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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 Poland

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

Referring to the request to fill in the Excel table regarding various options of the ban of the use of plant protection products in sensitive areas, Poland would like to emphasize that the remarks and comments sent previously (ST 14000/22 ADD 1) are still fully valid.

Poland would like to stress that some of the definitions of sensitive areas are still not clear – for example “areas used by general public” can be understood in very different ways. Having in mind, that state forests are open for all citizens in Poland, the interpretation that forests also fall under this definition is possible. It is not clear how to understand “areas used predominantly by vulnerable groups” – what does “used predominantly” mean?

It is not clear how to understand the proposed ban of the use of a ppp in “recreational/ bathing waters”. We do not use a ppp over water surface. It is not clear why there is proposal to ban emergency authorisations. We cannot be helpless in case of emergency situations.

It should be also emphasized that the time given to prepare an response was too short to conduct any scientific analysis or public consultation.

The proposals presented by the Commission have no scientific justification and their impact hasn't been quantitatively assessed. Thus, the impact assessment does not provide basis for making a responsible decision.

Bearing in mind what has been described above, we decided to give answers in a descriptive form, to be sure that our position is clear.

In the opinion of Poland risk posed by the ppp should be addressed during an active substance authorisation process and a ppp authorisation process. In both cases, the risk posed, inter alia, for humans (operators, bystanders, consumers), groundwater, surface water and pollinating insects is assessed and appropriate risk mitigation measures are established. Taking it into account, in our opinion, there is no justification for a prohibition (total or limited to certain ppp groups) of the use of ppps in any of the generally described areas listed in the definition of "sensitive areas".

If, in the opinion of the Commission, the measures described in Regulation 1107/2009 do not eliminate the risk to the expected level, the Regulation should be amended.

We can agree that in some specific, well-defined areas, the use of ppps should be limited. However, such restrictions should be risk based and take into account risk that is not assessed during the authorization process of the active substance or the ppp. Such measures are already present in the Polish national law.

According to the current Polish national law the use of ppp posing a threat to human health is banned in playgrounds, nurseries, kindergartens, primary schools, hospitals, special protection zones set out in the health resorts. The use of ppps in national parks and nature reserves, as well as around apiaries is also restricted (use of ppp at a distance lower than 20 m from apiaries is forbidden in Poland).

However in all above mentioned situations there should be possibility to grant derogation if it is necessary to eradicate:

- quarantine pests and pests referred to in art. 29 and 30 of the regulation 2016/2031, as well as vectors of such pests (derogation cannot be time limited and cannot depend on request of ppp user),
- invasive alien species,
- pest posing risk to humans.

Any restrictions should be also flexible enough to make it possible to react to the new, unpredictable crisis situations.

It should be possible to use ppps:

- to protect forests trees,
- to protect plants or groups of plants of high ecological, historical or landscape value,
- to ensure safety of industrial infrastructure, railway tracks etc.
- to comply with import requirements of third countries.

Poland is open for the discussion about additional risk mitigation measures concerning the use of ppps in some urban areas (like parks, sport and recreation areas, along streets), that can include for example obligation to close such an area or use ppps in such a way that there is no risk of unintended contact with a ppp (like injection).

However, we cannot accept restrictions on the use of PPPs in areas that are not clearly defined. We also cannot accept references to sensitive areas established in other legislation due to risks other than those associated with the use of PPPs. Such legal acts can be changed in the future in ways that are not currently foreseeable, creating new unintended restrictions on the use of PPPs.

Moreover Poland cannot accept any ban of the use of ppps in:

- human settlements as proposed in art. 3 paragraph 16 letter c of the proposal – according to the definition of “Human settlements - discontinuous urban fabric” such area can cover also agricultural land,
- ecologically sensitive areas as proposed in art. 3 paragraph 16 letter f of the proposal, because:
 - definition refers to other legal acts which could be changed in unpredictable way,
 - sensitive areas referred to in letter f have been established due to risk other than posed by ppps,
 - reference to Directive 2000/60/EC means, that whole territory of Poland would be treated as sensitive area,
 - NATURA 2000 and sensitive areas reported in CDDA cover significant percentage of arable land in Poland,
 - the proposed ban would make it impossible to protect forest stands,
 - we cannot assess area that would be covered by a ban of the use of ppps in pollinators monitoring areas (We fully agree that protection of pollinators is important, however we cannot accept any ban of the use of ppps in the area that is not defined and which will be established based on the legal act that hasn't been adopted yet – the proposal of this legal act can be changed in unpredictable way. Until we have a list of pollinators and information about their distribution, we cannot accept any restrictions.).

We still insist that the Commission should present data concerning sensitive areas established based on the Directive 91/676/EEG and the Directive 91/271/EEG in particular Member States. The proposal of the regulation still refers to these Directives and we should have full picture of the situation.

Provisions concerning quarantine pests should be consulted with Plant Health Unit of DG SANTE (SANTE.G.1).

	Sensitive area category	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 ¹⁴	Derogations - new conditions/ length	Any other comments?
Art 3(16)(a)¹	Used by the general public (general category)	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Public parks or gardens	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Recreation or sports grounds	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Public path	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
Art 3(16)(b)²	Used predominantly by vulnerable group (general)	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Pregnant and nursing women	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Unborn, infants and children	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Elderly	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Workers subject to high long-term PPP exposure	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Residents subject to high long-term PPP exposure	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
Art 3(16)(c)³	Human settlements - continuous urban fabric	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Human settlements - discontinuous urban fabric	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Human settlements - green urban areas	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Human settlements - sports and leisure facilities	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
Art 3(16)(d)⁴	Urban area covered by a watercourse/ w feature	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
Art 3(16)(e)⁵	Non-productive areas - GAEC 8	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
Art 3(16)(f)(i)⁶	WFD: abstraction of drinking water	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	WFD: safeguard zones as modified by Dir 2020/2184	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	WFD: economically significant aquatic species	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	WFD: recreational/ bathing waters	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	WFD: nutrient-sensitive/nitrate-vulnerable/UWWTD ⁷	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	WFD: protection of habitats/ species incl Natura 2000	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
Art 3(16)(f)(ii)⁸	Sites of community importance Habitats Directive	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	Special areas of conservation Birds Directive	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
	CDDA areas	any horizontal ban not acceptable, vide justification in the attached letter, some information concerning restrictions of the use ppp in specific areas in attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
Art 3(16)(f)(iii)⁹	Areas to be defined by future monitoring of pollinator species	any horizontal prohibitions unacceptable, vide justification in the attached letter	not applicable	not applicable	not applicable	not applicable	not applicable	vide attached letter	risk posed by particular ppp should be assessed during procedures of active substance approval and ppp authorisation according to Regulation 1107/2009
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 1107/2009. 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.								