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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal on a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation 2021/2115 - Comments from Denmark

Delegations will find in annex the comments received from Denmark on the above proposal.

DK comments for the agenda point “The Presidency will briefly summarise the outcome of the technical meetings held on 23 September and 6 October and the way forward”

Denmark would like to reiterate that the reduction targets must reflect the risks arising from the use of plant protection products rather than simple quantities of PPP use. Moreover, the reduction targets must take the previous efforts of the member states into consideration.

DK questions for the agenda point “The Commission services will explain the provisions related to additional funding (Article 43)”

DK Q1: The proposal includes in art. 43.a an option to provide support to comply with new requirement from the SUR for a maximum period of 5 year. Today, it is possible to provide financial support for certain imposed requirements from the implementation of the Natura2000-directives and the Water Framework Directive. This option is without time limits. So why has there been set a specific limit of 5 years for this proposal? This would mean that it is not possible to support for instance organic agricultural production in these areas after 5 years.

DK Q2: How does the proposal comply with existing aid schemes under the Rural Development Programme and for example national climate and environmentally related aid schemes, where a commitment has been given for a longer period than 5 years?

DK Q3 (comment rather than question): Denmark has implemented aid schemes for projects aimed at setting aside peatlands to reduce CO2 emissions, and wetland projects to reduce nitrogen and phosphor emissions. Because of these projects, the use of e.g. pesticides are banned on related areas, and the landowner is compensated for the loss of income. Compensation is typically paid out annually for a period of up to 20 years.

DK questions for the agenda point “The Commission services will present the topic of sensitive areas, including their definition (Article 3(16)), how the definition is meant to be applied (Article 18), and will provide clarifications”

DK Q4: Could the Commission clarify whether golf courses would be included in article 3.16? For example, golf courses could feasibly be considered “sports grounds” mentioned in article 3.16.a. There is a risk that banning PPP use on golf courses could greatly affect the sport. Furthermore, a ban could lead owners of golf courses to restrict public access to the courses in order to avoid being defined as areas used by the public. Is the ban intended to include football grounds and other grass covered sport areas for professional use?

DK Q5: We wonder whether multiple of the definitions in 3.16.a-d refer to the same areas in reality: The human settlements in 3.16.c would seem to include urban areas covered by a water course from 3.16.d, areas used by a vulnerable group from 3.16.b and areas used by the general public 3.16.a. For example, private gardens, sidewalks and parking areas would all belong to 3.16.c. We suggest that the Commission investigates the extent of the overlap in its analysis of the coverage of the areas defined in 3.16.a-f.

DK Q6: The definition in art. 3.16.c exempts some areas, e.g. railroads (Industrial, commercial and transport units). However, these areas could be covered by other definitions, e.g. art. 3.16.a (area used by the general public). Does the exemption trump other definitions or not? Should this be clarified in the proposal?

DK Q7: The SUD (128/2009) art. 11.d concerns very permeable surfaces, sealed surfaces and other infrastructure with a high risk of run-off into surface water or sewage systems. Use on these surfaces elevates the risk for water and environment. In general, this elevated risk is not taken into account by the authorization system in 1107/2009 [although the approval of specific PPPs may carry special provisions]. What elevated risks are we addressing with SUR art. 3.16.c-d?

DK Q8: We wonder why the risk from use on very permeable surfaces, sealed surfaces and other infrastructure are not addressed in the proposal when outside the areas covered by 3.16.a-f?

DK Q9: The reference to non-productive areas in article 3.16.e are from the CAP regulation 2021/2115). Is it correct that this area is considered sensitive in order to protect biodiversity?]

DK Q10: What evidence does the Commission have indicating that the protection under 1107/2009 is insufficient for all the areas protected under the water framework directive? Is this evidence sufficient to justify a general ban on PPP use?

In order to explain the former question: The areas mentioned in article 3.16.f(i) are defined by protected areas under the water framework directive (2000/60/EEC) [they appear in Annex IV of the WFD]¹. Therefore, the areas are presumably included in the definition to prevent PPP from reaching various bodies of water. The risk assessment approach and authorization system in Regulation 1107/2009 accounts for this risk in most cases. The sensitive areas are extensive, at least in Denmark, but we have stricter regulation in the authorization of PPPs and use test fields to investigate leaching, which together ensure that substances do not leach to the groundwater. We have further restrictions in sensitive areas with a demonstrably higher risk of leaching PPPs to the ground water because they are not adequately protected by the risk assessment in the authorization system, such as vicinity zones around wells for drinking water. In these zones, special regulation handles this risk.

DK Q11: In our current reading of the proposal, the inclusion of any area protected under the water framework directive (2000/60/EEC) in article 3.16.f.i could mean that Denmark in its entirety is an ecologically sensitive area. This is primarily because the directive includes any area designated for the abstraction of water intended for human consumption. Nutrient-sensitive areas also cover significant agricultural areas. When will the Commission present the findings of its analysis of the areas affected by the proposed ban?

DK Q12: Could the Commission clarify whether 3.16.f.ii. would cover all Natura 2000 areas or only a subset of areas within the Natura2000 areas? In Denmark, there are large agricultural areas within these areas. Was it the intention of the Commission to include these areas?

