



Council of the
European Union

Brussels, 18 November 2022
(OR. en)

Interinstitutional File:
2022/0196(COD)

14000/22
ADD 18

LIMITE

AGRI 578
PESTICIDE 37
SEMENCES 27
AGRILEG 158
ENV 1064
PHYTOSAN 44
CODEC 1590

WORKING DOCUMENT

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 - comments on "sensitive areas" from the Netherlands

Delegations will find in annex comments from the Netherlands on the above subject.

Comments from the Netherlands

Please be informed that these are preliminary suggestions as The Netherlands has a parliamentary scrutiny reservation on the whole proposal.

Coming back to the discussion on Chapter I and II, The Netherlands suggests that the wording about the precautionary principle in article 2 (3) of Directive 2009/128 should also be part of the proposal for a new regulation on sustainable use on plant protection products.

Furthermore The Netherlands considers it important to take the differences between toxicity of active substances better into account when calculating the Farm-to Fork indicator. The weighing factors used in the proposed F2F indicator are limited on this matter and as a result the amount of an active substances (kilogrammes) will have a greater effect on the indicator than the actual risks.

As an alternative, in the case the development of a better risk based indicator should lead to unwanted delay of setting targets, it could also be considered to introduce a separate reduction target for group 2 active substances. This will prevent a situation that a low risk substance (group 1) but with a high amount of active substance will be less favourable in reaching the reduction targets than a substance of group 2 with a lower amount of active substance but with a higher toxicity rate than the proposed weighing factor of 8.

Sensitive areas

The Netherlands underlines the intention of the European Commission in its proposal to reduce use and risks of plant protection products in areas where exposure is potential high for the general public or where targets are set to protect and restore water quality and biodiversity.

However, The Netherlands foresees many practical problems in the proposed way forward. The definition of sensitive areas is unclear and difficult to implement into specific well defined restricted areas. Furthermore, the definition as explained by the European Commission, especially the reference in the definition to the Water Framework Directive (WFD) and the related Nitrate Directive, would result in the situation that the whole of The Netherlands could be considered as a sensitive area, which in case no plant protections products are allowed, would make it impossible to continue with every current farming methods (including organic farming).

We believe that the definition and article on sensitive area's is not in line with the way how the principles on subsidiarity and proportionality are implemented in the existing WFD and Bird- and Habitat Directive (BHD).

Furthermore, we believe that the definition and article on sensitive area's is not in line with article 191 of the Treaty. That article of the Treaty is directly related to article 192 of the Treaty which forms the legal base for the proposal for regulation on the sustainable use of plant protection products (SUR-proposal). According to article 191, EU environmental policy should take available scientific en technical information and environmental circumstances in the different EU regions into account. A general ban on the use of plant protection products in sensitive areas that may cover a substantial part of or complete surface area of a Member State is not in line with these principles of the Treaty.

The Netherlands suggests a simplification of the proposal with the intention to protect the general public against avoidable exposure of plant protection products and to better protect well defined vulnerable areas that are designated for water quality and biodiversity in line with the directives (WFD, BHD). The proposal contains the following elements

1. Differentiate between professional use of plant protection products (PPP's) in agriculture/forestry and outside agriculture/forestry.
2. Professional use of PPP's outside agriculture/forestry is not allowed unless it can be demonstrated that, after verifying that all available IPM preventive measures and the use of non-PPP measures are exhausted, the use of PPP's is needed
 - a) to combat quarantine organisms, invasive alien species, or plants or their products that are a threat to human health
 - b) for a safe exploitation of corporate activities and establishments
 - c) for the practice of sports in area's that cannot be exploited and maintained otherwise

3. Professional use of certain PPP's in agriculture/forestry may be restricted above legal authorisation policy in area's
- a) designated as Natura 2000 area, according to the Bird- and Habitat Directives (BHD) if the use of these plant protection products has a significantly negative effect (as defined in those directives) on the nature restoration or conservation targets for which these areas are designated. These restrictions on PPP-use, which could also be related to best available application techniques are documented in the management plans for those areas that must be regularly reviewed according to the provisions in the BHD.
 - b) covered by the management plans for the WFD water bodies if the use of these plant protection products will cause exceedances of water quality standards as defined in the Water Framework Directive. These restrictions on PPP-use, which could also be related to best available application techniques are documented in the management plans for those area's that must be regular reviewed according to the provisions in the WFD.
4. For the use of PPP's in a 3 meter buffer zone in open field agricultural/forestry cultivation adjacent to areas where professional use is not allowed as mentioned under 2 or restricted in areas as mentioned under 3, the same restrictions can be applicable as for those areas.
5. If the adjacent area is a water course, then article 19 applies.

