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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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Subject: Proposal on a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation 2021/2115  
- Request from Poland to Council Legal Service

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Delegations will find in annex the Polish request to Council Legal Service to deliver its opinion on the legal quality and transparency of the Proposal on a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation 2021/2115.

## REQUEST FROM POLAND TO CLS

PL would like to ask Council Legal Service to deliver its opinion on the legal quality and transparency of the Proposal on a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation 2021/2115.

According to the EU Law portal “EU policies and laws adopted today will affect both citizens and businesses for generations to come. The Better Regulation agenda ensures evidence-based and transparent EU law-making based on the views of those that may be affected. For these rules to work, Member States must fully implement and enforce them in a timely fashion. They then need to ensure that the rules are correctly applied and enforced, because non-enforcement bears costs for citizens and businesses”.

Poland wants to fulfil the obligation of a proper implementation and enforcement of the future Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation 2021/2115, but due to the many ambiguous phrases used by the Commission we feel that it would not be possible. In order to protect European citizens from the effects of poor quality law, we believe it is our duty to prevent the adoption of laws that create high level of legal uncertainty.

The scope of bans, restrictions and obligations imposed by new Regulation should be clear and well defined, as infringement of the law is connected with penalties. It is unacceptable, that addressee of the regulation (farmer, ppp user or Member State) cannot assess whether its activity is compliant with the law. In our opinion “open definitions” with phrases as “such as” cannot be used in the context of bans, restrictions or obligations.

Moreover, some of the proposed obligation cannot be fulfilled, taking into account available technologies or knowledge.

Below we would like to present some of the Articles from the proposal, which we believe would be particularly difficult to understand, follow and then enforce:

1. Art. 3 (10) ‘application equipment’ means any equipment the use of which for the application of a plant protection product is **reasonably foreseeable** at the time of manufacture ...  
(comment: definition is not clear in the context of obligatory inspections of ppp application equipment);
2. Art. 3 (16) ‘sensitive area’ means any of the following:
  - a) an area used by the general public, such as ...
  - b) an area **used predominantly** by a vulnerable group as defined in Article 3(14) of Regulation (EC) No 1107/ 2009 (comment: definition is not clear in the context of the ban of the use of ppp on sensitive areas);
3. Art. 13 (2) A professional user’s records referred to in Article 14(1) shall demonstrate that he or she has considered **all** of the following options:
  - crop rotation, (comment: how to implement this requirement in orchards?),
  - use of **modern cultivation techniques**, including stale seedbed technique, sowing dates and densities, under-sowing, intercropping, conservation tillage, pruning and direct sowing (comment: the scope of modern cultivation techniques is not clear – it could be understood as robotics, artificial intelligence, etc.),
  - use of **resistant or tolerant cultivars** and **high quality** or certified seed and planting material, (comment: what if there are no such cultivars, what does the ‘high quality’ mean?),
  - pest exclusion by use of **protected structures, nets and other physical barriers**. (comment: are there any against fungus, viruses or bacteria);
4. Art 13 (4) Professional users **shall use biological controls, physical and other non-chemical methods** (comment: in many case there aren’t any). Professional users may only use chemical methods if they are necessary to achieve **acceptable levels of harmful organism control ...;**

5. Art 13 (4) (a) the results of monitoring of harmful organisms show, based on recorded observation, that chemical plant protection measures need to be applied in a timely manner because of the **presence of a sufficiently high number** of harmful organisms (comment: there are not threshold for many of pests);
6. Art 13 (5) Professional users shall apply plant protection products that are **as specific as possible** to control the harmful organisms and have **the least side effects** (comment: there is no information on that in a label of ppp) on human health, non-target organisms and the environment.;
7. Art 13 (6) Professional users shall keep the use of chemical plant protection products and **other forms of intervention** to levels that do not exceed **the levels that are absolutely necessary** to control the harmful organisms and that **do not increase the risk** for development of resistance in populations of harmful organisms ...;
8. Art 13 (7) (...) Where a plant protection measure involves repeated use of plant protection products, professional users shall use plant protection products with **different modes of action**. (comment: there might be no other);
9. Art 17 (5) A professional user shall inspect and operate application equipment in accordance with the **manufacturer's manual of instructions**. (comment: some of the equipment does not have the manufacturer's instructions);
10. Art 22 (3) Member States shall take **all necessary measures** regarding plant protection products authorised for non-professional users to prevent and, where prevention is not possible, to limit dangerous handling operations

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