

III

(Preparatory Acts)

COUNCIL

COMMON POSITION (EC) No 25/2008

adopted by the Council on 15 September 2008

with a view to the adoption of Regulation (EC) No .../2008 of the European Parliament and of the Council of ... concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC

(2008/C 266 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 37(2) and 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽⁴⁾ provides for rules governing plant protection products and the active substances contained in those products.
- (2) Following the progress report presented by the Commission under Directive 91/414/EEC, the European Parliament by its Resolution of 30 May 2002 ⁽⁵⁾ and the Council in its Conclusions of 12 December 2001 asked the Commission to review Directive 91/414/EEC and identified a number of issues for the Commission to address.
- (3) In the light of the experience gained from the application of Directive 91/414/EEC and of recent scientific and technical developments, that Directive should be replaced.

- (4) By way of simplification, the new act should also repeal Council Directive 79/117/EEC of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances ⁽⁶⁾.

- (5) To simplify application of the new act and to ensure consistency throughout the Member States, it should take the form of a Regulation.

- (6) Plant production has a very important place in the Community. One of the most important ways of protecting plants and plant products against harmful organisms, including weeds, and of improving agricultural production is the use of plant protection products.

- (7) Plant protection products can however also have non-beneficial effects on plant production. Their use may involve risks and hazards for humans, animals and the environment, especially if placed on the market without having been officially tested and authorised and if incorrectly used.

- (8) In order to remove as far as possible obstacles to trade in plant protection products existing due to the different levels of protection in the Member States, this Regulation should lay down harmonised rules for the approval of active substances and the placing on the market of plant protection products, including the rules on the mutual recognition of authorisations and on parallel trade. The purpose of this Regulation is thus to increase the free movement of such products and availability of these products in the Member States.

⁽¹⁾ OJ C 175, 27.7.2007, p. 44.

⁽²⁾ OJ C 146, 30.6.2007, p. 48.

⁽³⁾ Opinion of the European Parliament of 23 October 2007 (OJ C 263 E, 16.10.2008, p. 182), Council Common Position of 15 September 2008 and European Parliament Position of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 230, 19.8.1991, p. 1.

⁽⁵⁾ OJ C 187 E, 7.8.2003, p. 173.

⁽⁶⁾ OJ L 33, 8.2.1979, p. 36.

- (9) The purpose of this Regulation is also to ensure a high level of protection of both human and animal health and the environment and at the same time to safeguard the competitiveness of Community agriculture. Particular attention should be paid to the protection of vulnerable groups of the population, including pregnant women, infants and children. The precautionary principle should be applied and this Regulation should ensure that industry demonstrates that substances or products produced or placed on the market do not have any harmful effect on human or animal health or any unacceptable effects on the environment.
- (10) Substances should only be included in plant protection products where it has been demonstrated that they present a clear benefit for plant production and they are not expected to have any harmful effect on human or animal health or any unacceptable effects on the environment. In order to achieve the same level of protection in all Member States, the decision on acceptability or non-acceptability of such substances should be taken at Community level on the basis of harmonised criteria. These criteria should be applied for the first approval of an active substance under this Regulation. For active substances already approved, the criteria should be applied at the time of renewal or review of their approval.
- (11) In the interest of predictability, efficiency and consistency, a detailed procedure should be laid down for assessing whether an active substance can be approved. The information to be submitted by interested parties for the purposes of approval of a substance should be specified. In view of the amount of work connected with the approval procedure, it is appropriate that the evaluation of such information be performed by a Member State acting as a rapporteur for the Community. To ensure consistency in evaluation, an independent scientific review should be performed by the European Food Safety Authority established by Regulation (EC) No 178/2002 of the European Parliament and the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾, hereinafter referred to as 'the Authority'. It should be clarified that the Authority performs a risk assessment whilst the Commission should perform the risk management and take the final decision on an active substance. Provisions should be included to ensure transparency of the evaluation process.
- (12) For ethical reasons, the assessment of an active substance or a plant protection product should not be based on tests or studies involving the deliberate administration of the active substance or plant protection product to humans with the purpose of determining a human 'no observed effect level' of an active substance. Similarly, toxicological studies carried out on humans should not be used to lower the safety margins for active substances or plant protection products.
- (13) To speed up the approval of active substances, strict deadlines should be established for the different procedural steps.
- (14) In the interest of safety, the approval period for active substances should be limited in time. The approval period should be proportional to the possible risks inherent in the use of such substances. Experience gained from the actual use of plant protection products containing the substances concerned and any developments in science and technology should be taken into account when any decision regarding the renewal of an approval is taken.
- (15) The possibility of amending or withdrawing the approval of an active substance in cases where the criteria for approval are no longer satisfied should be provided for.
- (16) The evaluation of an active substance may reveal that it presents considerably less of a risk than other substances. In order to favour the inclusion of such a substance in plant protection products, it is appropriate to identify such substances and to facilitate the placing on the market of plant protection products containing them.
- (17) Certain substances which are not predominantly used as plant protection products may be of value for plant protection, but the economic interest of applying for approval may be limited. Therefore, specific provisions should ensure that such substances, as far as their risks are acceptable, may also be approved for plant protection use.
- (18) Some active substances may only be acceptable when extensive risk mitigation measures are taken. Such substances should be identified at Community level as candidates for substitution. Member States should regularly re-examine whether plant protection products containing such active substances can be replaced by plant protection products containing active substances which require less risk mitigation.
- (19) In certain Member States non-chemical control or prevention methods, which are significantly safer for human, animal health or for the environment, have been established and generally applied for certain uses. In exceptional cases Member States should also be able to apply the comparative assessment when granting authorisation for plant protection products.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

