1. ------IND- 2021 0085 D-- EN- ------ 20210085 --- --- PROJET

Ordinance

of the Federal Ministry of Food and Agriculture

Fifth Ordinance amending the Ordinance on the use of plant protection products

A. Problem and objective

With a cabinet decision of 4 September 2019, the Federal Government adopted an insect protection action programme. Among many other measures, the use of certain plant protection products is to be restricted in areas of particular importance for insect protection and near water bodies. Crop protection products containing the active ingredient glyphosate have been used in agriculture for many years to control weeds and protect crops. However, the application can also have a negative impact on biodiversity and is to be significantly restricted initially and fully discontinued at the end of 31 December 2023.

**B. 1 Solution**

Amendment to the Plant Protection Application Ordinance [Pflanzenschutz-Anwendungsverordnung].

**B. 2 Benefits**

The changes are intended to contribute to sustainable, insect-friendly agriculture.

C. Alternatives

None at this time. Due to the forthcoming reform of the Common Agricultural Policy, other possibilities could arise for the Federal Government, at least in part, within the framework of the environmental schemes from 1 January 2023.

D. Budgetary expenditure exclusive of compliance costs

No budget expenditure exclusive of compliance costs will accrue.

E. Compliance costs

E.1 Compliance costs for citizens

None

E.2 Compliance costs for businesses

Businesses will incur additional costs due to the increased use of mechanical control measures as a result of the extensive restrictions on the use of plant protection products containing glyphosate. This, together with restrictions on the use of herbicides and certain insecticides in certain protected areas, may also result in additional costs from mechanical control measures. Additional costs may also arise from the introduction of bans on the use of plant protection products in marginal strips bordering water bodies. The calculation of the compliance costs will be carried out immediately after the Cabinet decision and prior to referral to the Bundesrat and with the involvement of the NKR (National Regulatory Control Council) and the Federal Statistical Office. The burdens are relevant to the ‘one in one out’ principle. A prospect of relief will be established within one year.

Administrative costs associated with obligations to provide information

The extension of an existing obligation to provide information and the introduction of a new one entail minor costs.

E.3 Administrative compliance costs

The federal states will incur additional costs in processing applications under § 4(3) and § 4a(2).

F. Additional costs

Effects on individual prices and the level of prices, in particular the consumer price level are not expected.

Ordinance of the Federal Ministry of Food and Agriculture

Fifth Ordinance amending the Ordinance on the use of plant protection products[[1]](#footnote-1)))

Dated ...

On the basis of § 14(1)(1) and 5) in conjunction with paragraph 2 of the Plant Protection Act, of which § 14(1) in the part of the sentence preceding number 1 was last amended by Article 278 of the Ordinance of 19 June 2020 (Federal Law Gazette I p. 1328), the Federal Ministry of Food and Agriculture, in agreement with the Federal Ministry of Economic Affairs and Energy, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety and the Federal Ministry of Health, hereby decrees the following:

Amendment to the Ordinance on the use of plant protection products

The Ordinance of 10 November 1992 on the use of plant protection products (Federal Law Gazette I p. 1887), as last amended by Article 1 of the Ordinance of 25 November 2013 (Federal Law Gazette I p. 4020), is amended as follows:

* + - 1. The following § 3b is inserted after § 3a:

‘§ 3b

Special conditions of use

* + 1. The use of plant protection products consisting of or containing a substance listed in subparagraphs 4 or 5 of Section A of Annex 3 shall comply with the conditions set out in paragraphs 2 to 5 in addition to the conditions of use and ancillary conditions set out in the authorisation of the plant protection product concerned.
    2. Use is only permitted if, according to the circumstances of the individual case, preventive measures, such as the choice of suitable crop rotation, a suitable sowing date or mechanical measures in the crop or the creation of a plough furrow, cannot be carried out and other technical measures are not suitable or reasonable. The application rate, the frequency of application and the areas to be treated shall be limited to what is necessary.
    3. Application as a pre-sowing treatment, except in a no-till or mulch sowing system, or as a post-harvest stubble treatment is only allowed

