

DRAFT

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xxth Act:	Vienna Plant Protection Products Act; Amendment CELEX Nos: 32021R1165, 32021R0383, 02009R1107, 32008R0889, 32009L0128

Act amending the Vienna Plant Protection Products Act

The Viennese Landtag has decided:

Article I

The Vienna Plant Protection Products Act, Provincial Law Gazette for Vienna No 18/1990, as last amended by the Act Provincial Law Gazette for Vienna No 31/2015, is amended as follows:

- 1. In § 1, paragraphs (3) and (4) are deleted.
- 2. § 2 shall read:

‘§ 2. (1) Plant protection products are products, in the form in which they are supplied to the user, consisting of or containing active substances, safeners or synergists and intended for a use listed in Article 2(1)(a) to (e) 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.

(2) ‘Low-risk plant protection products’ are those that contain low-risk active substances in accordance with Article 22 of Regulation (EC) No 1107/2009 and are authorised as ‘low-risk plant protection products’ in accordance with Article 47(1) of Regulation (EC) No 1107/2009.

(3) ‘Suitable for organic production’ means those plant protection products that are registered in the Plant Protection Products Register pursuant to § 4(2) of the Plant Protection Products Act 2011 and meet the requirements laid down in Articles 9 and 24 of Regulation (EU) 2018/848 in conjunction with Annex I to Implementing Regulation (EU) 1165/2021. Deemed equivalent to these are natural enemies of pests as defined in § 12(1) of the Plant Protection Products Ordinance 2011 and microorganisms as defined in Article 3(15) of Regulation (EC) No 1107/2009, which are registered in the Plant Protection Products Register pursuant to § 4(2) of the Plant Protection Products Act 2011.

(4) Use of plant protection products includes the consumption, application, spreading, utilisation, storage, retaining and onsite transport of plant protection products for the purpose of application.

(5) Intended and appropriate use of plant protection products includes compliance with the legal requirements, compliance with good plant protection practice in accordance with Regulation (EC) No 1107/2009 and the taking into account of the principles of Integrated Plant Protection (‘IPP’, paragraph (6)).

(6) Integrated Plant Protection is the careful consideration of all available plant protection methods and the subsequent integration of suitable measures to counter the development of populations of harmful organisms and to keep the use of plant protection products and other defence and control methods at an economically and environmentally acceptable level which reduces or minimises risks to human health and the environment. Integrated plant protection focuses on the growth of healthy crops with the lowest possible disruption to agricultural ecosystems and promotes natural mechanisms to control or regulate pests.

(7) Plant protection equipment includes pouring, sprinkling, spraying, spreading, dusting and other equipment intended for the application of plant protection products.

(8) The environment means water, air and soil, as well as the relationships between these on the one hand and with all living beings on the other.

(9) An adviser is a person who has acquired appropriate knowledge and provides advice on plant protection and the safe use of plant protection products as part of their professional activity, including private-sector self-employed people and public advisory services.

(10) Professional user (§ 4(1)) is a person who uses plant protection products in the course of their professional activity, in particular an operator, a technician, an employer, as well as self-employed persons in agriculture. Deemed equivalent to these are persons who have the same qualifications as a professional user with regard to the use of plant protection products on the basis of initial, continued or further training successfully completed in accordance with § 9b, § 9c and §9d and who fulfil the other requirements of § 9e without, however, pursuing a professional activity in which plant protection products are regularly used.

(11) Other users are persons who, in the absence of requirements being laid down by law, are not regarded as professional users or equivalent persons (paragraph (10)) and who may therefore use only those plant protection products (§ 2(2)) which are authorised for non-professional users.'

3. § 4(1) shall read:

'(1) Plant protection products may only be used by professional users, unless the authorisation (§ 3(1)) and the indication of the plant protection product concerned stipulate otherwise.'

4. § 5 shall read:

'§ 5. (1) Anyone who applies plant protection products may only use authorised plant protection products (§ 3(1)) as plant protection products and only if and to the extent that this is stipulated for the respective specific user group in the indications upon authorisation. This also applies to the application of authorised basic substances in accordance with Article 23 of Regulation (EC) No 1107/2009.

