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From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a REGULATION ON THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL on the sustainable use of plant protection products and
amending Regulation (EU) 2021/2115 - Commission non-paper on
"sensitive areas"

Delegations will find in annex a non-paper prepared by the Commission services on "sensitive areas".

**NON-PAPER ON THE DEFINITION AND SCOPE OF PROVISIONS ON SENSITIVE AREAS IN THE
PROPOSAL FOR A REGULATION ON THE SUSTAINABLE USE OF PLANT PROTECTION PRODUCTS
(SUR)**

The Commission proposed on 22 June 2022 a Regulation on the sustainable use of plant protection products ⁽¹⁾ (SUR proposal), to replace the current Directive 2009/128/EC ⁽²⁾.

The Commission in particular proposed to define sensitive areas in Article 3(16) as areas used by the general public, areas predominantly used by vulnerable groups, urban areas and sports and leisure facilities, urban areas covered by a watercourse or water feature, agricultural areas devoted to non-productive features ⁽³⁾ and ecologically sensitive areas (water protection areas, areas protected for habitats and biodiversity and areas where pollinators are threatened with extinction). Article 18 prohibits the use of pesticides in sensitive areas, with limited derogations.

In the Council Working Party meetings on 11-12 October and 3 November 2022, Member States converged that alternative approaches should be explored on the definition and scope of the proposed ban on plant protection products. In response to Member State requests, this non-paper outlines possible ways forward, as a basis for further discussions.

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- ⁽¹⁾ Proposal for a Regulation on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115 (2022/0196 (COD)).
- ⁽²⁾ 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 (OJ L 309, 24.11.2009, p. 71).
- ⁽³⁾ These are areas subject to the rules relating to GAEC 8 (Good agricultural and environmental conditions) as set out in Annex III of the CAP Strategic Plans Regulation, Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

Following several rounds of discussions with Member States at political and technical level, the present non-paper offers options for consideration by Member States on the definition and scope of provisions on sensitive areas in the proposal for a regulation on the sustainable use of plant protection products (SUR).

The Commission's proposal is seen as too ambitious and affecting a disproportionately high area of Member States' territory. Member States have strongly argued in favour of a reduced scope both in terms of the proposed ban and the areas affected.

The non-paper outlines possible elements for consideration by the Council:

- Moving away from a total ban towards a restriction of use of the least harmful pesticides
- Allowing most pesticides in agriculture in ecologically sensitive areas, including all pesticides used in organic agriculture
- Reducing the scope of the definition of sensitive areas to focus on the most relevant areas
- Maintaining ambition regarding the protection of the general public, vulnerable groups and pollinators

These elements focus on the main concerns from the Member States while maintaining the coherence of the proposal. The Regulation continues promoting the use of plant protection products with good risk profiles (safer for farmers, pesticide users and citizens) while exceptionally allowing the use of most pesticides authorised in the EU market for agricultural use in ecologically sensitive areas, a key request from Member States. It maintains a high level of protection for the general public, vulnerable groups and, eventually through the Nature Restoration Law, pollinators.

The non-paper also outlines a possible reduction of the total area covered by the definition of sensitive areas so that Member State efforts can focus on those areas deemed most relevant to pesticide use.

In parallel, constructive discussions with Member States should continue on other key issues covered by the proposal, such as pesticide reduction targets and administrative burden, for which appropriate solutions can be found.

1. Moving away from a total ban while prioritising biocontrol and low-risk plant protection products

Member States have argued that the proposed total ban on the use of plant protection products could affect agricultural production and result in a very high level of derogations being granted. Member States consider that there is a need for some pest control in areas such as parks, sports grounds and private gardens and that the lack of any tools to control pests in forestry could have a negative effect on biodiversity. Allowing the use of biocontrol and low-risk products in such areas would also help incentivise bringing such products to the market. **It may therefore be considered by Member States to allow the use of biocontrol and low-risk products in all sensitive areas.** This would be consistent with the need to promote biological and low-risk pesticides as safer alternatives to chemical pesticides.