1. for the control of perennial weeds such as creeping thistle, bindweed, dock, knotweed and couch grass in the sub-areas concerned, or

2. for weed control, including the removal of mulch and fallow crops, on arable land classified in an erosion risk class pursuant to § 6(2) to (4) of the Agricultural Payments Obligations Ordinance of 17 December 2014 (BAnz (Federal Gazette) AT 23.12.2014 V1), as last amended by Article 2 of the Ordinance of 22 September 2020 (BAnz AT 24.9.2020 V1), as amended.

* + 1. Area application on grassland shall only be permitted
       1. for the renewal of grassland in the case of weed infestation where, because of its extent, the economic use of the grassland or the production of fodder is not possible without the application because of a risk to animal health, or
       2. for the preparation of reseeding on areas which are assigned to an erosion hazard class in accordance with § 6(2) to (4) of the Agricultural Payments Obligations Ordinance or on which turning tillage is not permitted on the basis of other regulations.

In the case of subparagraph 1, the application shall be limited to the parts of grassland concerned.

(5) Late application before harvest and application in water protection areas, medicinal spring protection areas and core and maintenance zones of biosphere reserves shall not be permitted.’

* + - 1. § 4 is replaced by the following § 4 and § 4a:

‘§ 4

**Prohibition of use in areas of nature conservation importance**

(1) In nature reserves, national parks, national nature monuments, natural monuments and legally protected biotopes within the meaning of § 30 of the Federal Nature Conservation Act, with the exception of dry stone walls in vineyards, plant protection products may not be used which

1. consist of or contain a substance listed in Annex 2 or 3;

2. are intended to destroy undesirable plants or parts of plants; or

3. are intended to protect plants or parts of plants against insects or to control insects and have been approved by the Federal Office of Consumer Protection and Food Safety with the condition of being labelled as dangerous to bees B1 to B3 or as dangerous to pollinators NN 410.

The prohibitions in the first sentence shall also apply in areas of community importance within the meaning of § 7(1)(6) of the Federal Nature Conservation Act, with the exception of areas used for horticulture, fruit growing and viticulture, the cultivation of hops and other special crops, the propagation of seeds and seedlings and, subject to paragraph 3, arable land which is not designated as a nature conservation area, national park, national monument of nature or natural monument.

(2) The competent authority may authorise exemptions from the prohibitions referred to in paragraph 1 in order to prevent significant agricultural, forestry or other economic damage or to protect native flora and fauna, in particular from invasive species. This shall not apply to the use of plant protection products consisting of or containing a substance listed in Section A(4) or (5) of Annex 3.

(3) In areas of community importance within the meaning of Article 7(1)(6) of the Federal Nature Conservation Act, management without the use of the plant protection products listed in the first sentence of paragraph 1 shall be achieved by 30 June 2024 by means of voluntary agreements and measures on arable land which is not designated as a nature conservation area, national park, national nature monument or natural monument.

(4) The Federal Ministry of Food and Agriculture will examine the use of the plant protection products listed in paragraph 1, sentence 1, on the arable land referred to in paragraph 1, sentence 2, and the measures taken to reduce the use of these plant protection products on this land. The Federal Ministry of Food and Agriculture will report to the Cabinet by 30 June 2024 at the latest on the impact of the measures taken to reduce the use of plant protection products. This report shall include, if necessary, proposals for adjustments to the regulations in paragraph 1.’

§ 4a

Prohibition of application to waters

(1) Plant protection products may not be used on water bodies, with the exception of small water bodies of minor importance for water management, within a distance of ten metres from the water body, measured from the overhanging embankment or, if there is no overhanging embankment, from the line of mean water level. In deviation from sentence 1, the minimum distance to be maintained shall be five metres if there is closed, year-round vegetation cover. Soil cultivation for the renewal of plant cover may be carried out once within five-year periods. The first five-year period shall begin on ... [insert: date of entry into force pursuant to Article 3(1) of this Ordinance] Where the authorisation of the plant protection product in question lays down rules on application at greater distances or on the plant protection equipment to be used, the obligation to comply with those rules on application shall remain unaffected. Distances between water bodies laid down by federal state law shall remain unaffected; the federal states may provide for different distances between water bodies.