Q13 In article 3.16.f.iii, the pollinators in question are likely to change location over time. Would this mean that the ban of PPP use moves along with the pollinators? How would the Member States implement this in practice and how will farmers know the exact boundaries of the ban?

¹ Annex IV of the WFD: "The register of protected areas required under Article 6 shall include the following types of protected areas:

- (i) areas designated for the abstraction of water intended for human consumption under Article 7;
- (ii) areas designated for the protection of economically significant aquatic species;
- (iii) bodies of water designated as recreational waters, including areas designated as bathing waters under Directive 76/160/EEC;
- (iv) nutrient-sensitive areas, including areas designated as vulnerable zones under Directive 91/676/EEC and areas designated as sensitive areas under Directive 91/271/EEC; and
- (v) areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in their protection, including relevant Natura 2000 sites designated under Directive 92/43/EEC(1) and Directive 79/409/EEC(2)."

DK Q14: In article 3.19 - 3.20 the text refers to “a body of surface water” and “a body of groundwater”, definitions from the water framework directive (2000/60/EEC) article 2, point (1-2) which concern “surface water” and “groundwater” in general. Not a body of surface water and groundwater. We believe the correct references to bodies of surface water and bodies of ground water in the water framework directive (2000/60/EEC) are art. 2.10 and art. 2.12. Have the references been incorrectly stated in the SUR proposal? [We posed this question at the WP in September where the Commission offered to check and return with an answer.]

DK Q15: Did the Commission intend to ban the use of PPPs authorized for use in organic agriculture in sensitive areas? The inability to conduct organic agriculture in sensitive areas is likely to diminish the value of the areas affected by the ban.

DK Q16: we wonder whether the ban would prevent farmers from applying for funds under the CAP related to organic farming for the sensitive areas. Could the Commission clarify whether this is the case?

Danish questions on article 18 on sensitive areas

DK Q17: For the buffer zones in art. 18.1, we believe it is important to ensure complete alignment with the new CAP requirements for buffer zones near surface water. We believe the Commission aims to ensure coherence, but to ensure complete alignment, could we refer directly and explicitly to the new CAP requirements? If the definitions differ, it will be very difficult for the users to tell the difference and unintended violations could occur.

DK Q18: Why is it only professional users who can apply for a permit, be granted a permit and use the permit? Is it the Commission’s intention, that non-professional users cannot be considered as candidates for a permit to use PPPs in sensitive areas? The wording of Article 18.4.7 does not allow non-professional users to apply PPP on invasive alien species, if these grow in sensitive areas, which are private.

DK Q19: In art. 18.3, how will the competent authorities be able to verify whether there is “a proven serious and exceptional risk of the spread of quarantine pests” when processing applications for derogations?

DK Q20: In art. 18.3, does the reference to “exceptional risk” entail that repeated derogations for the same pest is in violation of the article? If the risk of a pest were exceptional, it is unlikely to be recurring, one would assume. Is there a limit to the number of derogations allowed for the same pest in the same area according to art. 18.3?

DK Q21: Could a legally binding requirement for competent authorities to process applications within a specified time as suggested in art. 18.5 be problematic? One could imagine all sorts of emergency scenarios where a competent authority through no fault of its own would be in violation.

DK questions for the agenda point “The Commission services will briefly present Chapter III of the proposal. The delegations will have the opportunity to ask questions and, if appropriate, present their positions. Again, the Presidency expects a detailed discussion.”

DK Q22: We are unsure whether all the data listed in art. 8.1.c-i will be relevant to the public in the MS. Could we get the same positive effects of bringing attention to progress by the MS simply stating progress on reduction targets and the most new important steps taken to reach the reduction targets? We believe this is the most relevant information for the public and a good way for them to assess progress on the issue.

DK Q23: As we understand it, art. 9.3.a obliges Member States to list the percentage of PPPs used that are biological controls, specifically in the crops where the top-5 most commonly used PPPs are employed. This will predictably be the most common crops, such as cereals and rape in Denmark. However, there are currently very few authorized biological PPPs. In Denmark, they are nearly exclusively used in green houses and therefore will not appear on the list of crops where the top-5 PPPs are employed. In effect, the list would likely be void for Denmark. Would it be more informative to instead list whether there are authorized biological PPPs at all for use in these crops in question?

DK Q24: Could the Commission outline the expected benefits of changing from five to three year NAPs. Art. 8.1 asks Member States to update their national action plans every three years instead of every five years as set out in the SUD. In Denmark, it takes one year to evaluate the previous plan and one year to negotiate a new plan and one to two years to implement the new initiatives in a new national action plan. We also need some time for the initiatives to have an effect on PPP sales and use. Are there benefits that justify the increased administrative burden?

DK Q25: Art 10.6 empowers the Commission to adopt delegated acts to take into account data relevant to the sustainable use of PPPs. Could the Commission elaborate what data it would ask for? Would this procedure produce new administrative burdens for farmers?

DK Q26: As previously mentioned, there could be some value in the Commission assessing national measures, including the indicative targets, but we seek clarification on rules for the assessments. What information will the Commission use when making recommendations for MS to take additional measures or increase the level of ambition of national indicative targets? How will it select the MS, measures and level of ambition? This point applies to both the Commission recommendations on reduction targets as well as the national indicative targets.