- (20) In addition to active substances, plant protection products may contain safeners or synergists for which similar rules should be provided. The technical rules necessary for the evaluation of such substances should be established. Substances currently on the market should only be evaluated after those provisions have been established.
- (21) Plant protection products may also contain co-formulants. It is appropriate to provide a list of co-formulants which should not be included in plant protection products.
- (22) Plant protection products containing active substances can be formulated in many ways and used on a variety of plants and plant products, under different agricultural, plant health and environmental (including climatic) conditions. Authorisations for plant protection products should therefore be granted by Member States.
- (23) The provisions governing authorisation must ensure a high standard of protection. In particular, when granting authorisations of plant protection products, the objective of protecting human or animal health and the environment should take priority over the objective of improving plant production. Therefore, it should be demonstrated, before plant protection products are placed on the market, that they present a clear benefit for plant production and do not have any harmful effect on human or animal health, including that of vulnerable groups, or any unacceptable effects on the environment.
- (24) In the interest of predictability, efficiency and consistency, criteria, procedures and conditions for the authorisation of plant protection products should be harmonised, account being taken of the general principles of protection of human and animal health and the environment.
- (25) In case the decision on approval cannot be finalised within the period of time provided for due to reasons not falling under the responsibility of the applicant, Member States should be able to grant the provisional authorisations for a limited period of time in order to facilitate the transition to the approval procedure provided for under this Regulation. In the light of the experience gained with the approval of the active substances under this Regulation, the provisions on provisional authorisations should cease to apply or be extended after the period of five years, if necessary.
- (26) The active substances contained in a plant protection product can be produced by different manufacturing processes, leading to differences in specifications. Such differences may have safety implications. For efficiency reasons, a harmonised procedure at Community level should be provided for the assessment of those differences.
- (27) The principle of mutual recognition is one of the means of ensuring the free movement of goods within the Community. To avoid any duplication of work, to reduce the administrative burden for industry and for Member States and to provide for more harmonised availability of plant protection products, authorisations granted by one Member State should be accepted by other Member States where agricultural, plant health and environmental (including climatic) conditions are comparable. Therefore, the Community should be divided into zones with such comparable conditions in order to facilitate such mutual recognition. However, environmental or agricultural circumstances specific to the territory of a Member State might require that, on application, Member States recognise an authorisation issued by another Member State, amend it or refrain from authorising the plant protection product in their territory, if justified because of specific agricultural circumstances or if the high level of protection of both human and animal health and the environment set out in this Regulation can not be achieved.
- (28) The economic incentive for industry to apply for an authorisation is limited in certain uses. In order to ensure that diversification of agriculture and horticulture is not jeopardised by the lack of availability of plant protection products, specific rules should be established for minor uses.
- (29) When identical plant protection products are authorised in different Member States, a simplified procedure for granting a parallel trade permit should be provided for in this Regulation, in order to facilitate the trade between Member States of such products.
- (30) In exceptional cases, Member States should be permitted to authorise plant protection products not complying with the conditions provided for in this Regulation, where it is necessary to do so because of a danger or threat to plant production which cannot be combatted by any other means. Such authorisations should be reviewed at Community level.
- (31) Community seeds legislation provides for free movement of seeds within the Community but does not contain a specific provision concerning seeds treated with plant protection products. Such a provision should therefore be included in this Regulation. If treated seeds constitute a serious risk to human or animal health or to the environment, Member States should have the possibility of taking of the protective measures.
- (32) To promote innovation, special rules should be established permitting the use of plant protection products in experiments even where they have not yet been authorised.

