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REPORT

From: General Secretariat of the Council
To: Delegations

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL on the sustainable use of plant protection products and
amending Regulation (EU) 2021/2115
- progress report

I. INTRODUCTION

1. Following of the adoption of the “Farm to Fork” Strategy and the “Biodiversity” Strategy in May 2020, the Commission started the process of revising Directive 2009/128/EC (SUD) concerning the sustainable use of pesticides, aiming to reduce the use and risks of chemical pesticides by 50% and hazardous pesticides by 50% at European Union level until 2030. On 22 June 2022, the Commission submitted a proposal for a Regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115¹.

¹ ST 10654/22.

2. The proposal is intended to replace the current legislation (Directive 2009/128/EC) with a regulation, in order to harmonise national policies on pesticide use and to better align with the objectives of the relevant EU flagship initiatives under the European Green Deal (such as the Farm to Fork and Biodiversity Strategies) and of the EU Chemicals Strategy and Zero Pollution Action Plan. The proposal is a response to the Commission's commitment to reduce the overall use and risk of chemical pesticides in the EU by 50% and the use of more hazardous pesticides by 50% by 2030 as outlined in the Farm to Fork (F2F) and Biodiversity strategies. It also aims to provide a proportionate, realistic yet ambitious approach to addressing growing societal concerns around pesticides.
3. The main objectives of the proposal are to:
 - i) reduce the use and risk of chemical pesticides, in particular those containing more hazardous active substances;
 - ii) increase the application and enforcement of Integrated Pest Management;
 - iii) increase the use of less hazardous and non-chemical alternatives to chemical pesticides;
 - iv) improve the availability of data on the application, use of and risk from pesticides and on their effects on human and animal health, as well as on the environment;
 - v) improve of the implementation, application and enforcement of rules across all Member States;
 - vi) promote the application of new technologies such as precision farming.

II. STATE OF PLAY IN THE COUNCIL

4. The Commission presented the proposal and its impact assessment to the Working Party on Plants and Plant Health Questions (hereinafter ‘The Working Party’) on 13 July 2022, which was followed by a presentation in the AGRIFISH Council on 18 July 2022. The examination and detailed discussions of the articles of the proposal pursued between September and December 2022. A total of eight Working Party meetings (of which two have been two-day meetings) and three additional technical meetings have been devoted to the examination and discussion of Chapters I-IV of the proposal during the Czech Presidency.

For the above meetings, the Presidency prepared two steering notes² containing questions to delegations on the most important aspects of the articles to be discussed and invited Member States to provide comments and contributions on the topics addressed in order to facilitate the understanding of the issues at stake.

III. MAIN ISSUES AND PROGRESS ACHIEVED

General comments

5. Delegations generally welcomed the objectives of the proposal to reduce by 2030 the use and risks of plant protection products (PPPs) by 50% at EU level and the use of more hazardous PPPs, as proposed by the F2F and Biodiversity strategies. They agreed that the proposal can be an important instrument in the transition to a more sustainable agriculture in the EU, by creating mechanisms meant to reconcile food security, climate change and the protection of biodiversity, while protecting human, animal and environmental health. However, most of them pointed out that food security should remain a central objective of agriculture. The proposed reduction targets and measures should not undermine the production and the competitiveness of the EU agricultural sector, potentially leading to dependency on food imports that may not meet EU standards.

² WK 11562/2022 and ST 14000/22

6. Member States noted that the reduction targets at national level should be decided in a flexible manner, taking into account the individual starting points of each Member State, the great agro-climatic diversity throughout the EU, with crops and varieties of pests that are unique for certain Member States, the Member States' capacity to achieve the proposed targets, or the limited availability of non-chemical alternatives for crop protection.
7. Member States expressed concerns regarding the large proportion of agricultural land which would be affected by the proposed PPPs ban in the so-called 'sensitive areas', the potentially high administrative burden for the competent authorities and for PPPs users as well as the financial support from the CAP in a context where Strategic Plans have already been approved and the allocation of funding has already been decided.

