

## Preamble

### for a draft Act amending the Vienna Plant Protection Products Act

#### **Objectives and main content:**

The Vienna Plant Protection Products Act transposed Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides, OJ L 309, 24.11.2009, p. 71, and 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.

The present amendment is intended to make textual and thus substantive clarifications regarding this transposition, and thus to facilitate application of the Act in practice. By improving the transparency of the provisions, the aim is to increase acceptance among those who are subject to it and thus to accelerate achievement of the objectives associated with the transposition of the Directive, in particular with regard to Integrated Plant Protection 'IPP'.

#### **Impact of the draft legislation:**

##### **Financial impact:**

The Federal Government, the Province of Vienna and other local authorities will not incur any costs as a result of the draft.

##### **Impact on districts:**

None, or see environmental impact

##### **Economic policy implications:**

– Impact on employment and the status of Austria as a place for business:

None.

– Other economic policy implications:

None.

– Implications in terms of environmental, consumer protection and social policy:

Promotion of biodiversity and increased protection of pollinators within the urban area as well as strengthening the behavioural conformity of those affected by the legislation by restructuring the legislation and clearer wording.

##### **Specific impacts on men and women:**

None.

##### **Relationship to EU legislation:**

The purpose of the amendment is to render the transposition of the above-mentioned EU Directive more precisely.

##### **Special features of the legislative procedure:**

None

## **Explanatory notes**

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#### **General part**

Amendment LGBI. (Provincial Law Gazette) No 32/2012 to the Vienna Plant Protection Products Act transposed Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides, OJ L 309, 24.11.2009, p. 71, and 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, (Directive 2009/128/EC, hereinafter Directive).

Under the current powers to enact legislation, as per the constitutional amendment in Federal Law Gazette (BGBI.) I No 14/2019, the legislature at province level is authorised to issue the present amendment.

The aim of this amendment to the Vienna Plant Protection Products Act is to more clearly highlight the importance of Integrated Plant Protection (IPP) when using plant protection products. At the same time, the intention is to encourage increased movement away from 'traditional' synthetic plant protection chemicals, the use of which may be associated with more than just a low risk, and to promote alternative methods or processes.

This amendment is also intended to take account of the National Action Plan on the Sustainable Use of Plant Protection Products Austria 2022-2026, which includes the commitment to encourage the movement away from 'traditional' synthetic plant protection chemicals as well as targets for e.g. increasing the use of low-risk plant protection products.

The Province of Vienna has a particular interest in minimising the use of plant protection products and in restricting use in certain areas, especially since potential application areas for plant protection products in Vienna, such as parks, allotments and green spaces used for agriculture or commercially, often border on densely built-up residential areas. The urban structure therefore leads to an increased need for protection for the population of Vienna. At the same time, a contribution is to be made to protecting pollinators (bees, etc.) and thus to conserving biodiversity.

#### Outline of costs

No cost-relevant impacts are expected.

#### **Special part**

##### **Re Article I point 1 (§ 1):**

Paragraphs (3) and (4) can be deleted as they have become obsolete due to the current powers to enact legislation, as per the constitutional amendment in Federal Law Gazette I No 14/2019 and the associated transfer of power to enact legislation to the provinces.

##### **Re Article I point 2 (§ 2):**

Paragraph (2): The use of low-risk plant protection products (Article 22 Regulation (EC) No 1107/2009) is one of the main objectives of IPP. Account is taken of this by including the references now cited in paragraph (2).

Paragraph (3): It is being made clear that the use of authorised natural enemies of pests (e.g. ladybirds) as well as authorised microorganisms (e.g. bacteria) is possible and permissible.

Natural enemies of pests are not covered by the Directive, as only products classified as plant protection products as defined by Regulation (EC) No 1107/2009 fall within its scope. Natural enemies of pests are regulated by the Federal Plant Protection Products Ordinance 2011, Federal Law Gazette II No 233/2011 as amended by Federal Law Gazette II No 212/2015. § 12(1) of that ordinance stipulates that natural enemies of pests are to be regarded as plant protection products and, in accordance with paragraph (2), their placing on the market requires authorisation by the Federal Government.

Microorganisms are classified, in accordance with Annex II of the EU Regulation on organic plant protection products (Regulation (EC) 889/2008; Implementing Regulation or Implementing Regulation

(EU) 2021/1165) as plant protection products in accordance with Article 5(1) of that Regulation on the basis of organic pest control and disease control indications.