(2) Anyone who uses or allows to be used plant protection products authorised for the professional user (§ 3(1)) shall keep records in which at least the following information must be included:

- a) the trade name of all plant protection products used (including basic substances), including plant protection registration number and harmful factor;
- b) the name and size of the treated area, the treated crop and the amount actually used (application quantity) of the plant protection product. If an area-related application quantity is not envisaged, the concentration used shall be specified. The size of the treated area does not have to be specified in this case;
- c) the date of application; and
- d) the full name of the professional user (§ 2(10)).

These records shall be kept chronologically and for at least three years.

(3) When applying plant protection products, smoking, eating and drinking is prohibited. If necessary, personal protective equipment suitable for the specific use shall be used. After application of plant protection products, unprotected areas of skin, including hands, shall be cleaned thoroughly.'

5. § 6(1) shall read:

'(1) Plant protection products shall be kept and stored in such a way that they cannot be accessed by unauthorised persons. Any person who does not have a valid training certificate (§ 9e) shall be deemed to be unauthorised.'

6. § 6a(2) to (4) shall read:

'(2) In the territory of Vienna, with the exception of areas used for agricultural production or forest areas within the meaning of the Forest Act 1975, in addition to authorised basic substances (§ 5(1)) only authorised plant protection products that are either considered to be low-risk plant protection products (§ 2(2)) or suitable for use in organic production (§ 2(3)) may be used.

(3) By way of derogation from paragraph (2), authorised synthetic plant protection chemicals may also be used in order to comply with EU law, international agreements, orders made under the Vienna Plant Protection Act or the legal acts of the authorities based thereon, and in the following areas:

areas

- 1. used as research fields of a scientific institution;
- 2. used as railway facilities, airfields or landing sites and similar installations that are to be kept free of vegetation for safety reasons;
- 3. used for practising sport or for sports competition, if the area is not predominantly available for use by children and adolescents up to the age of 14;

4. requiring the use of synthetic plant protection chemicals in the interests of national safety;
5. regarded as gardens and parks within the meaning of § 1(12) of the Monument Protection Act, as well as areas that are equally worthy of protection and preservation due to their historical significance and cityscape quality; or
6. used as surface cover for waste treatment facilities within the meaning of the Waste Management Act 2002 for protecting and maintaining the function of the surface cover.

In case of doubt, the City Administration must, upon request, determine by means of official decision whether an area is to be regarded as belonging to the list set out in points 1 to 6 and, therefore, that the use of plant protection products within the meaning of paragraph (4) is permissible.

(4) Without prejudice to paragraph (1), when using any authorised plant protection products, Integrated Plant Protection (§ 2(6) and § 6a(1)) shall be taken into account in the context of the specific use case concerned.'

7. *The following paragraphs (4) to (8) are added to § 7:*

'(4) The aerial application of plant protection products shall be prohibited, unless provided otherwise below.

(5) By way of derogation from paragraph (4), at the request of a professional user (§ 2(10)) and in compliance with the conditions laid down in Article 9(2) and (3) of Directive 2009/128/EC, the City Administration may, by means of official decision, grant approval for the use of unmanned aerial vehicles for applying plant protection products (§ 2(1) to (3)) or basic materials. Where necessary, the approval shall include conditions, timeframes and stipulations for the protection of public interests, the health of local residents and the environment.

(6) Any request referred to in paragraph (5) shall be accompanied by an application plan and evidence showing that the conditions laid down in Article 9(2) of Directive 2009/128/EC are fulfilled. In addition, the following information:

1. the expected time of application;
2. the quantities to be applied;
3. the plant protection products used, including natural enemies of pests and microorganisms or basic substances; and
4. the areas on which the plant protection products, including natural enemies of pests and microorganisms or basic substances are to be applied

must be included in the request.

(7) The City Administration shall keep records pursuant to Article 9(6) of Directive 2009/128/EC on the information contained in the requests referred to in paragraph (6) and in the approvals granted pursuant to paragraph (5).

(8) The City Administration is authorised, taking into account federal and/or EU law, to lay down, by means of ordinance, more detailed provisions on the application of plant protection products including natural enemies of pests and microorganisms (§ 2(3)) and basic substances (§ 5(1)) using unmanned aerial vehicles.'