(2) The competent authority may authorise exceptions to the first and second sentences of paragraph 1 in order to prevent significant agricultural, forestry or other economic damage or to protect native flora and fauna, in particular from invasive species.’

3. § 9 is worded as follows:

* 1. ‘

General ban on use

Glyphosate and glyphosate trimesium (subparagraphs 27a and 27b of Annex 1) shall not be subject to the prohibition of use under § 1 and § 5(1) until 1 January 2024.’

4. The following subparagraphs 27a and 27b are inserted after Article 1(27):

‘27a Glyphosate

27b Glyphosate trimesium’.

5. Annex 3, Section A is amended as follows:

* + - * 1. Subparagraph 1a is repealed.
        2. Subparagraphs 4 and 5 are amended in column 3 as follows:

In subparagraph 2, the full stop at the end is replaced by a comma.

The following subparagraphs 3 and 4 are added:

‘3. in the home and allotment garden sector; this shall not apply as long as the following applies for the plant protection product in question on the basis of a decision not subject to challenge made before ... [insert: date of entry into force pursuant to Article 3(1) of this Ordinance]:

a) use by non-professional users is authorised or

b) use by professional users is authorised and the suitability for use in domestic and allotment gardens is established in accordance with § 36(1), sentence 2, subparagraph 3 or (2) of the Plant Protection Act;

4. on land intended for the general public; this shall not apply as long as the following applies for the plant protection product in question, on the basis of a decision not subject to challenge made before [insert: date of entry into force pursuant to Article 3(1) of this Ordinance]: the suitability for use on land intended for the general public has been established under an authorisation procedure or the use on land intended for the general public has been authorised.’

c) Subparagraphs 5a and 7 are deleted.

Further amendments to the Ordinance on the use of plant protection products

The Ordinance on the use of plant protection products, last amended by Article 1 of this Ordinance, is amended as follows:

* + - 1. § 3a, § 3b and § 4(2) sentence 2 are deleted.
      2. Subparagraphs 4 and 5 of Section A of Annex 3 are deleted.
      3. Annex 4 is deleted.

Entry into force

(1) This Ordinance shall enter into force on the day following promulgation, subject to paragraph 2.

(2) Article 2 shall enter into force on the date glyphosate and glyphosate trimesium are no longer approved as active substances according to a regulation on the basis of Article 20(1)(b) in conjunction with paragraph 2(1) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24. 11. 2009, p. 1, L 111, 2.5.2018, p. 10, L 45, 18.2.2020, p. 81), as last amended by Regulation (EU) 2019/1009 (OJ L 170, 25.6.2019, p. 1), in the current version, and sell-by and use-by dates have expired, but no later than 1 January 2024. The Federal Ministry of Food and Agriculture shall announce the date of entry into force in the Federal Law Gazette.

The Bundesrat has granted its approval.

Explanatory notes

A. General part

I Objective and necessity

Insects are an important part of nature. In order to prevent a decline in insects, the German government has adopted an insect protection action programme. Among many other measures, the use of certain plant protection products is to be restricted in areas of particular importance for insect protection. The use of plant protection products directly on water bodies is also to be restricted.

Plant protection products containing the active ingredient glyphosate have been used as herbicides in agriculture for many years. At EU level, the active ingredient is approved until December 2022. Plant protection products containing that active substance should therefore be authorised by Member States, provided that they satisfy the other conditions for authorisation provided for in Regulation (EC) No 1107/2009. As a broad-spectrum herbicide, it is used to control weeds, facilitate harvesting practices and no-till tillage, which is particularly beneficial in erosion-prone areas and also results in reduced soil water loss through evaporation. On the other hand, the use of plant protection products containing glyphosate can also have negative effects on biodiversity. The purpose of this Ordinance is therefore to specify, in addition to the conditions of use laid down in the authorisation of the plant protection products concerned, the uses which are still essential and thus to contribute to reducing use, with the aim of generally discontinuing use as soon as possible. The application possibilities in agriculture are initially restricted by the Ordinance, while the application in the home and allotment garden area and on areas used by the general public is prohibited. In the case of the latter areas, application can be dispensed with immediately.