- (33) In order to ensure a high level of protection of human health and the environment, plant protection products should be used properly having regard to the principles of integrated pest management. The Council should include in the statutory management requirement referred to in Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽¹⁾ the principles of integrated pest management, including good plant protection practice.
- (34) In addition to this Regulation a thematic strategy on the sustainable use of pesticides was adopted as well as Directive 2008/.../EC of the European Parliament and the Council of ... establishing a framework for Community action to achieve a sustainable use of pesticides ⁽²⁾. In order to achieve coherence between these instruments, the user should know from the product label where, when and under what circumstances a plant protection product may be used.
- (35) A system of exchange of information should be established. Member States should make available to each other, the Commission and the Authority the particulars and scientific documentation submitted in connection with applications for authorisation of plant protection products.
- (36) Adjuvants may be used to increase the efficacy of a plant protection product. Their placing on the market or use should be forbidden where they contain a co-formulant which has been prohibited. The technical rules necessary for the authorisation should be established.
- (37) Studies represent a major investment. This investment should be protected in order to stimulate research. For this reason, studies lodged by one applicant with a Member State should be protected against use by another applicant. This protection should, however, be limited in time in order to allow competition. It should also be limited to studies which are genuinely necessary for regulatory purposes, to avoid applicants artificially extending the period of protection by submitting new studies which are not necessary.
- (38) Rules should be laid down to avoid duplication of tests and studies. In particular, repetition of studies involving vertebrates should be prohibited. In this context, there should be an obligation to allow access to studies on vertebrates on reasonable terms. In order to allow operators to know what studies have been carried out by others, Member States should keep a list of such studies even where they are not covered by the above system of compulsory access.
- (39) As different rules are applied by Member States, the Commission and the Authority in relation to access to and confidentiality of documents, it is appropriate to clarify the provisions concerning access to information contained in the documents in the possession of these authorities and the confidentiality of these documents.
- (40) Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ⁽³⁾ applies to the classification, packaging and labelling of pesticides. However, to further improve the protection of users of plant protection products, of consumers of plants and plant products and of the environment, further specific rules are appropriate which take account of the specific conditions of use of plant protection products.
- (41) To ensure that advertisements do not mislead users of plant protection products, it is appropriate to lay down rules on the advertising of those products.
- (42) Provisions on record-keeping and information about the use of plant protection products should be established in order to raise the level of protection of human and animal health and the environment by ensuring the traceability of potential exposure, to increase the efficiency of monitoring and control and to reduce the costs of monitoring water quality.
- (43) Provisions on control and inspection arrangements with regard to the marketing and use of plant protection products should ensure correct, safe and harmonised implementation of the requirements laid down in this Regulation in order to achieve a high level of protection of both human and animal health and the environment.
- (44) Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽⁴⁾ provides for control measures for the use of plant protection products at all stages of the production of food, including record-keeping on the use

⁽¹⁾ OJ L 270, 21.10.2003, p. 1.

⁽²⁾ OJ L ...

⁽³⁾ OJ L 200, 30.7.1999, p. 1.

⁽⁴⁾ OJ L 165, 30.4.2004, p. 1. Corrected version in OJ L 191, 28.5.2004, p. 1.