The elements above were used to answer the questionnaire of the Presidency and the Excell sheet of the European Commission.

Presidency Questionnaire on Sensitive Areas.

1. Which areas need to be protected by a complete/partial PPP ban, including those not listed in the Commission proposal?

The current policy of The Netherlands is that professional use of PPP's outside agriculture is not allowed. However, derogations are possible if it can be demonstrated that the use of PPP's is necessary:

- a) to combat quarantine organisms, invasive alien species, or plants or their products that are a threat for human health
- b) for a safe exploitation of corporate activities and establishments
- c) for the practice of sports in area's that cannot be exploited and maintained otherwise

With this policy The Netherlands protects every area outside agricultural and this policy also avoids the practical problems and overlap in defining different areas in relation to exposure to the general public and vulnerable citizens.

The Netherlands believes such a ban is justified and proportional as this ban does not affect the yield and quality of agricultural produce (and by that also not affects the income of farmers) and that in general enough non-PPP means and methods are available and feasible in relation to Integrated Pest Management to deal with unwanted/undesired plants and parts of plants by professionals/contractors in urban areas.

With this approach it is also possible to deal with the situation in The Netherlands that closed agriculture practices, such as glasshouses without or with negligible emission of PPP's to the environment, are taken place within or in very close range of urban areas.

Furthermore, such a general ban of PPP's use outside agricultural will contribute to the general environmental policy and principle to reduce the contamination of the environment with chemicals as much as possible and feasible (zero pollution policy).

As a consequence of the policy described above, it also means that the general ban on PPP's is applicable for designated areas for nature protection or water protection (surface water, drinking water, ground water) that have no agricultural function.

2. In which areas is the complete/partial ban not necessary/feasible, or they are already sufficiently protected by another EU legislation?

A complete ban is not justified (proportional) or feasible in areas with agricultural function. In areas designated for the protection of nature or water quality (surface -, drinking -, ground water) and with agricultural activities, it may be necessary to introduce a partial ban to protect specific nature restoration or conservation targets or water quality standards that are not sufficiently protected by the approval and authorisation criteria of Regulation 1107/2009.

In The Netherlands there already are legal provision in place for professional agricultural use of PPP's, in addition to the authorisation criteria, to protect water quality standards.

Currently a study by the Provinces of The Netherlands (competent Authorities for nature protection) is ongoing if there is also a need for additional provisions within Natura 2000 areas and in neighboring agricultural fields to protect nature protection and restauration targets.

The Netherlands believes that already existing legislation (Regulation 1107-2009, Water Frame Work Directive, Bird- and Habitat Directive and its national implementation) contains sufficient tools to protect the general public, vulnerable groups, nature and water quality. However, the proposal for a regulation on the sustainable use of PPP's can contribute to a harmonised approach between Member States

3. In which areas might the partial ban of PPPs be needed but further assessment is necessary (e.g. assessment of each individual PPP or PPP group, based on risk criteria established for the exclusion/inclusion from/in that specific area)?

See the answer on question 2 in relation to the areas designated for nature and water quality in which professional agricultural activities take place.

4. Based on your answers to the questionnaire, would you have enough information to clearly determine which areas in the territory of your Member State would be covered by the definition of 'sensitive areas'?

No:

The definition of sensitive areas related to urban areas are unclear, impractical and cannot be enforced.

The definition of sensitive areas related to pollinators is unclear as the proposal for a regulation for nature restoration does not have a provision that areas should be designated in relation to the monitoring of pollinators. Furthermore, according to the explanation of the European Commission, there seems to be a full overlap with the nature areas (Natura 2000 areas). Also, the proposed wording and reference to the proposal for a regulation on nature restoration will have a negative incentive for farmers to invest into habitats for pollinators and therefore will be counterproductive.

