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#### WORKING DOCUMENT

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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 Luxembourg

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

**Comments from Luxembourg**

In answer to your request from the steering note ST14000/22 on sensitive areas, we have the following comments completed by the attached filled out Excel file:

1. Which areas need to be protected by a complete/partial PPP ban, including those not listed in the Commission proposal?
  - Areas used predominantly by vulnerable groups
  - Public spaces
2. In which areas is the complete/partial ban not necessary/feasible, or they are already sufficiently protected by another EU legislation?
  - Agricultural areas in general
  - Fields located in protected areas (e.g. in Natura 2000 and WFD) as they are sufficiently covered by respective legislation
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)?
  - On the national level, the general public is only allowed to use PPPs containing low-risk active substances or active substances allowed in organic production
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, as some definitions – relating to the areas included in the definition of 'sensitive areas' but also relating to the types of PPP to be banned/allowed - are not clear enough to be enforceable.

Art.3 (16) c: CORINE human settlements overlaps with most categories from the other points in Art.3 (16), this leads to confusion.

	Sensitive area category	Ban all PPPs	Allow biocontrol <sup>10</sup>	Allow low-risk PPPs <sup>11</sup>	Allow PPPs authorised for organic farming <sup>12</sup>	Ban more hazardous PPPs <sup>13</sup>	Ban use of emergency authorisations <sup>14</sup>	Derogations - new conditions/ length	Any other comments?
		Not clear enough to be enforceable							LU national legislation has further defined "public spaces" and issued a complete ban (with possible derogations that have never been used) of PPPs in these areas. Hence we are in favour of such a ban, but the definition used in the SUR is not clear enough to be enforceable. General comment regarding column H: Emergency authorisations are necessary for emergencies and should never be banned; General comment regarding column I: derogations in case of human or animal health issues or to prevent damage to important infrastructure such as rail roads, dams or bridges should always be included; 60 days is too short to solve the problem and would only lead to repeated successive requests
Art 3(16)(a) <sup>1</sup>	Used by the general public (general category)								
	Public parks or gardens	Ban							
		Don't ban in private facilities (i.e. golf courses)							
	Recreation or sports grounds								
	Public path	Ban							
Art 3(16)(b) <sup>2</sup>	Used predominantly by vulnerable group (general)	General PPP ban supported, but "Used predominantly by vulnerable group (general)" not clear enough to be enforceable							
	Pregnant and nursing women	Ban							
	Unborn, infants and children	Ban							
	Elderly	Ban							
	Workers subject to high long-term PPP exposure	Falls under labour/employment legislation; not clear enough to be enforceable							Definition of "high" and "long-term" exposure would be necessary. Florists are exposed long term and to a high level to PPP residues when handling treated flowers, a ban of PPP in their work place would not lead to a reduction of exposure
	Residents subject to high long-term PPP exposure	Not clear enough to be enforceable							
Art 3(16)(c) <sup>3</sup>	Human settlements - continuous urban fabric		definition of biocontrol not clear enough	allow	allow				cf. comment in cell J2. General ban of PPPs except for low risk PPPs and organic farming PPPs, with possible derogations and emergency authorisations. This would ban all other PPP use by the general public, which is supported and currently ongoing in LU at national level. Concerning a ban of other PPP categories used by professional users, more time is needed to discuss nationally
	Human settlements - discontinuous urban fabric		definition of biocontrol not clear enough	allow	allow				
	Human settlements - green urban areas								
	Human settlements - sports and leisure facilities								
Art 3(16)(d) <sup>4</sup>	Urban area covered by a watercourse/ w feature	Not clear enough to be enforceable							this seems to be already partially covered under Art 3(16)(a)?
Art 3(16)(e) <sup>5</sup>	Non-productive areas - GAEC 8	Already managed under the legal framework it refers to, hence not to be managed under the SUR							
Art 3(16)(f)(i) <sup>6</sup>	WFD: abstraction of drinking water	Managed under the legal framework it refers to, hence not to be managed under the SUR							
	WFD: safeguard zones as modified by Dir 2020/2184								
	WFD: economically significant aquatic species								
	WFD: recreational/ bathing waters								
	(WFD: nutrient-sensitive/nitrate-vulnerable/UWWTD) <sup>7</sup>								
	WFD: protection of habitats/ species incl Natura 2000								
Art 3(16)(f)(ii) <sup>8</sup>	Sites of community importance Habitats Directive								
	Special areas of conservation Birds Directive								
	CDDA areas								
Art 3(16)(f)(iii)	Areas to be defined by future monitoring of pollinator spec								
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 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) 2015/408								
14	Emergency authorisations under Article 53 of Regulation 1107/2009 on the placing of plant protection products on the market.								