Nature reserves, national parks, national nature monuments, natural monuments and legally protected biotopes within the meaning of the Federal Nature Conservation Act are high category national protected areas that serve to protect species and habitats. Plants and plant parts are elementary components of the habitats to be protected in these protected areas and serve as habitats and/or food sources for various species. The destruction of plants and parts of plants by the application of herbicides or the use of certain insecticides is contrary to the protection of species and habitats and of certain species of insects. The existing bans on the use of certain plant protection products in those areas should therefore be extended accordingly.

In future, the same application bans will also apply to FFH (Habitats Directive) sites, except for the cultivation of horticultural crops, fruit and wine growing, hops, seed and seedling propagation and other special crops that are not also designated as nature conservation areas or national parks. Cultivation without the use of herbicides and certain insecticides is also aimed at for arable farming in FFH areas. This is to be achieved through voluntary measures, such as elements of the future Common Agricultural Policy, agri-environmental and climate measures, contractual nature conservation, but also through increased advisory services. The Federal Ministry of Food and Agriculture will evaluate this measure and submit a report on these measures to the Federal Cabinet by 30 June 2024 year. On the basis of this report, a decision will be taken on possible further measures.

Exceptions should be allowed where insect populations or undesirable plants occur that would adversely modify or damage the targeted habitat or type of use, and to avoid severe economic disadvantages.

Water bodies represent important biotope connecting lines in the landscape. Strengthening the biotope connection lines by extensifying the use of the areas directly adjacent to the water bodies serves to stabilise biodiversity.

Exceptions should also be possible in the case of water bodies if undesirable plants grow and multiply in excess or if pests establish themselves which cause lasting damage to crops on neighbouring agricultural land and cannot be controlled there or can only be controlled at disproportionate expense.

II. Alternatives

None at this time. Due to the forthcoming reform of the Common Agricultural Policy, the environmental schemes could be at least partially taken into account at a later stage.

**III. Power to enact legislation**

The Ordinance is based on § 14 of the Plant Protection Act. The Federal Ministry of Food and Agriculture, in agreement with the Federal Ministries of Economic Affairs and Energy, of Labour and Social Affairs, of the Environment, Nature Conservation and Nuclear Safety and of Health, is responsible for issuing the ordinance. The consent of the Bundesrat is required.

IV. Compatibility with European Union law and international treaties

The Ordinance is in line with the provisions established by the Implementing Regulation (EU) 2017/2324 renewing the approval of the active substance glyphosate.

V. Regulatory consequences

* 1. Legal and administrative simplification

The Ordinance does not lead to legal and administrative simplification.

* 1. Sustainability aspects

The Ordinance contributes to sustainable agriculture and the preservation of natural resources and is therefore in line with the sustainability strategy.

* 1. Budgetary expenditures exclusive of compliance costs

none

* 1. Compliance costs

Citizens may incur minor costs as a result of the ban on the use of plant protection products containing glyphosate, but these cannot be quantified in individual cases.

The Ordinance contains restrictions on the use of plant protection products containing glyphosate. These affect many conventionally managed farms with arable farming or grassland. Here, additional annual costs (labour costs, costs for inputs) will result from the need for more frequent tillage. These costs will generally be higher than those resulting from the use of plant protection products containing glyphosate. However, depending on the type of farm, the crops grown and the weed infestation pressure, these costs can vary considerably.

There is no one-off compliance cost, as it can be assumed that equipment for soil cultivation is available on the farms.

For the orchards and vineyards located in nature reserves, the complete ban on herbicides will also result in higher costs; since mechanical soil cultivation is much more difficult here, the costs are also correspondingly higher.

Restricting the use of certain insecticides for agricultural land located in nature conservation areas may also result in higher compliance costs if only products requiring multiple applications are available as an alternative. For grassland located in FFH areas, mechanical soil cultivation may also result in higher compliance costs in individual cases. However, as fewer plant protection products are generally used here, the compliance burden is only minor. Otherwise, there are still possibilities for funding, e.g. within the framework of contractual nature conservation.

The compliance costs have not yet been specified. The BMEL (Federal Ministry of Food and Agriculture) and the BMU (Federal Ministry of the Environment, Nature Conservation and Nuclear Safety) have agreed on a renewed examination, which, however, cannot be completed before 10 February.

The calculation of the compliance costs will be carried out immediately after the Cabinet decision and prior to referral to the Bundesrat and with the involvement of the NKR and the Federal Statistical Office. The burdens are relevant to the ‘one in one out’ principle. A prospect of relief will be established within a year.

**Information obligations:**

§ 4(2) does not constitute a new information obligation. The possibility of applying for exemptions also existed in the past. However, since the new version of § 4 both enlarges the area covered and imposes further restrictions on the use of plant protection products, a larger number of applications can be expected.

A new information obligation is contained in § 4a(2). An exemption can also be applied for in the case of watercourse margins.

The federal states will incur additional costs in processing applications under § 4(2) and 4a(2).

* 1. Additional costs

As a further cost, the restriction of the use of plant protection products containing glyphosate can lead to yield losses. These losses depend on the crops grown, the weed infestation pressure and the respective weather conditions.

For grassland, yield losses are assumed to be lower, since significantly fewer plant protection products are used here anyway.

In FFH areas that are not simultaneously designated as national parks or nature reserves:

The same applies to grassland as to grassland in nature reserves.

Arable crops and other crops are excluded from the application restrictions, so that no further costs arise in this respect.

**Watercourse distances**

The use of plant protection products on water bodies is also restricted. The total length of water bodies in Germany is assumed to be around 400 000 km. However, the federal states have the option of specifying deviating minimum distances such that no information can yet be given on the actual arable land affected. It should also be borne in mind that some federal states have already provided for minimum distances.

No other costs, in particular no impact on the price level or on consumer prices, are foreseen.

**Impact on small and medium-sized enterprises, ‘one in, one out’**

Agricultural holdings are generally small and medium-sized enterprises. The proposed rules therefore do not particularly concern this type of company. The possibility of providing relief for farms is to be examined in further regulatory projects of the BMEL.

* 1. Further consequences of the provisions

No further regulatory impact or impact on equality policy is expected.

1. Time limitation; review

Since biodiversity is to be protected on a permanent basis, there is no reason for a time limit with regard to the provisions in § 4 and § 4a. An evaluation of the use of plant protection products in arable farming in FFH areas is planned.

The renewal of the approval of the active substance glyphosate at EU level has been applied for. Depending on the decision at EU level, a review of the regulations may be necessary. However, this cannot be predicted at present.

B. Specific part

Subparagraph 1 (§ 3b (new))

The newly inserted § 3b specifies the conditions of use for plant protection products containing glyphosate. In addition to the conditions of use and ancillary conditions already laid down in the authorisation, the permitted uses are limited to those cases where an application is still indispensable for conventionally managed farms in order to ensure proper management and harvesting.

The provisions are set out in detail below:

Paragraph 2 stipulates that other preventive measures must also be taken first. This includes, in particular, mechanical tillage and mechanical methods of weed control, but also the choice of an appropriate sowing date. The use of plant protection products containing glyphosate is only permissible if such alternative measures are not available or are not reasonable, e.g. due to unfavourable weather conditions.