2. Promoting sustainable agriculture in ecologically sensitive areas

The continuation of agriculture in areas protected for habitats and biodiversity under the Birds and Habitats Directives and the Nationally Designated protected areas inventory (CDDA) (Article 3(16)(f)(ii)) is a major concern of Member States and stakeholders. Several argued that agriculture is part of the management policy that contributes to the meeting of biodiversity objectives, and in some cases the sensitive organisms to be protected are dependent on the maintenance of the agricultural habitat or crop. Feedback further suggested that significant agricultural areas would be affected and showed a preference for prohibiting only the more hazardous pesticides in such areas.

On this basis, Member States may envisage allowing the use of biocontrol, low-risk and other approved substances as well as all plant protection products allowed in organic agriculture while not allowing the use of emergency authorisations of pesticides containing non-approved substances ⁽⁴⁾ or the use of more hazardous pesticides that are not used in organic agriculture ⁽⁵⁾; this would allow use of most plant protection products but remove those considered of highest risk in these agricultural areas.

It is considered that this approach, coupled with a more effective application of the IPM provisions as set out in the proposal, could still lead to a more progressive move to chemical pesticides as a last resort. This approach could also better consider the current availability of effective alternatives for agricultural needs.

3. Removal of nitrate/nutrient/urban waste-water sensitive areas

To focus the protection on the most relevant sensitive areas, Member States may consider removing the references to these areas from the definition of sensitive areas in the SUR.

⁽⁴⁾ Emergency authorisations of pesticides containing approved and non-approved active substances are provided for under Article 53 of 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 (*OJ L 309, 24.11.2009, p. 1*).

⁽⁵⁾ These are pesticides containing active substances approved as ‘candidates for substitution’ under Article 24 of Regulation 1107/2009. Copper is the only ‘more hazardous’ pesticide that is authorised for use in organic agriculture. It is not widely used in organic farming but it is currently needed for certain crops. Research initiatives have already yielded substantial reductions in the level of copper use by using expert systems to rely on climate and humidity to predict when copper is not needed, by developing resistant cultivars and by developing biological controls. In addition, the quantity of copper permitted in both conventional and organic farming has been reduced to 28kg per hectare over a 7 year period. Member States should supervise the use of copper in organic farming during annual inspections for certification of organic farming and in related sampling in order to ensure that its use is minimised as much as possible in line with emerging research and reduction techniques. Copper reduction research, included that supported by the Horizon Europe funding is ongoing.

4. Nationally designated protected areas inventory (CDDA)

Areas protected for habitats and biodiversity include areas reported to the nationally designated protected areas inventory (CDDA). This is a European inventory holding information about designated areas and their designation types. Several Member States have reported areas that are not deemed strictly necessary for biodiversity, for example areas of cultural value. These areas are reported by Member States and the classification criteria are not harmonised at EU level.

For the CDDA, there **are three possible alternatives** to the current approach that Member States may consider:

1. Member States might remove areas not directly relevant for biodiversity from the CDDA designation.
2. To make SUR-related reporting a specific reporting field in future CDDA reporting (which is done annually). This would mean that Member States would then be responsible for designating areas relevant for SUR purposes under the CDDA (e.g. areas considered by the Member State as more vulnerable to pesticide use). Member States would have more flexibility within their existing reporting, but subject to criteria relevant for designating SUR relevant areas for the protection of biodiversity that are not separately covered by the Birds and Habitats Directives.
3. Exclusion of the CDDA from the sensitive area definition. It is important to note that there may be areas reported to the CDDA for reasons of protection of biodiversity that are not fully covered by the Birds and Habitats Directives.

5. Areas defined in the Water Framework Directive ⁽⁶⁾ (WFD) / Drinking Water Directive ⁽⁷⁾ (DWD)

In some cases, areas designated for abstraction of drinking water under the WFD may cover up to 100% of a Member State's territory. For these areas, **three possible alternatives** to the current approach could be considered by Member States:

1. To change the category from “abstraction areas” under the WFD to “catchment areas for abstraction points”, to be designated by Member States by 2027 under the DWD. This would allow Member States to have control over the extent of designated territory and Member States would designate that territory in the knowledge that the area would be subject to pesticide use restrictions. Exemptions could be permitted under specific technical conditions ⁽⁸⁾.
2. Instead of restricting the use of pesticides in the entire catchment area for abstraction points, Member States could delineate specific sub-sections of that catchment area for abstraction points after carrying out the risk monitoring of the catchment area for abstraction points that they are obliged to carry out under the DWD. Thus, these areas would also be delineated by 2027 but Member States would have control and would be able to identify the relevant areas where risk monitoring demonstrates that a particular risk warrants a restriction on use of pesticides. This might require an amendment of the DWD.
3. Deleting the reference to protection of drinking water under the SUR on the basis that it is adequately covered by the DWD and legislation on placing pesticides on the market ⁽⁹⁾.

