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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 - comments on "sensitive areas"
from Belgium

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

Comments from the Belgium

PUBLIC

16-11-2022

BE position about sensitive areas in SUR initial proposal

The initial SUR proposal (COM(2022) 365 final) addresses the concept of sensitive areas in Article 3.16 (definition), Article 18 (measures to restrict the use of PPPs) as well as in Annex II (annual report) and Annex III (training material).

11-12 October 2022.

The Working Party on Plants and Plant Health Questions (Pesticides/Plant Protection Products) analysed Article 3.16 at its meeting on 11 and 12 October 2022.

On this definition, Belgium made the following remarks that aren't yet answered. As far as these are not answered Belgium enter a scrutiny reservation:

3.16.a: the notion of public paths could include small country roads. Is this the idea of this text? If not, the paths should be specified.

3.16.b: Vulnerable groups as defined in Article 3(14) of Regulation 1107/2009 include highly exposed long-term residents. Does the definition therefore cover all inhabited areas? Are there objective criteria that define the height of exposure and the notion of "long term"?

3.16.d: The definition "an urban area covered by a watercourse or water feature" is very vague. A priori all urban areas are concerned. Can you clarify? Are water features artificial?

3.16.f.i: The catchment prevention zones IIa and IIb seem to be concerned, but what about the aquifer recharge zones?

On Article 18, Belgium entered a scrutiny reservation due to the lack of time given to delegations to prepare their intervention on this point. The Czech Presidency promised to organise, as soon as possible, a written round table of the proposed alternatives to amend Articles 3.16 and 18.

24 October 2022

On 24-10-2022, in the absence of the Czech proposal, the Austrian delegation launched a consultation in writing about alternatives amending Articles 3.16 and 18. The issue was discussed and the following reactions were obtained on the Finnish and Dutch proposals:



Alternatives proposed	Belgian position
Finland : "Our preliminary proposal has been to remove/delete the Articles 3(16) and 18."	Not supported. Some areas are to be protected.
<p>Pays-bas : we suggest 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). With this proposal there is no need for a definition for sensitive areas.</p> <ol style="list-style-type: none"> 1. Differentiate between professional use of plant protection products (PPP's) <u>in</u> agriculture/forestry and <u>outside</u> agriculture/forestry. 2. Professional use of PPP's <u>outside</u> agriculture/forestry is not allowed unless it can be demonstrated that, after verifying that preventive measures and the use of non-PPP measures are exhausted, the use of PPP's is needed <ol style="list-style-type: none"> a. to combat quarantine organisms, invasive alien species, and organisms 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 3. Professional use of PPP's in agriculture/forestry is not allowed in area's <ol style="list-style-type: none"> a. designated as Natura 2000 area according to the BHD unless its use and measures , such as best available application techniques, to reduce use and risks 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 unless its use and measures, such as best available application techniques, to reduce use and risks are documented in the management plans for those area's that must be regular reviewed according to the provisions in the WFD. 4. In open field situations, the use of PPP's in a 3 meter buffer zone in agricultural/forestry cultivation adjacent to public accessible area's and areas mentioned under 3, is only allowed under the same conditions as in those areas. 5. If the adjacent area is a water course, then article 19 applies. 	<p>Little support to that proposal. A definition of protected area is needed in order to apply there some specific protection measures (ban, buffer zone, etc.).</p> <p>At 2.b : a limit this to a series of well-defined sectors such as the railways and the importers (gas, electricity, telephone, etc.).</p> <p>At 2.c : not favourable to allow PPP on these areas without any exception.</p> <p>At 3.b : Too vague. Need to target the WFD-related areas that would be affected by this PPP ban. For us, nitrate vulnerable zones should be clearly excluded. For catchment protection zones, how far? close (IIa) and/or remote (IIb) prevention zone?</p> <p>At 4 : 3 meter buffer zone should be a minimum, in order to allow MS to extend it. Or : if ever larger buffer zones would be suggested at EU or MS level, it should be possible to reduce them using mitigating measurements such as drift reducing techniques for example. However, it should be checked if a fixed standard buffer zone of 3m to protect bystanders/residents is compatible with the provisions of the EFSA document 'Guidance on the assessment of exposure of operators, workers, residents and bystanders in risk assessment of plant protection products, 18.01.2022'.</p>

The Czech Presidency sent on 25-10-2022 a set of questions together with a table to collect suggested measures for each category of the definition of sensitive area. The Presidency promises to analyse the answers and deliver its conclusions at the meeting of the Working Party on Plants and Plant Health Questions (Pesticides/Plant Protection Products) on 25 November 2022. The response is due by 10-11-2022.