Paragraph 3 describes the permitted applications for pre-seed treatment and for stubble treatment. Permitted for use to control weeds that are difficult to control even with adequate tillage and on land where deep ploughing must be avoided because of the risk of erosion. In this respect, reference is made to the areas at risk of erosion already covered under § 6(2) to (4) of the Agricultural Payments Obligations Ordinance. Paragraph 3 should be read in conjunction with paragraph 2. Even in the case of weeds that are difficult to control, the use of plant protection products containing glyphosate is only permitted once a certain threshold of damage has been exceeded. In any case, the application must be limited to what is necessary, i.e. it must only be carried out when the perennial weeds are present to an extent worthy of control in sub-areas or the entire field.

Paragraph 4 refers to the renewal of grassland. In principle, a radical change is to be made here. Application is only permitted if, due to weed infestation, ploughing and mechanical seedbed preparation alone are not sufficient. If the area is used as pasture, it may also be necessary to control weeds that may be harmful to the animals grazing there, e.g. ragwort. On sites at risk of erosion (difficult to cultivate, sensitive sites such as slopes, presumed peat soils, lowland moor sites), it may be appropriate for ecological reasons to carry out grassland renewal as direct sowing after killing the old sward without tillage.

Paragraph 5 excludes the use of plant protection products containing glyphosate prior to harvesting and also excludes their use in water protection areas and medicinal spring protection areas and core and maintenance zones of biosphere reserves. Further bans on the use of plant protection products containing glyphosate in protected areas also result from § 4.

Subparagraph 2 (§ 4 (new)):

§ 4 is reworded, and the prohibitions on the use of certain plant protection products are extended. In addition to the areas already covered, additional biotope types will be included in the biotope types as a result of the envisaged amendment of § 30 of the Federal Nature Conservation Act by the Third Act Amending the Federal Nature Conservation Act in accordance with the Insect Conservation Action Programme. These are orchard meadows, species-rich grassland, stone bars and dry stone walls. With regard to the orchard meadows, reference is made to the explanatory memorandum to the Federal Nature Conservation Act. The term ‘orchard meadows’ does not cover commercial orchards (usually dense plantations of specific fruit types with closed uniform rows of trees). Dry stone walls in viticulture are excluded from the prohibition of application in legally protected biotopes, as cultivation would no longer be economically viable here and there would therefore be a risk of these areas, which enhance the cultivated landscape, being abandoned.

Prohibitions on use should also apply in flora/fauna/habitat areas (FFH sites) that are not also designated as nature reserves or national parks.

FFH sites are a key component of the EU-wide network of protected areas for the conservation of Europe’s most valuable species and habitats. The Federal Government’s Action Programme for Insect Protection therefore envisages extending the ban on herbicides and biodiversity-damaging insecticides to FFH sites. For agricultural land in FFH sites that are not designated as nature reserves, national parks, national nature monuments or natural monuments, the Federal Government pursues a differentiated approach:

On grassland, which occupies a large proportion of the area in FFH sites, these plant protection products are already hardly used as a rule such that the prohibitions on use do not lead to a significant reduction in yield capacity here.

A prohibition of application also for horticulture, such as fruit, wine and vegetable growing, hops or seed and plant propagation and other special crops is avoided, as this could lead to above-average economic losses due to the special structural conditions in these production areas.

For arable farming in FFH sites, the aim is to farm without the use of herbicides and biodiversity-damaging insecticides. In this respect, the German government is responding to the calls by the federal states and the agricultural sector to give more scope to voluntary measures and agreements by local actors in arable farming, in the expectation that these agreements on measures with equivalent effects will achieve a corresponding level of reduction. This could be done through elements of the future Common Agricultural Policy, agri-environmental and climate protection measures, contractual nature conservation and also through increased advisory services. Accompanying investment support for the purchase of equipment for mechanical weed control is also provided by the Federal Government during the period, in particular in the Investment and Future Programme.

Voluntary agreements may include those concluded by the federal state governments with agricultural and nature conservation associations, such as the ‘Der Niedersächsische Weg’ [Lower Saxony Way] in Lower Saxony. Agreements between other actors, such as between water management and agriculture, can also constitute such agreements.