- of plant protection products. Similar rules on monitoring and controls relating to the storage and use of plant protection products not covered by Regulation (EC) No 882/2004 should be adopted by the Commission.
- (45) Close coordination should be ensured with other Community legislation, in particular Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin ⁽¹⁾, and with Community legislation on the protection of workers and anyone concerned with the contained use and deliberate release of genetically modified organisms.
- (46) It is necessary to establish procedures for the adoption of emergency measures in situations where an approved active substance, a safener, a synergist or a plant protection product is likely to constitute a serious risk to human or animal health or the environment.
- (47) Member States should lay down rules on penalties applicable to infringements of this Regulation and should take the measures necessary to ensure that they are implemented.
- (48) General civil and criminal liability in the Member States of the manufacturer and, where applicable, of the person responsible for placing the plant protection product on the market or using it should remain applicable.
- (49) Member States should have the possibility of recovering the costs of the procedures associated with the application of this Regulation from those seeking to place, or placing, plant protection products or adjuvants on the market and from those applying for the approval of active substances, safeners or synergists.
- (50) Member States should designate the necessary national competent authorities.
- (51) The Commission should facilitate the application of this Regulation. Therefore, it is appropriate to provide for the necessary financial resources and the possibility of amending certain provisions of this Regulation in the light of experience or of developing technical notes for guidance.
- (52) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (53) In particular, the Commission should be empowered to adopt Regulations concerning labelling requirements, controls and rules for adjuvants, establishing a work programme for safeners and synergists, including their data requirements, postponing the expiry of the approval period, extending the date for provisional authorisations, setting the information requirements for parallel trade and on inclusion of co-formulants, as well as amendments to the Regulations on data requirements and on uniform principles for evaluation and authorisation and to the Annexes. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (54) On grounds of efficiency, the normal time-limits for the regulatory procedure with scrutiny should be curtailed for the adoption of a Regulation postponing the expiry of the approval period for a period sufficient to examine the application.
- (55) Furthermore, it is appropriate to transfer certain current provisions set out in the Annexes to the Directive 91/414/EEC into separate legal instruments to be adopted by the Commission within 18 months after the entry into force of this Regulation. Since these current provisions should be, as a first step, transferred into new legal instruments and thus be adopted without any substantial modification, the advisory procedure is the most appropriate.
- (56) It is also appropriate to use the advisory procedure to adopt some purely technical measures, in particular technical guidelines in view of their non-binding character.
- (57) Certain provisions of Directive 91/414/EEC should remain applicable during the transitional period,

⁽¹⁾ OJ L 70, 16.3.2005, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules for the authorisation of plant protection products in commercial form and for their placing on the market, use and control within the Community.

This Regulation lays down both rules for the approval of active substances, safeners and synergists, which plant protection products contain or consist of, and rules for adjuvants and co-formulants.

Article 2

Scope

1. This Regulation shall apply to products, in the form in which they are supplied to the user, consisting of or containing active substances, safeners or synergists, and intended for one of the following uses:

- (a) protecting plants or plant products against all harmful organisms or preventing the action of such organisms, unless the main purpose of these products is considered to be for reasons of hygiene rather than for the protection of plants or plant products;
- (b) influencing the life processes of plants, such as substances influencing their growth, other than as a nutrient;
- (c) preserving plant products, insofar as such substances or products are not subject to special Community provisions on preservatives;
- (d) destroying undesired plants or parts of plants, except algae unless the products are applied on soil or water to protect plants;
- (e) checking or preventing undesired growth of plants except algae unless the products are applied on soil or water to protect plants.

These products are referred to hereinafter as 'plant protection products'.

2. This Regulation shall apply to substances, including micro-organisms having general or specific action against harmful organisms or on plants, parts of plants or plant products, hereinafter referred to as 'active substances'.

3. This Regulation shall apply to the following:

- (a) substances or preparations which are added to a plant protection product to eliminate or reduce phytotoxic effects of the plant protection product on certain plants, hereinafter referred to as 'safeners';
- (b) substances or preparations which, while showing no or only weak activity as referred to in paragraph 1, can give enhanced activity to the active substance(s) in a plant protection product, hereinafter referred to as 'synergists';
- (c) substances or preparations which are used or intended to be used in a plant protection product or adjuvant, but are neither active substances nor safeners or synergists, hereinafter referred to as 'co-formulants';
- (d) substances or preparations which consist of co-formulants or preparations containing one or more co-formulants, in the form in which they are supplied to the user and placed on the market to be mixed by the user with a plant protection product and which enhance its effectiveness or other pesticidal properties, hereinafter referred to as 'adjuvants'.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1) 'residues'

One or more substances present in or on plants or plant products, edible animal products, drinking water or elsewhere in the environment and resulting from the use of a plant protection product, including their metabolites, break-down or reaction products;

2) 'substances'

Chemical elements and their compounds, as they occur naturally or by manufacture, including any impurity inevitably resulting from the manufacturing process;

3) 'preparations'

Mixtures composed of two or more substances intended for use as a plant protection product or as an adjuvant;

