



EUROPEAN COMMISSION

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His Excellency
Mag. Alexander Schallenberg
Federal Minister for European and
International Affairs
Minoritenplatz 8
A - 1014 Vienna

Subject: Notification 2024/0207/AT

**Draft amendments to the Viennese Regulation on Plant Protection
Products**

Delivery of comments pursuant to Article 5(2) Directive (EU) 2015/1535

Dear Sir,

Within the framework of the notification procedure laid down in Directive (EU) 2015/1535 ⁽¹⁾, the Austrian authorities notified to the Commission, on 15 April 2024, a draft regulation amending the regulation of the Province of Vienna on plant protection products (hereafter the “notified draft”).

According to the notification message, the notified draft would amend several provisions of the Viennese regulation on plant protection products so as to emphasise the importance of integrated pest management. It would establish the principle that in the Province of Vienna, with the exception of certain areas, such as those used for agricultural purposes, only authorised plant protection products considered either low-risk or suitable for use in organic production may be used, in addition to approved basic substances. Besides, the notified draft would prohibit explicitly the use of aircrafts for the application of plant protection products, although the use of unmanned aerial vehicles (‘drones’) may exceptionally be authorised. It would also amend the provisions on the record-keeping of the use of plant protection products.

¹ (1) 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. 1-15.

The examination of the notified draft has prompted the Commission to issue the following comments.

Article 67 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 ⁽²⁾ is entitled “Record-keeping”. Its first paragraph provides: *“Producers, suppliers, distributors, importers, and exporters of plant protection products shall keep records of the plant protection products they produce, import, export, store or place on the market for at least 5 years. Professional users of plant protection products shall, for at least 3 years, keep records of the plant protection products they use, containing the name of the plant protection product, the time and the dose of application, the area and the crop where the plant protection product was used”*. It adds: *“They shall make the relevant information contained in these records available to the competent authority on request. Third parties such as the drinking water industry, retailers or residents, may request access to this information by addressing the competent authority”*.

Commission Implementing Regulation (EU) 2023/564 of 10 March 2023 as regards the content and format of the records of plant protection products kept by professional users pursuant to Regulation (EC) No 1107/2009 lays down detailed harmonised rules, so that the adequate and uniform quality of records kept under Article 67(1) of Regulation (EC) No 1107/2009 is ensured throughout the Union. The Annex to Implementing Regulation (EU) 2023/564 thus sets out the detailed information to be provided in the records, which shall be kept electronically. However, Article 5 of that same regulation provides that this regulation shall apply from 1 January 2026.

The notified draft would amend the provisions of the Viennese regulation on plant protection product regarding the keeping of records of the use of plant protection products. Article I(4) of the notified draft would amend in particular Article 5 of the said Viennese regulation, so that this latter provision would contain a paragraph 2 stating : *“(2) Any person applying or having plant protection products authorised for the professional user and the professional user [...] shall keep records containing at least the following information: a) the trade name of all plant protection products used (including basic substances), including plant protection register number and damage factor; b) the name and size of the area treated, the crop treated and the amount actually used (volume) of the plant protection product. If an area-based application rate is not foreseen, the concentration used shall be reported. An indication of the size of the area treated is not required in this case; c) the date of application; and d) the full name of the professional user [...]. These records shall be kept chronologically and for at least three years”*.

Although this provision does not appear to contradict the terms of Article 67(1) of Regulation (EC) No 1107/2009, and could provide additional practical indications compared to the rules laid down in the Union provision, it is recalled that the latter provision is directly applicable in Austria. Besides, the attention of the Austrian authorities is drawn to the fact that Implementing Regulation (EU) 2023/564 of 10 March 2023 is already in force, although not yet applicable. Legal certainty would be better ensured if the notified draft contained a reference to the above-mentioned EU regulations. Moreover, when the detailed rules resulting from Implementing Regulation (EU) 2023/564 become applicable, on 1 January 2026, the provisions resulting from the

² (OJ L 309, 24.11.2009, p. 1

notified draft, although superseded, could give rise to legal uncertainty, as they would deviate from the Union provisions. It is noted, for instance, that the notified draft does not provide for the same level of details concerning the information to be recorded, and does not appear to give any indication concerning the format of the records to be kept.

The Austrian authorities are invited to take these comments into account, and amend the notified draft accordingly.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Sandra GALLINA
Directorate-General for Health and
Food Safety