		Ban all PPPs	Allow biocontrol ¹⁰	Allow low-risk PPPs ¹¹	Allow PPPs authorised for organic farming ¹²	Ban more hazardous PPPs ¹³	Ban use of emergency authorisations ⁴	Derogations - new conditions/ length	Any other comments?
Art 3(16)(a) ¹	Sensitive area category Used by the general public (general category)	X						Derogations are possible: A. to combat quarantine organisms, invasive alien species, or plants or their products that are a threat for human health; B. for a safe exploitation of corporate activities and establishments; C. for the practice of sports in areas that cannot be exploited and maintained otherwise	The Netherlands suggests a simplified and practical approach to replace the categories of article 3.16 a, b, and c by a ban of professional use of PPP's outside agriculture, with the derogations possibilities described in column I.
	Public parks or gardens	see row 2						see row 2	see row 2
	Recreation or sports grounds	see row 2						see row 2	see row 2
	Public path	see row 2						see row 2	see row 2
Art 3(16)(b) ²	Used predominantly by vulnerable group (general)	see row 2						see row 2	see row 2
	Pregnant and nursing women	see row 2						see row 2	see row 2
	Unborn, infants and children	see row 2						see row 2	see row 2
	Elderly	see row 2						see row 2	see row 2
	Workers subject to high long-term PPP exposure	see row 2						see row 2	see row 2
	Residents subject to high long-term PPP exposure	see row 2						see row 2	see row 2
Art 3(16)(c) ³	Human settlements - continuous urban fabric	see row 2						see row 2	see row 2
	Human settlements - discontinuous urban fabric	see row 2						see row 2	see row 2
	Human settlements - green urban areas	see row 2						see row 2	see row 2
	Human settlements - sports and leisure facilities	see row 2						see row 2	see row 2
Art 3(16)(d) ⁴	Urban area covered by a watercourse/ w feature	see row 2						see row 2	see row 2
Art 3(16)(e) ⁵	Non-productive areas - GAEC 8	X							related to catch crops and nitrogen fixing crops
Art 3(16)(f)(i) ⁶	WFD: abstraction of drinking water					hazardous in relation to the targets or standards for which the area is designated			A complete ban of PPP-use, with derogations, is possible in areas with no agricultural activities, see row 2. A complete ban of PPP-use is not justified (proportional) or feasible in areas with agricultural activities. In areas designated for the protection of nature or water quality (surface -, drinking -, ground water) and with agricultural activities, it may be necessary to introduce a partial ban to protect specific nature protection or restoration targets or water quality standards that are not sufficiently protected by the approval and authorisation criteria of Regulation 1107/2009.
	WFD: safeguard zones as modified by Dir 2020/2184					see row 18			see row 18
	WFD: economically significant aquatic species					see row 18			see row 18
	WFD: recreational/ bathing waters							see row 2	see row 2
	(WFD: nutrient-sensitive/nitrate-vulnerable/UWWTD) ⁷								Not feasible/proportional as this would mean that the entire territory of The Netherlands would be considered as a sensitive area. This category is not acceptable for The Netherlands.
	WFD: protection of habitats/ species ind Natura 2000					see row 18			see row 18
Art 3(16)(f)(ii) ⁸	Sites of community importance Habitats Directive					see row 18			see row 18
	Special areas of conservation Birds Directive					see row 18			see row 18
	CDDA areas					see row 18			see row 18
Art 3(16)(f)(iii)	Areas to be defined by future monitoring of pollinator species								Due to the unclear definition and expected overlap with Natura 2000 areas, we propose to delete this category from the definition of sensitive areas
Explanatory notes:									
1	Article 3(16)(a) 'area used by the general public' includes a non-exhaustive list, meaning it is broader than the examples given (public park/ garden, recreation/ sports ground, public path)								
2	Term 'vulnerable group' defined in Art 3(14) of Reg 1107/20 This is a non-exhaustive list and may concern groups other than those listed in that definition.								
3	These are Artificial Surfaces at Levels 1.1 and 1.4 of CORINE land cover classification system.								
4	Urban' is understood by the Commission as local administrative units.								
5	GAEC standard 8 listed in Annex III to Regulation (EU) 2021/2115								
6	See Articles 6 and 7 and Annex IV of the Water Framework Directive								
7	The Presidency understands that Member States wish these areas as listed in point (iv) of Annex IV to be removed from the definition and that the Commission is carefully considering this.								
8	See hyperlinks to consolidated versions of Directive 92/43/EEC and Directive 2009/147/EC and to the Nationally designated protected areas inventory (CDDA) above.								
9	Area for which monitoring of pollinators under Art 17(1)(f) of proposed Nature Restoration Law shows sustains pollinator species European Red Lists classify as threatened with extinction								
10	Biological control is defined in Article 3(23) of the SUR proposal								
11	Low-risk PPPs are listed in Part D of the Annex in the consolidated version of Commission Implementing Regulation (EU) No. 540/2011 on the list of approved active substances under Regulation 1107/2009								
12	Authorised substances listed in Annex I to Commission Implementing Regulation (EU) 2021/1165 of 15 July 2021 authorising certain products and substances for use in organic production as long as they are also approved under Reg 1107/2009								
13	These are chemical active substances approved as candidates for substitution in accordance with Article 24 of Regulation (EC) No 1107/2009 and listed in Part E of the Annex to Implementing Regulation (EU) No 540/2011, or listed in the Annex to Implementing Regulation (EU) 2015/40								
14	Emergency authorisations under Article 53 of Regulation 1107/2009 on the placing of plant protection products on the market.								