Comments on specific issues

8. **The Impact Assessment.** The impact assessment (IA) of the proposal was presented by the Commission in the first working party meeting, on 13 July 2022, followed by first questions and comments from the delegations, to which the Commission provided answers. However, the discussions on the IA have continued with regularity in each subsequent working party meeting, highlighting the IA as one of the main reasons of concern for a large majority of delegations.
9. At the September 2022 AGRIFISH Council, at the request of a group of 15 Member States, the Presidency put on the agenda of the agriculture ministers an AOB point in order to discuss concerns about the IA not taking sufficiently into account the impact on food security in the Union and the competitiveness of the EU agricultural sector, especially as it had been conducted before the outbreak of the war in Ukraine and the energy and food price crises. These delegations also pointed out that IA did not provide adequate quantitative analyses regarding the potential dependence on food imports, or the proposed ban of PPPs in sensitive areas, especially given the limited availability of low-risk alternatives and without similar requirements for imported food. Consequently, these 15 delegations proposed that the Commission should prepare a complementary IA.

10. Following extensive bilateral consultations with the delegations, the Presidency decided to bring the issue of the IA to the attention of Coreper, in order to provide guidance for future work at WP level. On 16 November 2022, on the basis of a Presidency note (ST 14733/22) containing questions intended to gauge the political support for requesting a complementary IA, Coreper concluded that there was broad support for drafting a Council Decision requesting the Commission to prepare a study complementing the existing IA of the proposal, while continuing the work on the parts and aspects of the proposal not covered by the above study.
11. The Presidency presented the draft Council Decision (ST 14497/22) in the Working Party meeting of 25 November 2022. On the basis of the comments expressed in that meeting and of the subsequent written contributions of the delegations, the Presidency prepared a revised draft Council Decision that was presented to the Working Party on 25 November. On the basis of the comments of the Member States, the Presidency prepared a revised version, which was subsequently discussed in an attaché meeting on 2 December 2022. Following this meeting, a further revised draft Council Decision (ST 14497/2/22 REV 2) was submitted to a written consultation, which confirmed a wide support for the revised draft Council Decision. The agreed draft Council Decision will be submitted to Coreper and Council for approval as a I/A point before the end of the Czech Presidency's mandate.
12. **The reduction targets and the methodology for their calculation.** A large number of Member States expressed reservations about the setting of legally binding PPPs reduction targets at national level. They argued that the targets should be realistic, proportionate and set in a flexible way, taking into account the different starting points of each Member State, the great agro-climatic diversity throughout the EU, the evolving PPPs needs depending on pest status or crop structure, or the availability of non-chemical alternatives. Most delegations acknowledged that calculating the targets based on prior use and intensity of PPPs use were positive, but they also pointed out that using only PPPs sales data might be misleading. They further explained that it would be more relevant to evaluate the risk arising from the use of PPPs rather than to set targets calculated by dividing the weighted quantities of sold PPPs to the Utilised Agricultural Area (UAA).

13. Most Member States considered important to better take into account the differences of toxicity between different active substances in the calculation of the F2F indicators. The weighing factors used in the proposed F2F indicators were of limited use in this matter, because the amount of active substance would have a greater effect on indicators than the actual risks it posed. They also pointed out a potential conflict between the objective of the F2F and Biodiversity strategies to increase the areas dedicated to organic farming on one hand, and the potential higher quantity of lower-risk PPPs necessary for effective plant protection in those areas on the other hand.
14. In addition to the discussion in the Working Party meetings, two technical meetings were dedicated to the methodology of calculation of the reduction targets. The Commission explained in detail how the calculation should be understood and applied. The Commission also provided: 1) additional information on the average values for the intensity of pesticides use in the EU and the 3 zones defined under Regulation (EC) No 1107/2009 and 2) the list of chemical substances used to calculate the indicator F2F 1 (use and risk of chemical pesticides) and F2F 2 (use of more hazardous pesticides). Austria, Belgium, Denmark, Finland, Greece, Hungary, Italy, Slovenia and Spain presented alternative methods which were analysed and discussed, but work on a methodology which would be fairly applicable for all Member States is still necessary.
15. **Sensitive areas.** The definition of '*sensitive areas*' and Article 18 on the '*Use of PPPs in sensitive areas*' generated questions, comments and reservations from the delegations, in relation with the proposed total ban of PPPs in sensitive areas. The definition in Article 3(16) proposes to consider as '*sensitive*' those areas used by the general public, or by vulnerable groups, urban areas and sports and leisure facilities, urban areas covered by a watercourse or water feature, agricultural areas devoted to non-productive features and ecologically sensitive areas (water protection areas, areas protected for habitats and biodiversity and areas where pollinators are threatened with extinction). Article 18 prohibits the use of pesticides in sensitive areas, with limited derogations.