Paragraph (7): Technical progress has led to the development of aerial vehicles that are not 'traditional' aircraft ('planes') but can be operated unmanned ('drones') and are now also specifically manufactured or used for the application of plant protection products.

Aerial vehicles for application of plant protection products are nothing more than 'plant protection equipment' (§ 2(7) new) and are therefore also to be classified in law as such. It also follows that, as defined in the Directive, such aerial vehicles are 'pesticide application equipment' (Article 3(4)), or, if need be, a separate category.

These 'unmanned aerial vehicles', like any other plant protection equipment, are subject to the legal regime of controls and periodic inspection and shall have appropriate proof thereof ('sticker').

Paragraph (11): In particular because of the various indications that authorised plant protection products have, the difference between professional users and other users of plant protection products has now been clarified.

**Re Article I point 3 (§ 4):**

The amendment emphasises the link to the authorisation or indications 'for professional use'. This also makes it clear that the use of plant protection products with 'domestic gardens and allotments' indications does not require a training certificate or, conversely, that a training certificate is indeed needed for application of 'professional products' (professional use).

**Re Article I point 4 (§ 5):**

Paragraph (1) is being reworded because products are available on the market that are not authorised as plant protection products but can also have a kind of plant protection effect or contain active substances that are also found in plant protection products (e.g. 'cleaning agents'). In order to prevent such products from being used as plant protection products, this paragraph expressly states that only authorised plant protection products may be used as plant protection products. Therefore, plant protection products other than those authorised may not be used for the purpose of plant protection, even if they (among others) may have a plant protection effect.

However, the 'basic substances' authorised by the Federal Government must, however, be distinguished from this. Basic substances, which are safe substances (e.g. vinegar), are not plant protection products in the proper sense, and are not marketed as such, but can be used for plant protection. The purpose of the provision is to clarify that their application is permitted on the basis of and within the framework of EU provisions (Regulation (EC) 1107/2009, Article 23) and that use within the framework of the IPP is also desirable.

Paragraph (2) (new) largely corresponds to the old paragraph (1) and paragraph (3) (new) largely corresponds to the old paragraph (2). The restructuring of the text is intended to provide clarity. It should be noted that the three-year period of retention begins on the first day of the calendar year following the year in which the plant protection product was used (e.g. records for the year of use 2024: the retention period starts to run on 1 January 2025). The plant protection register number refers to: the plant protection register of plant protection products authorised/approved in Austria. This can also be viewed at: [https://psmregister.baes.gv.at/psmregister/faces/main;jsessionid=iMbbpDtXDoDVXHPLbpaC1nqvShQX-mjnIkG7DTUdtc4NolG042kM!-1800887422?adf.ctrl-state=14lwyz3rc9\\_4](https://psmregister.baes.gv.at/psmregister/faces/main;jsessionid=iMbbpDtXDoDVXHPLbpaC1nqvShQX-mjnIkG7DTUdtc4NolG042kM!-1800887422?adf.ctrl-state=14lwyz3rc9_4)

**Re Article I point 5 (§ 6):**

The modification of paragraph (1) is intended to clarify without doubt that access to plant protection products within establishments or undertakings is only permitted for specialist personnel, i.e. only those who hold a valid training certificate. In this respect, holders of authority (e.g. those holding management roles, authorised agents) are also excluded from this as long as they do not have such certificate.

**Re Article I point 6 (§ 6a):**

For clarification purposes, paragraph (2) explicitly lists the plant protection products intended for use in Vienna's territory and paragraph (3) names the areas in which the use of 'traditional' synthetic plant protection chemicals is permitted.

The restriction to the plant protection products set out in paragraph (2) is due in particular to the urban structure, i.e. the close coexistence of many persons in a small area within the provincial borders of the Federal Capital Vienna.

Agricultural production areas include all crops in agricultural production (primary production), such as arable farming, viticulture, horticulture, orchards, grassland, crop vegetables and special crops.

**Paragraph (3):**

Areas in which the use of 'traditional' synthetic plant protection chemicals that go beyond low risk is permitted, are listed in points 1 to 6. When it comes to compliance with EU law, use of such chemicals would be possible for example in the case of (qualified) pests, neophytes (see e.g. Regulation (EU) 2016/2031), 'quarantine pests', neophyte control, Regulation EU 1143/2014 and the like. In the case of international agreements, this concerns, for example, species protection.