⁽⁶⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000).

⁽⁷⁾ Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast) (OJ L 435, 23.12.2020, p. 1).

⁽⁸⁾ For example there could be a total ban in catchment areas for abstraction points under the DWD except where it can be demonstrated that: (i) the use of pesticides and their metabolites is not identified as a risk to human health under the risk assessment of the catchment areas for abstraction points; (ii) the results of the monitoring do not exceed 50 % of the parametric value set out for the parameters 'pesticides' and 'pesticides total', including the results of the monitoring of relevant metabolites of pesticides; and (iii) the concentration of each non-relevant metabolite of pesticide does not exceed 1 µg/l in the raw water.

⁽⁹⁾ Article 4(3)(e) and Annex II of Regulation 1107/2009 provide that an active substance shall not be approved if it has an unacceptable effect on the environment, including a risk of contamination of surface water or groundwater or an impact on aquatic species. Article 6 provides the possibility to subject an approval to conditions in relation to the manner and conditions of application and for designation of areas where the use of pesticides containing

6. Other areas included

Some Member States have also asked whether private sports clubs (and other similar areas) are covered by ‘areas used by the general public’ and responses to public consultation also raised this issue. The Commission considers that the protection of public health is of utmost importance regardless of whether an area is open to the public in general or only to paying members of the public. The use restriction, referred to under section 1 of this non-paper, should apply to areas used by the general public, including those accessible after paying for entry.

Some Member States are suggesting excluding ‘discontinuous urban fabric’ from the definition as they include agricultural production. This definition would include residential built-up areas, suburbs, villages and hamlets in a discontinuous spatial pattern. An alternative approach could be to remove the agricultural element from discontinuous urban fabric.

Member States have commented that the term ‘area used predominantly by a vulnerable group...’ within the definition of ‘sensitive area’ is too broad. The alternative could be to move to a closed definition, listing vulnerable groups as limited to pregnant and nursing women, the unborn, infants, children and elderly, and potentially exclude roads, railways, ports and airports from the definition of sensitive areas.

A number of Member States have raised further concerns regarding areas designated for future monitoring of pollinators, as the areas to be designated in the future under the Nature Restoration Law proposal are not yet known. There is likely to be a large degree of overlap between areas designated for future monitoring of pollinators and other ecologically sensitive areas. While the areas where pollinators are threatened with extinction outside ecologically sensitive areas are likely to be small, they are crucial to their protection. The Commission considers the protection of pollinators threatened with extinction as a priority issue. As such, Member States should consider how pesticide use may negatively affect pollinators in the discussions on the Nature Restoration Law.

the active substance may not be authorised. Article 8 of the DWD provided for monitoring of pesticides in catchment areas for abstraction points and accompanying preventive and risk mitigation measures.

7. Derogations

Member States have commented that the proposed derogations to allow pesticide use for the control of quarantine pests and invasive alien species are too limited and too short (60 days duration), adding to administrative burden. While the potential options outlined for consideration above would also address some of the concerns in this context, Member States could consider extending the period of each derogation to one full growing season or for 120 days, whichever is the longest.

In addition, Member States raised concerns in relation to new quarantine pests or invasive alien species that have not yet been listed under plant health legislation, arguing that waiting for listing could mean it would be too late to deal with the threat in urgent cases. The alternative to be considered could be to allow the possibility to apply for a derogation in relation to pests for which an application has been made that they be classified as quarantine pests or invasive alien species, but a decision has not yet been made. If an application for classification as quarantine pests or invasive alien species were to fail, the derogation could lapse automatically.
