



1. The Austrian National Council has decided that the Austrian "The 2011 Plant Protection Products Act, [Federal Law Gazette I No 10/2011, as amended by the Federal Act published in Federal Law Gazette I No 79/2019], is amended as follows: 1. § 17(5) is deleted. 2. § 18(10) reads as follows:

‘(10) The placing on the market of plant protection products containing the active substance glyphosate is prohibited in accordance with the precautionary principle.’

(hereinafter referred to as the "Austrian Glyphosate Ban")

2. The Austrian Glyphosate Ban is a technical regulation under Technical Standards Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations (the "Technical Regulation"). Accordingly, it has been notified under NOTIFICATION NUMBER: 2020/308/A (AUSTRIA) under the so-called EU TRIS procedure.
3. Bayer is a global enterprise with core competencies in the life science fields of health care and nutrition. Its products and services are designed to benefit people by supporting efforts to overcome the major challenges presented by a growing and aging world population. Bayer manufactures and markets glyphosate-based herbicides in the EU and other countries of the world.

EU Internal Market

4. Bayer would like to comment that the Austrian Glyphosate Ban will create obstacles to the free movement of goods within the internal EU market and violates Art. 34 TFEU, REGULATION (EC) No 1107/2009 as well as the COMMISSION IMPLEMENTING REGULATION (EU) 2017/2324:
 - a. As the Austrian Glyphosate Ban prohibits the placing on the market of plant protection products containing the active substance glyphosate in the entire member state Austria, it obviously prevents any export of glyphosate containing plant protection products to Austria from other EU member states for the purpose of placing them on the market in Austria. This is a severe prevention of any movement of such goods in the European domestic market.
 - b. The Austrian Glyphosate Ban is incompatible with Article 34 TFEU, which prohibits '[q]uantitative restrictions on imports and all measures having equivalent effect'. The Austrian Glyphosate Ban constitutes such a measure having an equivalent effect to a quantitative restriction, essentially because it sets out a general prohibition on the use of plant protection products containing certain substances that have been approved at EU level and prevents the marketing of numerous plant protection products that have been lawfully manufactured and marketed in other Member States (pursuant to marketing authorizations lawfully granted under REGULATION (EC) No 1107/2009).
 - c. The Austrian Glyphosate Ban cannot be justified under Article 36 TFEU as being necessary to ensure the protection of animal and human health. It is settled case law that where EU legislation provides for the harmonisation of the measures necessary to ensure the protection of animal and human health and establishes procedures at EU (and national) level(s) to check that they are observed, recourse to Article 36 TFEU is no longer

justified and the appropriate checks must be carried out and the measures of protection adopted within the framework outlined by the harmonising legislation.

- d. The harmonised legislation provides for possibilities for Member States to have the approval of active substances reviewed by the Commission and to withdraw authorisations for placing plant protection products on the market, respectively. Neither has Austria taken the necessary procedural steps for these measures, nor are their conditions met. Since the Austrian Glyphosate Ban specifically targets products containing the active substance glyphosate, Austria could have requested that the Commission reviews the approval of glyphosate “*in the light of new scientific and technical knowledge and monitoring data*” (Art. 21(1) REGULATION (EC) No 1107/2009). However, Austria has not invoked any new scientific data, nor requested that the Commission reviews the approval of glyphosate. Rather, Austria has taken unilateral measures despite (theoretical) measures available in the harmonised system.
 - e. Apart from the fact that Austria did not take the measures provided for in REGULATION (EC) No 1107/2009, the prerequisites for the introduction of (stricter) national provisions after the adoption of a harmonisation measure under primary law (Art. 114(5) TFEU) are not met either. In particular, there is no *new scientific evidence* that may call the risk assessment of glyphosate into question that lead to its recent renewal only in December 2017 following a comprehensive evaluation. Moreover, Austria has not put forward any considerations specifically related to Austria that may require (stricter) national provisions.
 - f. Even if you put aside the existing EU pesticide framework and the options for measures available there, due to the lack of new scientific data that might justify national measures, there is no basis for invoking the precautionary principle either. Irrespective of whether the precautionary principle can at all be invoked by a Member State for the purpose of prohibiting plant protection products solely based on the fact that they contain a particular active substance that has been validly approved at EU level according to REGULATION (EC) No 1107/2009, the precautionary principle would only apply if there were new data invalidating the (earlier) conclusion that that substance satisfies the approval criteria. This requirement is not met.
 - g. Yet, the Austrian Glyphosate Ban prohibits the marketing of plant protection products which composition – active substances – has been validly approved at EU level according to REGULATION (EC) No 1107/2009, and without even having invoked any particular emergency situation. Member States cannot unilaterally restrict the use of plant protection products containing substances that have been authorised at EU level outside the specific procedures and criteria set out in REGULATION (EC) No 1107/2009. Therefore, it was not open to Austria to unilaterally set out a general ban outside the substantive criteria and procedures set out in REGULATION (EC) No 1107/2009 and ignoring the COMMISSION IMPLEMENTING REGULATION (EU) 2017/2324 granting approval for the active substance glyphosate within the entire EU including Austria.
5. While the Austrian Glyphosate Ban is unrelated to the science-based evaluations that are ongoing as part of the marketing authorisation renewal process for glyphosate in the EU, this decision could still undermine the re-registration process, as it would not only disregard the current approval of glyphosate, which is valid until December 2022, but also the outcome of the science-based assessment by the Assessment Group on Glyphosate (AGG) as part of peer-review process overseen by the European Food Safety Authority (EFSA). The AGG is made up of the competent regulatory authorities from France (ANSES), Hungary (NÉBIH), the Netherlands (CTGB) and Sweden (KEMI).

Safety

6. The safety of our products is our top priority at Bayer. Our business depends on our customers being able to safely use our products, and we take any questions about the safety of our products very seriously.
7. With this contribution we would like to highlight that for more than 40 years, farmers – as well as governments, professional operators such as industrial vegetation management (e.g., supporting safety on roads and railways) and other users – have depended on glyphosate as an efficient and cost-effective tool that can be used safely to control weeds. Glyphosate-based herbicides help farmers deliver crops to markets while promoting sustainable agriculture by reducing soil tillage, soil erosion and carbon emissions as part of an integrated weed management system.
<https://www.bayer.com/en/about-glyphosate-based-herbicides-and-their-role-in-agriculture.aspx>
8. Glyphosate-based products have been used safely and successfully in Europe for decades. Leading health regulators in Europe, the United States, Germany, Canada, Australia, Korea, New Zealand, Japan, and elsewhere around the world continue to conclude that glyphosate-based products are safe when used as directed. Glyphosate herbicides are among the most thoroughly studied products of their kind. For more information visit www.glyphosate.eu/useful-information/safety/

Biodiversity

9. Bayer recognises the importance of biodiversity protection as prescribed in European legislation. As the use of glyphosate has increased over time, its positive environmental impact and sustainability has been widely acknowledged by farmers and other agricultural experts.
10. When used in Integrated Weed Management (IWM) programs, glyphosate helps protect wildlife habitats and offset carbon emissions. Glyphosate is uniquely suited to IWM, and helps to minimise tillage farming practices, reduce greenhouse gas emissions, preserve more land for native habitats, and provide enough food to meet the needs of a growing population worldwide. Beyond the farm, glyphosate is key to ensuring the safety of roadsides, railways and utility corridors in Europe by controlling invasive or noxious weeds and brush. For more information visit <https://www.glyphosate.eu/useful-information/environment-biodiversity/>