The ban of PPPs in sensitive areas was singled out as one of the main problematic issues from the presentation of the proposal by the Commission. The Commission proposal was considered as too ambitious and affecting a disproportionately high area of Member States' territory. Member States stressed that a potential ban of PPPs should be proportional and clearly linked with the specific need for protection for the environment and for human and animal health in those areas and with the availability of efficient non-chemical alternative plant protection techniques. They argued that such a ban would be justified when there was evidence that the risk reduction provided by the authorisation system of PPPs foreseen by Regulation (EC) No 1107/2009 was insufficient.

16. Furthermore, Member States argued that the proposed total ban of PPPs could affect agricultural production and result in a very high level of derogations being granted. They expressed concerns about the possibility to continue agricultural production in nitrate/nutrient/urban waste-water sensitive areas, areas protected for habitats and biodiversity under the Birds and Habitats Directives and the Nationally Designated protected areas inventory (CDDA), areas protected under the Water Framework Directive³/Drinking Water Directive⁴ or under NATURA 2000. These areas cover a significant portion of agricultural land in many Member States, therefore could potentially lead to a decrease or even cessation of agricultural production in those areas.
17. Many Member States also highlighted that, in areas with high ecological, historical or landscape value, the use of approved PPPs should continue to be allowed. Additionally, some Member States suggested the exclusion of '*discontinuous urban fabric*' (such as residential built-up areas, suburbs, villages and hamlets in a discontinuous spatial pattern) from the definition, as they often include agricultural production. Further concerns were expressed regarding the areas designated for the future monitoring of pollinators which are not known yet, since they will be designated at a later stage under the Nature Restoration Law proposal whose examination in the Council preparatory bodies is ongoing.

³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000).

⁴ Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast) (OJ L 435, 23.12.2020, p. 1).

18. Consequently, Member States strongly argued in favour of a reduced scope both in terms of the proposed ban and the areas covered by the definition of ‘*sensitive areas*’.
19. In order to structure the progress of the discussions on this issue, the Presidency, in consultation with the Commission, proposed a steering note with questions (ST 14000/22) and an Excel table in the form of a questionnaire inviting the delegations to comment on the proposed definition in Article 3(16) and on Article 18. On the basis of Member States’ contributions, the Commission prepared a non-paper (ST 14000/22 ADD 14) which outlines possible way forward for the discussion of alternative approaches for the definition and the scope of the proposed ban on PPPs in sensitive areas.
20. The Commission non-paper was discussed in the Working Party on 25 November 2022. Delegations acknowledged that the non-paper represents a pragmatic way forward. Many of delegations said that they still needed to analyse the different options and would send further questions and/or comments in writing. Others explained that they would need first the results of the study which would be requested from Commission by means of the above Council Decision in order to have the whole picture as to how the different provisions of the proposal would work together. Several Member States raised question about the areas destined for monitoring pollinators.
21. On the basis of the comments and contribution of the Member States, the Presidency drafted a first compromise text (ST 15329/22) on Chapter I (including Article 3(16) - the definition of ‘*sensitive areas*’) and on Article 18, which proposes shifting the responsibility of adopting measures for the protection of sensitive areas to the Member States themselves. Furthermore, Article 18(3) would extend the possible derogations granted by Member States’ competent authorities for using PPPs to 120 days and proposes one additional justification for a derogation (the risk of serious economic damage).