- 4) 'substance of concern'
- Any substance which has an inherent capacity to cause an adverse effect on humans, animals or the environment and is present or is produced in a plant protection product in sufficient concentration to present risks of such an effect.
- Such substances include, but are not limited to, substances meeting the criteria to be classified as dangerous in accordance with Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾, and present in the plant protection product at a concentration leading the product to be regarded as dangerous within the meaning of Article 3 of Directive 1999/45/EC;
- 5) 'plants'
- Live plants and live parts of plants, including fresh fruit, vegetables and seeds;
- 6) 'plant products'
- Products of plant origin in unprocessed state or having undergone only simple preparation, such as milling, drying or pressing, but excluding plants;
- 7) 'harmful organisms'
- Any species, strain or biotype belonging to the animal kingdom or plant kingdom or pathogenic agent injurious to plants or plant products;
- 8) 'placing on the market'
- The holding for the purpose of sale within the Community, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves, but not the return to the previous seller. Release for free circulation into the territory of the Community shall constitute placing on the market for the purposes of this Regulation;
- 9) 'authorisation of a plant protection product'
- Administrative act by which the competent authority of a Member State authorises the placing on the market of a plant protection product in its territory;
- 10) 'producer'
- A person who manufactures plant protection products, active substances, safeners, synergists, co-formulants or
- adjuvants on his own, or who contracts this manufacturing to another party, or a person designated by the manufacturer as his sole representative for the purpose of compliance with this Regulation;
- 11) 'letter of access'
- An original document by which the owner of data protected under this Regulation agrees to the use of such data under the specific terms and conditions by the competent authority for the purpose of granting an authorisation of a plant protection product or an approval of an active substance, synergist or safener for the benefit of another applicant;
- 12) 'environment'
- Waters (including ground, surface, transitional, coastal and marine), sediment, soil, air, land, wild species of fauna and flora, and any interrelationship between them, and any relationship with other living organisms;
- 13) 'micro-organisms'
- Any microbiological entity, including lower fungi and viruses, cellular or non-cellular, capable of replication or of transferring genetic material;
- 14) 'genetically modified organisms'
- Organisms in which the genetic material has been altered within the meaning of Article 2(2) of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms ⁽²⁾;
- 15) 'zone'
- Group of Member States as defined in Annex I.
- For the purpose of use in greenhouses, as post-harvest treatment, for treatment of empty storage rooms and for seed treatment the zone means all zones defined in Annex I;
- 16) 'good plant protection practice'
- Practice whereby the treatments with plant protection products applied to given plants or plant products, in conformity with the conditions of their authorised uses, are selected, dosed and timed to ensure acceptable efficacy with the minimum quantity necessary, taking due account of local conditions and of the possibilities for cultural and biological control;

⁽¹⁾ OJ 196, 16.8.1967, p. 1.

⁽²⁾ OJ L 106, 17.4.2001, p. 1.

- 17) 'good laboratory practice'
- Practice as defined in point 2.1 of Annex I to Directive 2004/10/EC of the European Parliament and of the Council of 11 February 2004 on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances (codified version) ⁽¹⁾;
- 18) 'good experimental practice'
- Practice in accordance with the provisions of European and Mediterranean Plant Protection Organisation (EPPO) Guidelines 181 and 152;
- 19) 'data protection'
- The temporary right of the owner of a test or study report to prevent it being used for the benefit of another applicant;
- 20) 'authorisation holder'
- Any natural or legal person holding an authorisation of a plant protection product;
- 21) 'professional user'
- Professional user as defined in Article 3(1) of Directive 2008/.../EC;
- 22) 'minor use'
- Use of a plant protection product in a particular Member State on plants or plant products which are:
- (a) not widely grown in that Member State; or
- (b) widely grown to meet an exceptional plant protection need;
- 23) 'greenhouse'
- A walk-in, static, closed place of crop production with a usually translucent outer shell, which allows controlled exchange of material and energy with the surroundings and prevents release of plant protection products into the environment.
- For the purpose of this Regulation, closed places of plant production where the outer shell is not translucent (e.g. for production of mushrooms or witloof) are also considered as greenhouses;
- 24) 'post-harvest treatment'
- Treatment of plants or plant products after harvest in an isolated space where no run-off is possible, for example in a warehouse;
- 25) 'biodiversity'
- Variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this variability may include diversity within species, between species and of ecosystems;
- 26) 'competent authority'
- Any authority or authorities of a Member State responsible for carrying out the tasks established under this Regulation;
- 27) 'advertisement'
- A means of promoting the sale or use of plant protection products (to anyone other than the authorisation holder, the person placing the plant protection product on the market and their agents) by printed or electronic media;
- 28) 'metabolite'
- Any metabolite or a degradation product of an active substance, safener or synergist, formed either in organisms or in the environment.
- A metabolite is deemed relevant if there is a reason to assume that it has comparable intrinsic properties as the parent substance in terms of its biological target activity, or that it poses a higher or comparable risk to organisms than the parent substance or that it has certain toxicological properties that are considered unacceptable. Such a metabolite is relevant for the overall approval decision or for the definition of risk mitigation measures;
- 29) 'impurity'
- Any component other than the pure active substance and/or variant which is present in the technical material (including originating from the manufacturing process or from degradation during storage);