Additional note on point 3: The use of 'traditional' synthetic plant protection chemicals in areas used as sports facilities exclusively or predominantly (this is more than 50 % of the users or the temporal use of the facility) by children and adolescents (up to and including the age of 14) must be excluded on the basis of the special protection status of this group of persons.

Point 5 includes areas that are related to the protection of monuments or the public value of which ('historically valuable') is comparable to the protection of monuments, such as the 'Prater Hauptallee'.

**Paragraph (4):** The obligation laid down in § 6a(1) to take account of the general principles of IPP now applies not only to persons applying products professionally but also to all other persons applying products.

**Re Article I point 7 (§ 7):**

Paragraph (4): Article 9 of the Directive ('Aerial spraying') provides that the aerial application of plant protection products (by plane or helicopter, see Article 3(5) of the Directive, definition) should fundamentally be prohibited, or, conditions should be imposed for exemptions.

Although the current statutory provisions (at federal level) do not de facto allow application using the aforementioned aircraft (planes and helicopters), in order to leave no doubt, this prohibition is now expressly laid down in the present amendment, including in view of the concerns surrounding plant protection products. Aerial application of plant protection products is not compatible with the urban structure of the federal province of Vienna and the prohibition on this type of application prevents the particular danger that would be posed to the population of Vienna given the dense settlement.

Paragraph (5): Article 3(5) of the Directive refers to 'planes or helicopters' as 'aircraft'. This obviously means aircraft controlled by persons on board. In light of this, certain unmanned aerial vehicles which do not fall within the concept and understanding of (manned) 'traditional aircraft' but are unmanned and remotely controlled (drones) and which are also suitable and prepared as application equipment for plant protection products are qualified as plant protection equipment in the present provision.

In transposing Article 9 of the Directive, an approval requirement for each application case is laid down for the use of these special, unmanned aerial vehicles as plant protection equipment. Laying down an approval requirement in law appears essential for ensuring the necessary level of protection for this type of use of plant protection products with respect to both the urban population and the environment. For this reason, this special application option should also be limited to professionals (§ 2(10)), especially since this group of persons must not only have the appropriate knowledge, but also has the most comprehensive experience in the use of plant protection products because of their continuous and regular use of plant protection products. In light of the public interests that are to be protected, it therefore seems appropriate to reserve this mode of application to professional users. Therefore, persons who are to be deemed equivalent to professional users shall therefore not be allowed to apply products using aerial equipment.

In order to enable safeguards or restrictions in the specific individual case and thus to effectively protect the relevant public interests in the specific application case, it is also necessary to impose stipulations for any approvals.

Paragraph (6): This provision reflects the requirement laid down in Article 9(4) of Directive 2009/128/EC.

Paragraph (7): This provision reflects Article 9(6) of Directive 2009/128/EC.

Paragraph (8): Due to the associated risks, a high level of protection must be ensured for the application of (permissibly usable) plant protection products via unmanned aerial vehicles. In order to achieve this and to create a corresponding regulatory framework, power to issue ordinances has been enacted. In such an ordinance, the requirements, conditions, timeframes, etc. for use can then be regulated in detail. A plant protection product of this kind containing in its indications application by means of aircraft/unmanned aerial vehicles must be used for application using unmanned aerial vehicles as plant protection equipment within the meaning of this Act.

**Re Article I point 8 (§ 8):**

In the present draft, 'area-based regulation' is now laid down in the legislation in relation to areas of application for plant protection products in order to achieve a better protective effect for use in specific areas within the meaning of Article 12 of the Directive. The required level of protection (see 'use of low-risk plant protection products as defined in Regulation (EC) No 1107/2009 and biological control measures shall be considered in the first place' Article 12 of the Directive) is in any event maintained by the new provision (§ 6a(3) new).

Paragraph (2) can be deleted as 'area-based regulation' is now provided for (§ 6a(3)). Therefore, the obligation to notify the authority previously contained in paragraph (2) can also be deleted.

**Re Article I points 11 and 12 (§ 11):**

Necessary adjustments are being made by the amendment.

**Re Article I point 13 (§ 11c):**

An update is being made on the basis of the insertion of § 11d.

**Re Article I point 14 (§ 11d and § 11e):**

Paragraph (2) lists the versions of the cited pieces of legislation to which the references in the amendment refer.

§ 11e makes reference to the single market transparency notification.

**Re Article I point 15 (§ 12):**

In order to prevent direct financial harm to distributors and consumers of synthetic plant protection chemicals that have already been acquired, paragraph (3) grants a corresponding transitional period for reasons of proportionality.