The Federal Government links this to an evaluation clause, according to which the use of the above-mentioned plant protection products and the measures taken to reduce them will be examined by the Federal Ministry of Agriculture and Food and a report on this will be submitted to the Cabinet by 30 June 2024 at the latest. Should this reveal that voluntary measures or agreements in the above sense are in force on less than 90 % of the arable land concerned, the Federal Government will review the existing regulation and draw up appropriate proposals for adaptation so that the reduction targets agreed in the Action Programme for Insect Protection can be achieved. It shall be ensured that measures of equivalent effect remain unaffected.

The application of plant protection products in bird protection areas is not covered by the provisions of § 4. The possibilities of the federal states to regulate this remain unaffected.

Paragraph 2 contains the necessary derogations to allow continued use of plant protection products on a case-by-case basis where this is necessary to prevent serious damage to agriculture or forestry or to control invasive species.

A ban on the use of plant protection products containing glyphosate already applies to the areas referred to in § 4. No derogations can now be granted for the use of such products in these particularly sensitive areas.

Subparagraph 3 (§ 4a (new))

§ 4a stipulates a general distance of 10 metres in width, or 5 metres in width in the case of permanent greenery, from bodies of water, with the exception of small bodies of water of minor importance from a water management point of view. In future, this must be observed in the application of all plant protection products. If larger distances have been specified with the approval of a plant protection product or if the use of an additional drift-reducing technique is prescribed, these provisions must also be observed. It also includes an opening clause for the federal states, which can also provide for other watercourse distances. For example, the federal states may provide for different distance regulations in lowland areas rich in water bodies.

Paragraph 2 contains the necessary derogation.

Subparagraph 3 (§ 9)

§ 9 is reformulated.

The active substance glyphosate is to be included in Annex 1 (list of plant protection products whose use is completely prohibited) with effect from 1 January 2024. Until then, the active ingredient is still approved at EU level and there are still sales and use-up periods, so a complete ban is not permissible under EU law. A procedure is currently under way to renew the approval of the active substance. In this context, should there be any changes to the duration of the approval of the active substance, the date of the complete prohibition of use should be adjusted if necessary.

Subparagraph 4 (Annex 1)

This amendment adds plant protection products consisting of or containing the active substances glyphosate and glyphosate-trimesium to Annex 1, thus subjecting them to a complete ban on use. This prohibition of application is to be applied in accordance with the provisions of the newly worded § 9.

Re subparagraph 5

Points (a) and (c)

The deletion is solely for reasons of legal clarification. Subparagraphs 1a, 5a and 7 were no longer applicable under the previous rule as of 31 May 2016. For the active substances concerned, there is now only an authorisation at EU level for use in greenhouses. Authorisation for corresponding plant protection products for seed treatment or for use in the open may no longer be granted and corresponding plant protection products may no longer be used.

The amendment therefore does not lower the level of protection.

Point (b)

The existing restrictions on the use of plant protection products containing glyphosate (e.g. on sealed surfaces such as garage driveways) will be supplemented by restrictions in the home and allotment garden sector and on areas used by the general public. For reasons of grandfathering, this does not apply insofar as there are still valid authorisations for individual agents. This is in line with the EU active substance authorisation, which requires Member States to ensure that the use of these products is minimised in the areas referred to in Article 12(a) of Directive 2009/128/EC.

Re Article 2

The special conditions of use from § 3b, § 4(2), sentence 2, and Annex 3, subparagraphs 4 and 5, as well as the special dispensing conditions from § 3a in conjunction with Annex 4, subparagraphs 2 and 3, are no longer necessary if the ban on the use of glyphosate is to be applied. The Ordinance on the use of plant protection products should therefore be adapted at that time. Since plant protection products containing the active substance diuron may no longer be authorised, there is no longer any need for specific conditions for their use.

Re Article 3

Article 3 regulates the entry into force.

1. ) Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). [↑](#footnote-ref-1)