⁽¹⁾ OJL 50, 20.2.2004, p. 44.

CHAPTER II

ACTIVE SUBSTANCES, SAFENERS, SYNERGISTS AND CO-FORMULANTS

SECTION 1

Active substances

Subsection 1

Requirements and conditions for approval

Article 4

Approval criteria for active substances

1. An active substance shall be approved in accordance with Annex II if it may be expected, in the light of current scientific and technical knowledge, that, taking into account the approval criteria set out in points 2 and 3 of that Annex, plant protection products containing that active substance meet the requirements provided for in paragraphs 2 and 3.

The assessment of the active substance shall first establish whether the approval criteria set out in points 3.6.2 to 3.6.4 and 3.7 of Annex II are satisfied. If these criteria are satisfied the assessment shall continue to establish whether the other approval criteria set out in points 2 and 3 of Annex II are satisfied.

2. The residues of the plant protection products, consequent on application consistent with good plant protection practice and having regard to realistic conditions of use, shall meet the following requirements:

- (a) they shall not have any harmful effects on human health, including vulnerable groups, or animal health, taking into account known cumulative and synergistic effects where the methods to assess such effects are agreed, or on groundwater;
- (b) they shall not have any unacceptable effect on the environment.

For residues which are of toxicological, ecotoxicological, environmental or drinking water relevance, there shall be methods in general use for measuring them. Analytical standards shall be commonly available.

3. A plant protection product, consequent on application consistent with good plant protection practice and having regard to realistic conditions of use, shall meet the following requirements:

- (a) it shall be sufficiently effective;
- (b) it shall have no immediate or delayed harmful effect on human or animal health, directly or through drinking water

(taking into account substances resulting from water treatment), food, feed or air, or consequences in the workplace or through other indirect effects, taking into account known cumulative and synergistic effects where the methods to assess such effects are agreed; or on groundwater;

- (c) it shall not have any unacceptable effects on plants or plant products;
- (d) it shall not cause unnecessary suffering and pain to vertebrates to be controlled;
- (e) it shall have no unacceptable effects on the environment, having particular regard to the following considerations:
 - (i) its fate and distribution in the environment, particularly contamination of surface waters, including estuarine and coastal waters, groundwater, air and soil;
 - (ii) its impact on non-target species;
 - (iii) its impact on biodiversity.

4. The requirements of paragraphs 2 and 3 shall be evaluated in the light of uniform principles as referred to in Article 29(6).

5. For approval of an active substance, paragraphs 1, 2 and 3 shall be deemed to be satisfied where this has been established with respect to one or more representative uses of at least one plant protection product containing that active substance.

6. In relation to human health, no data collected on humans shall be used to lower the safety margins resulting from tests or studies on animals.

7. By way of derogation from paragraph 1, where on the basis of documented evidence an active substance is necessary to control a serious danger to plant health which cannot be contained by other available means, such active substance may be approved for a time limited period not exceeding five years even if it does not satisfy the criteria set out in points 3.6.3, 3.6.4, 3.6.5 or 3.8.2 of Annex II, provided that the use of the active substance is subject to risk mitigation measures to ensure that exposure of humans and the environment is minimised. For such substances maximum residue levels shall be set in accordance with Regulation (EC) No 396/2005.

This derogation shall not apply to active substances which are or have to be classified in accordance with Directive 67/548/EEC, as carcinogenic category 1 or toxic for reproduction category 1.

*Article 5***First approval**

First approval shall be for a period not exceeding ten years.