Questions were submitted to COM by the Belgian delegation at the meeting of 11 October 2022. Written and precise answers to these questions are awaited to further elaborate the Belgian position. As it stands, Belgium maintain a scrutiny reservation for Articles 3.16 and 18.

The Belgian contribution to the questions raised by the Czech Presidency is as follows.

Table 1 – Analysis based on the definition of sensitive area

Sensitive area category in article 3.16	All PPPs	Bio-control ¹	low-risk PPPs ²	PPPs for organic farming ³	more hazardous PPPs ⁴	emergency authorisations ⁵	Derogations new conditions/ length	Any other comments?
(a) ⁶ Used by the general public (general category)	Not ban	Not allow	Allow	Not allow	Ban	Not ban	To prevent from another risk considered as higher for public health and/or environment. The possibility of using products in case of emergency (as indicated on art.18.3) should be kept open.	In principle, neither "biological" nor "natural" properties should be a criterion for allowance. Only a risk based approach is appropriate and sustainable in the long term. The unofficial list of low-risk active substances should be added to the official list in order to achieve a wide range of low-risk PPP, as proposed by the NAPAN Bel. 2.3.1 action.

¹ Biological control is defined in Article 3(23) of the SUR proposal

² 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

³ 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

⁴ 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) 2015/408

⁵ Emergency authorisations under Article 53 of Regulation 1107/2009 on the placing of plant protection products on the market.

⁶ 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)

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Sensitive area category in article 3.16	All PPPs	Bio-control ¹	low-risk PPPs ²	PPPs for organic farming ³	more hazardous PPPs ⁴	emergency authorisations ⁵	Derogations - new conditions/length	Any other comments?
Public parks or gardens	Ban	Not allow	Not allow	Not allow	Ban	Not ban	Idem	we would prefer a ban of all PPP in all public spaces (exception for public plant nurseries not accessible to public), and recreation or sports grounds (accessible to large public, including vulnerable groups). See question raised to COM on 11-10-2022 : " <i>the notion of public paths could include small country roads. Is this the idea of this text? If not, the paths should be specified.</i> "
Recreation or sports grounds	Ban	Not allow	Allow	Not allow	Ban	Not ban	Idem	
Public path							Idem	
(b) ⁷ Used predominantly by vulnerable group								

⁷ Term 'vulnerable group' defined in Art 3(14) of Reg 1107/2009.

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General								See question raised to COM on 11-10-2022 : " <i>Vulnerable groups as defined in Article 3(14) of Regulation 1107/2009 include highly exposed long-term residents. Does the definition therefore cover all inhabited areas? </i> " This category should be replaced by urbanised areas. Isolated settlements in the countryside should not be included? Does the adverb "predominantly" make this distinction?
Pregnant and nursing women	Ban							
Unborn, infants and children	Ban							
Elderly								
Workers subject to high long-term PPP exposure	Ban							See question raised to COM on 11-10-2022 : " <i>Vulnerable groups as defined in Article 3(14) of Regulation 1107/2009 include highly exposed long-term residents. Does the definition therefore cover all inhabited areas? Are there objective criteria that define the height of exposure and the notion of "long term"?</i> "

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Residents subject to high long-term PPP exposure								
(c) ⁸ Human settlements -	<p>Art. 3.16, a), b), c), sensitive areas that are listed under (Art 3(16)(a) & (b)) defined to protect vulnerable groups and sensitive areas defined under Art 3(16)(c) clearly overlap and should be clarified/simplified. Even after more detailed information delivered in the Excel document it remains vague and open for much interpretation ... Especially the link to the corinne lists will provide ample opportunity for confusion in application, both with professional users as with competent authorities that should provide possible derogations and ensure enforcement. why are certain transport/logistics infrastructure (railways, harbors, airfields) completely excepted as sensitive area ? As surfaces that drain water in high extend towards surface waters and/or sewerage, they can pose a (very) high risk to pollute the environment when they are treated with PPP's! Initiatives in several MS (BE, FR, ...) show that considerable reductions in the use of (harmful) PPP's on these surfaces can be achieved. We demand to delete this exception. Or clarified that this is included in continuous or discontinuous urban fabric (transport networks – transport network features). However for railways, we must keep the possibility of a derogation from the total ban in case of lack of alternatives or disproportionate costs.</p>							
continuous urban fabric								
discontinuous urban fabric								
green urban areas								
sports and leisure facilities	Ban							
	Ban						keep some flexibility (via a derogation) for cases where no sustainable alternative solution exists (focusing on low risk PPPs)	
(d) ⁹ Urban area covered by								

⁸ These are Artificial Surfaces at Levels 1.1 and 1.4 of CORINE land cover classification system.

