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) was most recently amended by Article 2 of the Act of July 5, 2021 (Federal Law Gazette I p. 2354), the ordinances 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:

Article 1

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. Sentences 1 and 2 shall not apply in so far as a country has adopted or adopts provisions laying down requirements for the use of plant protection products, including exemptions and exemptions, in accordance with water or nature conservation provisions in addition to federal law.

(2) The competent authority may grant derogations from the prohibitions referred to in paragraph 1:

1. in order to prevent significant agricultural, forestry or other economic damage,

2. or to protect native flora and fauna, in particular from invasive species and

3. to ensure road safety of railways.

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 Federal 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. Sentences 1 to 4 shall not apply in so far as a country has adopted or adopts provisions pursuant to Section 22(1)(1)(b) of the Plant Protection Act which determine different water distances.

(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.

Article 2

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.

Article 3

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 Federal Ministry of Food and Agriculture announces the date of entry into force in the Federal Law Gazette.

The Bundesrat has granted its approval.

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)