*Article 6***Conditions and restrictions**

Approval may be subject to conditions and restrictions including:

- (a) the minimum degree of purity of the active substance;
- (b) the nature and maximum content of certain impurities;
- (c) restrictions arising from the evaluation of the information referred to in Article 8 taking account of the agricultural, plant health and environmental, including climatic, conditions in question;
- (d) type of preparation;
- (e) manner and conditions of application;
- (f) submission of further confirmatory information to Member States, the Commission and the European Food Safety Authority, hereinafter referred to as 'the Authority', where new requirements are established during the evaluation process or as a result of new scientific and technical knowledge;
- (g) designation of categories of users, such as professional and non-professional;
- (h) designation of areas where the use of plant protection products containing the active substance may not be authorised or where the use may be authorised under specific conditions;
- (i) the need to impose risk mitigation measures and monitoring after use;
- (j) any other particular conditions that result from the evaluation of information made available in the context of this Regulation.

Subsection 2

Approval procedure*Article 7***Application**

1. An application for the approval of an active substance or for an amendment to the conditions of an approval shall be submitted by the producer of the active substance to a Member State, hereinafter referred to as 'rapporteur Member State', together with a summary and a complete dossier as provided for in Article 8(1) and (2) or a scientifically reasoned justification for not providing certain parts of those dossiers, demon-

strating that the active substance fulfils the approval criteria provided for in Article 4.

A joint application may be submitted by an association of producers designated by the producers for the purpose of compliance with this Regulation.

The application shall be examined by the Member State proposed by the applicant, unless another Member State agrees to examine it.

2. When submitting his application, the applicant may pursuant to Article 63 request certain information, including certain parts of dossier, to be kept confidential and shall physically separate that information.

Member States shall assess the confidentiality requests. Upon a request for access to information, the rapporteur Member State shall decide what information is to be kept confidential.

3. When submitting his application the applicant shall at the same time join a complete list of tests and studies submitted pursuant to Article 8(2) and a list of any claims for data protection pursuant to Article 59.

4. When assessing the application the rapporteur Member State may at any time consult the Authority.

*Article 8***Dossiers**

1. The summary dossier shall include the following:

- (a) information with respect to one or more representative uses on a widely grown crop in each zone of at least one plant protection product containing the active substance, demonstrating that the approval criteria provided for in Article 4 are met; where the information submitted does not cover all zones or concern a crop which is not widely grown, justification for this approach;
- (b) for each point of the data requirements for the active substance, the summaries and results of tests and studies, the name of their owner and of the person or institute that has carried out the tests and studies;
- (c) for each point of the data requirements for the plant protection product, the summaries and results of tests and studies, the name of their owner and of the person or institute that carried out the tests and studies, relevant to the assessment of the criteria provided for in Article 4(2) and (3) for one or more plant protection products which are representative of the uses referred to in point (a), taking into account the fact that data gaps in the dossier, as provided for in paragraph 2 of this Article, resulting from the proposed limited range of representative uses of the active substance, may lead to restrictions in the approval;

- (d) a checklist demonstrating that the dossier provided for in paragraph 2 of this Article is complete in view of the uses applied for;
- (e) the reasons why the test and study reports submitted are necessary for first approval of the active substance or for amendments to the conditions of the approval;
- (f) where relevant a copy of an application for a maximum residue level as referred to in Article 7 of Regulation (EC) No 396/2005 or a justification for not supplying such information;
- (g) an assessment of all information submitted.

2. The complete dossier shall contain the full text of the individual test and study reports concerning all the information referred to in points (b) and (c) of paragraph 1. It shall not contain any reports of tests or studies involving the deliberate administration of the active substance or the plant protection product to humans.

3. The format of the summary dossier and the complete dossier shall be established in accordance with the advisory procedure referred to in Article 79(2).

4. The data requirements referred to in paragraphs 1 and 2 shall contain the requirements for active substances and plant protection products as set out in Annexes II and III to Directive 91/414/EEC and laid down in Regulations adopted in accordance with the advisory procedure referred to in Article 79(2) without any substantial modifications. Subsequent amendments to these Regulations shall be adopted in accordance with Article 78(1)(b).

Article 9

Admissibility of the application

1. Within 45 days of receiving the application, the rapporteur Member State shall send the applicant a written acknowledgement, stating the date of receipt and check whether the dossier submitted with the application contain all the elements provided for in Article 8, using the checklist referred to in point (d) of Article 8(1). It shall also check the requests for confidentiality referred to in Article 7(2) and the complete lists of tests and studies submitted pursuant to Article 8(2).

