

SUBMISSION TO EUROPEAN COMMISSION REGARDING TRIS NOTIFICATION NUMBER: 2019/419/A (AUSTRIA)

The European Crop Protection Association comments on the proposed amendments to the Austrian “The 2011 Plant Protection Products Act”.

1. The European Crop Protection Association (ECPA) represents the crop protection industry in Europe. Our members develop innovative and science-based solutions such as pesticides and biopesticides that keep crops healthy and contribute to provide Europeans a safe, affordable, healthy, and sustainable food supply. Our members encourage sustainable farming practices and the responsible use of crop protection technology important for the sustainable intensification of agriculture. ECPA believes policy should be informed by science and designed to manage risk.
2. The Austrian National Council has decided that the Austrian “*2011 Plant Protection Products Act*” [Federal Law Gazette I No 10/2011, last amended by the Federal Act published in Federal Law Gazette No 163/2015], is amended to implement the following sentence in § 18(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”)
3. The Austrian Glyphosate Ban is a technical regulation under Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations (the “TRIS Directive”). Accordingly, it has been notified following the so-called EU TRIS procedure.
4. As a general comment, we wish to point out that Recital 4 of the TRIS Directive states that “*barriers to trade resulting from technical regulations relating to products may be allowed only where they are necessary in order to meet essential requirements and have an objective in the public interest of which they constitute the main guarantee*”. The declared objective of the Austrian Glyphosate Ban appears to be protecting the environment as well as human and animal health. The EU framework governing the authorization, sale and control of plant protection products already provides adequate protection to human and animal health and the environment and ensures the smooth functioning of the single market. It is therefore clear that the Austrian Glyphosate Ban is disproportionate and unsuitable in relation to the objectives which is intended to achieve and cannot be regarded as “necessary to meet essential requirements” under the TRIS Directive.
5. Likewise, the potential justifications to impose such disproportionate restriction pursuant to Article 36 of the TFEU (e.g. protection of health and life of humans, animals or plants) do not apply because the targeted products are authorised under EU-wide legislation which already provides harmonised rules to achieve the objectives stated in the Austrian Act, both at EU and national level.
6. This being said, we would like to focus our contribution on the stark contrast between the Austrian Glyphosate Ban and several provisions of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market (hereinafter referred to as the “PPP Regulation”), most notably the harmonised rules for approval of active substances and placing on the market of PPPs. An endorsement of the Austrian ban would indeed set a dangerous precedent and risk to undermine the entire EU regulatory framework for pesticides.
7. One of the main purposes of the PPP Regulation is to lay down harmonised rules to:

- (i) remove obstacles to trade in PPPs; and consequently
- (ii) increase the free movement and availability of PPPs in the Member States (Recital 9 of the PPP Regulation).

To this end, Articles 4 to 20 of the PPP Regulation set out rules for the first approval and renewal(s) of the approval of active substances. Furthermore, articles 29-46 of the PPP Regulation provide common rules concerning the first authorisation and renewal(s) of the authorisation of PPPs.

8. A complete ban on the marketing of PPPs containing an approved active substance contradicts the basic rules on which the pesticides regulatory system is founded. Active substance - Glyphosate obtained renewal of approval according to the stringent requirements of the PPP Regulation. Implementing Regulation 2017/2324 formally confirms this. The Austrian Glyphosate Ban would have the effect of prohibiting the placing on the market of all PPPs containing Glyphosate despite the active substance being approved at EU level and those products being previously authorised by the Austrian authorities.
9. Moreover, targeting an entire category of PPPs is in breach of the rules concerning product authorisation which only allow a case-by-case (and justified) refusal or withdrawal of the authorisation of products (Article 36(3) and 44(3) of the PPP Regulation). Member States may also request the Commission to review the approval of an active substance in light of new scientific and technical data (Article 21 of the PPP Regulation) but cannot arbitrarily ban a whole category of PPPs.
10. Furthermore, as stated above, the Austrian Glyphosate Ban should be considered an unjustified trade barrier and would disproportionately impact the free movement of products in the EU internal market (Article 34-36 TFEU and Recital 9 of the PPPs Regulation).
11. According to ECPA, the Austrian Glyphosate Ban cannot be justified on the basis of the precautionary principle. As stated in its legal text and recently confirmed by the European Court of Justice, the provisions of the PPP Regulation are underpinned by the precautionary principle and fit for purpose (C-616/17 *Blaise and others*). Glyphosate has been approved at EU level by the Commission following a thorough risk assessment and regulatory process. The precautionary principle was duly considered in the process leading to the renewal of Glyphosate and subsequent products authorisations/renewals. ECHA, EFSA and Member States authorities deemed Glyphosate to be neither carcinogenic, nor toxic for reproduction nor mutagenic.
12. It is important to highlight that under the PPP Regulation, the European Commission has the competence to take emergency measures when an AS/product is likely to constitute a serious risk to human and animal health or the environment. Only in case of the Commission not taking action and when other specific conditions are met, a Member State may take interim protective measures to temporarily restrict/prohibit the use of a product/AS in its territory (Article 71 of the PPP Regulation). The Austrian Glyphosate Ban, *de facto*, permanently prohibits an active substance approved at EU level from the territory of a Member State. This measure is the sole responsibility of the Commission. Therefore, the Austrian Glyphosate Ban is also in breach of the EU emergency procedure (Article 69-71 of the PPP Regulation).

In conclusion, ECPA is of the opinion that the Austrian proposal is in breach of the Regulation (EC) No 1107/2009 and risks to undermine the entire legal framework for pesticides, as well as the European and National scientific and regulatory institutions who carry out related assessment.