22. In the definition of ‘*sensitive areas*’ foreseen in Article 3(16), the Presidency compromise aligns the category of *areas used by the general public or by vulnerable groups* with the definition set out in Article 3 of Regulation (EC) No 1107/2009 and deletes the categories of *non-productive areas* (Art 3(16(e)) as defined under the EU standards on good agricultural and environmental condition of land (GAEC) set out in Regulation (EU) 2021/2015, as well as the subcategory of ecologically sensitive areas in Article 3(16)(f)(ii), *the nationally designated protected areas (CDDA)*. This compromise was briefly presented by the Presidency at the Working Party on 7 December 2022.
23. **Integrated Pest Management (IPM)**. Many Member States highlighted IPM as the backbone of the sustainable use of PPPs legislation and were positive about the provisions proposing IPM recordkeeping as a tool to ensure the implementation of IPM principles and official controls verification (one of the limitations of the current Sustainable Use of Pesticides Directive). However, they suggested that the format should be simplified to the most relevant necessary information, in order to reduce the complexity and the administrative burden for the PPPs users.

Several delegations also welcomed the provisions proposing aerial application of PPPs and the use of drones as a means to reduce the exposure and hence the risks associated with the use of PPPs.

24. Several delegations argued that the proposal was too cumbersome and difficult to implement in its entirety, in particular in Member States with a large variety of crops and pests. They expressed concerns about the Commission’s oversight in the approval and annual revision of the IPM crop-specific rules, on the argument that these were technical standards which should remain in the competence of Member States. Moreover, given the inherent flexible nature of IPM principles, Member States argued that IPM crop-specific rules should keep their guidelines status, instead of becoming legally binding rules. Some delegations also proposed that it would be useful to exempt the IPM requirements for professional users outside agriculture, as well as for very small agricultural professional users.

25. **The administrative burden and financial support.** Although many recognised the added value of a harmonised content of the **National Action Plans (NAPs)**, Member States argued that the proposed requirements related to the **NAPs** would significantly increase the administrative burden of Member States, that the efforts necessary for the new reporting and monitoring obligations would be too demanding and that they should best be redirected at the actual reduction of use and risk of PPPs. Several Member States explained that their competent authorities did not have the necessary human, financial and material resources to carry out the envisaged obligations related to the coordinated collection of the necessary data and information from R&D projects, academia, private and/or public institutes and organizations. They proposed that the annual reporting frequency should be aligned with the biannual reporting frequency of the Commission, or even be decreased at every 3 years. Member States also proposed that the revision of the NAPs by each Member State should be kept at every 5 years (as in the current Sustainable Use of Pesticides Directive) instead the proposed 3 years frequency, on the argument that the foreseen measures, actions and timelines should be set at medium and long term.
26. Related to the potentially increased administrative burden, many Member States asked for clarifications related to the provisions proposing **support or financial incentives** for farmers. Several of them pointed out that the allocation of resources within the framework of the CAP National Strategic Plans (NSPs) was already done with no possibility to change until the NSPs are revised. Therefore, they suggested that the CAP should not be the only source of financial compensation and alternatives and that a new framework for financial support should be developed by this proposal.

Other issues

27. **Forestry.** The proposal uses the total sales of PPPs for the calculation of the reduction targets, which means that the PPPs used for agriculture are lumped with those used for the protection of forests. One Member State pointed out that this would lead to distorting results, as the PPPs used solely in forestry account for 75% of the total sales of PPPs in its territory. Moreover, in the methodology for the calculation of the reduction targets foreseen by the Commission proposal, the total amount of sold PPPs is divided by the utilised agricultural area (UAA), which for the above Member State leads to the unusual situation that PPPs used in forestry are divided by agricultural area. Discussions are still ongoing to solve this issue.
28. **Reciprocity.** Some Member States pointed out that the support for farmers and for the European consumers' health should have been combined with reciprocity requirements for food imports, in order to ensure a fair competition on the European market and avoid imported food that does not meet the same safety requirements as Union products. Furthermore, it was also suggested that the proposal should have been used as an opportunity to prohibit the import of PPPs unauthorised in the Union.

V. CONCLUSION

The Presidency considers that the work done to this point provides a solid basis for further progress in the Council.

With a view to the AGRIFISH Council meeting on 12 December 2022, the ministers are invited to note this progress report.