8. *In § 8, paragraph (2) is deleted as well as the paragraph number '(1)'. Furthermore, the words '(such as by means of aerial vehicles)' in letter b are deleted.*

9. *In the last sentence of § 9e(5), the full stop after the word 'must' is replaced by a comma and the words 'and reliability (paragraph (3)) continues to exist.' are added.*

10. *In § 9e(6), following the reference 'paragraph (5)' the words 'as well as continued reliability (paragraph (3)) in writing' are inserted.*

11. *§ 11(1) shall read:*

'(1) If the offence does not constitute a criminal offence falling within the jurisdiction of the ordinary courts, an administrative offence punishable

1. by a fine of up to EUR 5 000 is committed by anyone who
 - a) acts contrary to § 3, § 4(1) and (2), § 5(1) and (3), § 6, § 6a(1), (2) and (4), § 7(1) to (5), § 10b, orders made pursuant to § 10c(1), or
 - b) the ordinances issued on the basis of § 7(8), § 7a(1) and § 8,

- c) uses plant protection products within the meaning of § 3 contrary to the official prohibition (prohibition on the application of plant protection products, § 9e(7) and (9)),
- 2. by a fine of up to EUR 1 000 is committed by anyone who
 - a) acts contrary to § 5(2) and § 9(1) and (2), or
 - b) obstructs the supervisory bodies of the City Administration in the exercise of their duties or thwarts the performance of their duties, or
 - c) where plant protection products (§ 2) are used or applied, is unable to provide a valid training certificate (§ 4(2)) to the supervisory bodies (§ 10(2)), or
 - d) fails to carry or cannot provide valid photo identification contrary to § 4(3).'

12. In § 11(4), the reference '§ 31(2)' is replaced by the reference '§ 31(1)'.

13. § 11c(2) and (3) shall read:

'(2) Where this Act refers to federal laws or federal ordinances, these shall apply in the version in force on 1 June 2024.

(3) Where this Act refers to Directives of the European Parliament, the Council or the Commission of the European Union and to Regulations of the European Parliament and of the Council, with the exception of the provisions cited in § 11d, these shall apply in the version in force on 1 June 2024.'

14. After § 11c, the following § 11d and § 11e, together with their respective headings, are added:

'Short names used

§ 11d. (1) The short names for Regulations used in this Act refer to:

- a. Regulation (EC) No 889/2008: Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control, CELEX number: 32008R0889, OJ L 250, 18.9.2008, p. 1,
- b. Regulation (EC) No 1107/2009: 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, CELEX number: 32009R1107, OJ L 309, 24.11.2009, p. 1,
- c. Implementing Regulation (EU) 2021/1165: Commission Implementing Regulation (EU) 2021/1165 of 15 July 2021 authorising certain products and substances for use in organic production and establishing their lists (Text with EEA relevance), CELEX number: 32021R1165, OJ L 253, 16.7.2021, p. 13,
- d. Regulation (EU) 2021/383: Commission Regulation (EU) 2021/383 of 3 March 2021 amending Annex III to Regulation (EC) No 1107/2009 of the European Parliament and of the Council listing co-formulants which are not accepted for inclusion in plant protection products (Text with EEA relevance), CELEX number: 32021R0383, OJ L 74, 4.3.2021, p. 7.

(2) Where this Act refers to the EU Regulations cited in paragraph (1), the following versions, in the case of letter

- a. until 1 January 2024 in the original version cited in paragraph (1) and in compliance with the transitional provisions in Article 11, Implementing Regulation (EU) 2021/1165,
- b. in the original version cited in paragraph (1), with the exception of Annex III, which applies in the version as amended by Regulation (EU) 2021/383,
- c. and d. in the original version cited above

shall apply.

Notification

§ 11e. The Act amending the Vienna Plant Protection Products Act (Provincial Law Gazette for Vienna No xxx/202X) has been notified in accordance with the provisions of 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 (Text with EEA relevance), Celex No 32015L1535, OJ L 241, 17.9.2015, p. 1, as amended (Notification No 202X/xxxx/A/xx).'

15. In § 12(1), after the reference 'paragraph (2)' the words 'and paragraph (3)' are inserted.

16. *The following paragraph (3) is inserted after § 12(2):*

‘(3) Authorised synthetic plant protection chemicals which have already been purchased by users before the entry into force of the Act, Provincial Law Gazette for Vienna No XX/2024, may be used until 31 December 2025.’

Article II

This Act shall enter into force at the end of the day of its promulgation.

Governor:

Director of the Provincial Administrative Offices: