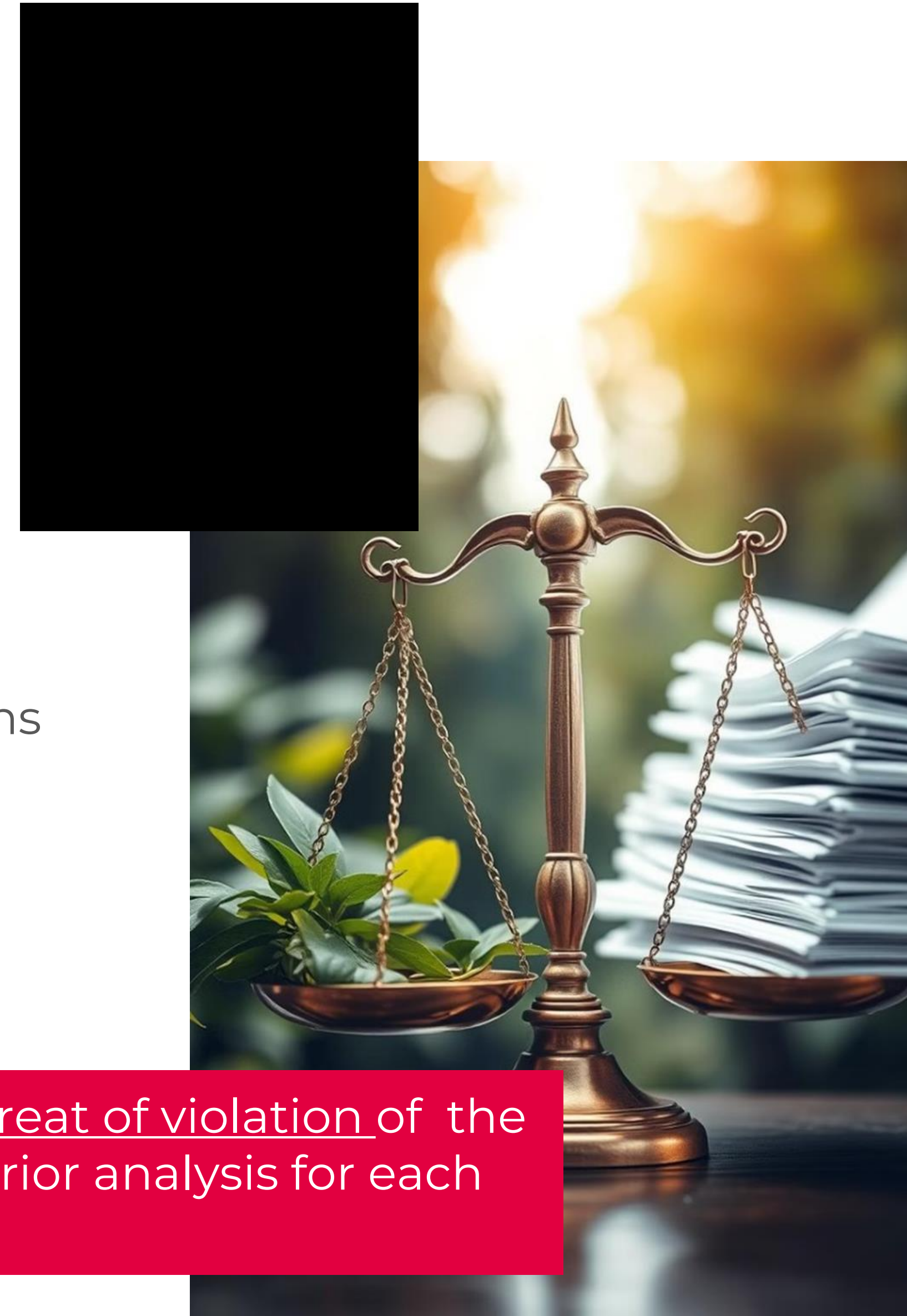


What violations can be asserted?

Injunctive relief requires the demonstration of:

- ✓ a clear violation or a serious threat of violation
- ✓ of one or more provisions of the laws, decrees, orders, or regulations
- ✓ relating to environmental protection

The existence of a clear violation or serious threat of violation of the EU Pesticide Regulation must be subject to prior analysis for each specific case.



What environmental damage can be asserted?

Broad definition

Environnement =
encompasses all aspects of
the living environment.

Presumption of damage

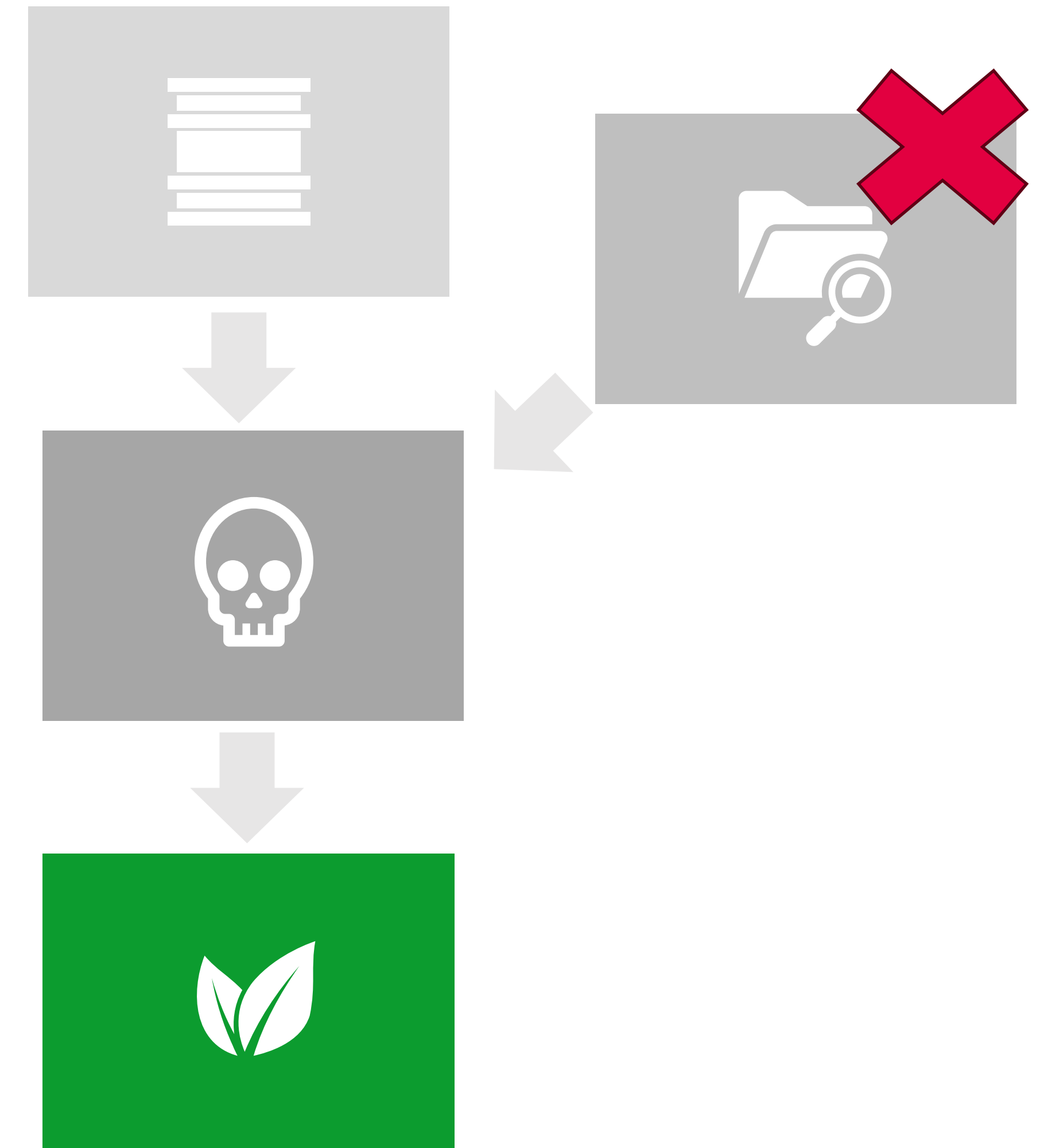
Following case law, in
relation to environmental
impact studies, the absence
of a study gives rise to the
presumption that the
relevant product is harmful
and its use detrimental to
the environment

Concrete impact

Judges must consider the
violation's concrete
environmental
consequences.

Tangible evidence

Demonstrate for each
molecule that the relevant
pesticide is likely to have
harmful consequences for
health and the
environment.



What **injunctions** could be requested?

Cessation



Prevention



Remediation



Limits: separation of powers



What **injunctions** could be requested?

Compliance with EU Pesticide
Regulation 1107/2009



Prohibition to authorise the marketing of
pesticides that have not been subject to
a prior long-term toxicity study

Withdrawal (2 years) of all authorisations
previously granted for pesticides that have not
been the subject of a prior long-term study



Subject to penalties for non-
compliance

Legal Procedure

Initiation

Case brought by summons ("*citation*") or petition ("*requête*"), i.e. faster and cheaper (no bailiff)

Conciliation

Attempt at conciliation precedes debates

Debates

Written pleadings followed by oral pleadings

Judgment

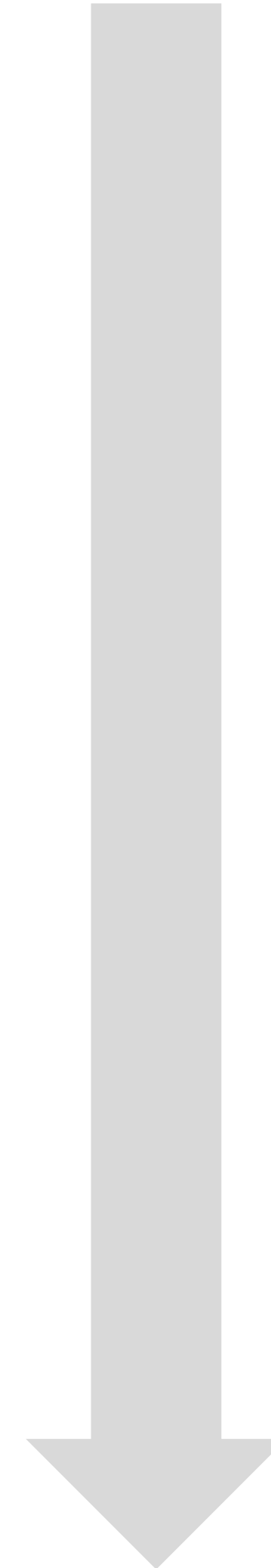
Decision enforceable notwithstanding appeal

Compliance deadline

The judge may grant time to comply with the injunctions.

Adjournment

Possibility to request adjournment and periodic reviews



Thank you