⁹ Urban' is understood by the Commission as local administrative units.

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a watercourse/ w feature	<p>Sensitive areas defined in Art 3(16)(d) show a lot of overlap with areas defined in Art 3(16)(c) and Art 3(16)(f). Further clarification/simplification is needed.</p> <p>See question raised to COM on 11-10-2022 : <i>"The definition "an urban area covered by a watercourse or water feature" is very vague. A priori all urban areas are concerned. Can you clarify? Are water features artificial?"</i></p> <p>Most of the urban surface is impermeable and connected to a rainwater collection network, and therefore already considered as an area at risk for the aquatic environment within the meaning of the directive + Most of the urban surface is public area. + Big density of establishments with vulnerable groups</p>							
(e) ¹⁰ Non-productive areas - GAEC 8								
(f)	<p>In general the protection of these areas or goals in these areas goals set in Regulation cannot be less ambitious than those set in the Directive. Derogations on the use of (certain classes of) PPP's should still be possible, based on an appropriate assessment according to/respecting/contributing to the 'conservation objectives' for designated areas under habitat and birds directive.</p>							
(f)(i) ¹¹ WFD: abstraction of drinking water safeguard zones as modified by Dir 2020/2184 economically significant aquatic species recreational/ bathing waters	<p>The WFD already provides for protection measures against pollution, including PPPs.</p> <p>Regarding the use of PPP in abstraction zones for drinking water link can be made to article 8, 2, b) of the recast drinking water directive and impose further restrictions on use of PPP in those areas of the abstraction zones where a risk assessment identifies potential negative impact of the use of PPP's on the quality of water intended for human consumption. In those specific high risk area's in the catchment additional (mitigating) measurements are necessary, and could include for example bigger buffer zones, soil treatment techniques to prevent erosion, limiting/prohibit the use of well-defined PPP's, ...</p>							

¹⁰ GAEC standard 8 listed in Annex III to Regulation (EU) 2021/2115

¹¹ See Articles 6 and 7 and Annex IV of the Water Framework Directive

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nutrient-sensitive/nitrate-vulnerable/UWWTD) ¹²	A complete ban of PPP use in the article 7 areas of the water framework directive, which can be very large and where a ban might not translate automatically in better quality is to be avoided. Reference made to nitrate sensitive area's and 'urban waste water' sensitive area's must be deleted as these concern nearby the hole BE territory and theses are not concerned by the PPP issue.							
protection of habitats/species incl Natura 2000								
(f)(ii) ¹³ Sites of community importance Habitats Directive Special areas of conservation Birds Directive CDDA areas	Ban							
(f)(iii) ¹⁴ Areas to be defined by future monitoring of pollinator species								

Table 2 – Analysis based on the article 18

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

Public areas, forests, water catchment zone, protect zones for nature, ...
 Areas not dedicated to professional plant/food production (agriculture, ornamental horticulture...)
 Private areas regularly open/accessible to the general public and/or accessible to vulnerable groups

¹² The Presidency understands that Member States wish these areas listed in point (iv) of Annex IV to be removed from the definition and that the Commission is carefully considering this

¹³ 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

¹⁴ 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

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

Nitrate protection zone, isolated habitat, ...

Catchment protection areas are already sufficiently protected by the WFD.

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)?

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'?

Not at all. Some of the questions raised at WP 11-10-2022 are still to be answered by the COM.

The following layers: nitrate vulnerable zones, catchment protection zones, CORINE Land cover and nature conservation zones (with natural parks) concern 88.51% of the Walloon (South BE region) UAA. Without Natural parks (thus only Natura2000 in nature conservation zones), the impact is 74,91 % of UAA. As an example, the impact of nitrate vulnerable zones alone is - 68.12% of the UAA and the impact of catchment protection zones alone is - 9.41% of the Walloon UAA.

The entire BE north region (Flanders) is designated as sensitive area (due to nitrate vulnerable zone). Consequently, such approach is NOT workable/feasible.