2. Where one or more of the elements provided for in Article 8 are missing, the rapporteur Member State shall inform the applicant, setting a time period for their submission. Such time period shall be a maximum of three months.

Where at the end of that period, the applicant has not submitted the missing elements, the rapporteur Member State shall inform the applicant, the other Member States and the Commission that the application is inadmissible.

A new application for the same substance may be submitted at any time.

3. Where the dossiers submitted with the application contain all the elements provided for in Article 8, the rapporteur Member State shall notify the applicant, the other Member States, the Commission and the Authority of the admissibility of the application and start assessing the active substance.

After receiving that notification, the applicant shall immediately forward the dossiers as provided for in Article 8 to the other Member States, the Commission and the Authority, including the information for which parts of the dossiers' confidentiality has been requested as referred to in Article 7(2).

Article 10

Access to the summary dossier

The Authority shall without delay make the summary dossier referred to in Article 8(1) available to the public, excluding any information for which confidential treatment has been requested and justified pursuant to Article 63, unless there is an overriding public interest in its disclosure.

Article 11

Draft assessment report

1. Within twelve months of the date of the notification provided for in the first subparagraph of Article 9(3), the rapporteur Member State shall prepare and submit to the Commission, with a copy to the Authority a report, hereinafter referred to as 'draft assessment report', assessing whether the active substance can be expected to meet the approval criteria provided for in Article 4.

2. The draft assessment report shall also include where relevant, a proposal to set maximum residue levels. In such a case the rapporteur Member State shall forward the application, the evaluation report and the supporting dossier referred to in Article 9 of Regulation (EC) No 396/2005 to the Commission no later than six months after the date of the notification provided for in the first subparagraph of Article 9(3) of this Regulation.

The rapporteur Member State shall make an independent, objective and transparent assessment in the light of current scientific and technical knowledge.

If, pursuant to Article 4(1), the assessment establishes that the approval criteria set out in points 3.6.2 to 3.6.4 and 3.7 of Annex II are not satisfied, the draft assessment report shall be limited to these parts of the assessment.

3. Where the rapporteur Member State needs additional studies or information, it shall set a time period for the applicant to supply it. In that case, the twelve-month period shall be extended by the additional time period granted by the rapporteur Member State. The additional time period shall be of a maximum of six months and shall cease at the moment when the additional information is received by the rapporteur Member State. It shall inform the Commission and the Authority accordingly.

Where at the end of the additional period, the applicant has not submitted the additional studies or information, the rapporteur Member State shall inform the applicant, the Commission and the Authority and shall state the missing elements in the assessment included in the draft assessment report.

4. The format of the draft assessment report shall be established in accordance with the advisory procedure referred to in Article 79(2).

Article 12

Conclusion by the Authority

1. The Authority shall circulate the draft assessment report received from the rapporteur Member State to the applicant and the other Member States at the latest 30 days after its receipt. It shall ask the applicant to circulate an update of the dossier where applicable to the Member States, the Commission and the Authority.

The Authority shall make the draft assessment report available to the public, after giving the applicant two weeks to request, pursuant to Article 63, that certain parts of the draft assessment report be kept confidential.

The Authority shall allow a period of 60 days for the submission of written comments.

2. The Authority, where appropriate shall organise a consultation of experts, including experts from the rapporteur Member State.

Within 120 days of the end of the period provided for the submission of written comments, the Authority shall adopt a conclusion in the light of current scientific and technical knowledge using guidance documents available at the time of application on whether the active substance can be expected to meet the approval criteria provided for in Article 4 and shall communicate it to the applicant, the Member States and the Commission and shall make it available to the public.

Where appropriate, the Authority shall address in its conclusion the risk mitigation options identified in the draft assessment report.

3. Where the Authority needs additional information, it shall set a time period of a maximum of 90 days for the applicant to supply it to the Member States, the Commission and the Authority.

The rapporteur Member State shall assess the additional information and submit it to the Authority without delay and at the latest within 60 days after receipt of the additional information. In that case the 120-day period provided for in paragraph 2 shall be extended by a period which shall cease at the moment when the additional assessment is received by the Authority.

The Authority may ask the Commission to consult a Community reference laboratory, designated pursuant to Regulation (EC) No 882/2004 for the purposes of verifying whether the analytical method for the determination of the residues proposed by the applicant is satisfactory and meets the requirements in point (f) of Article 29(1) of this Regulation. The applicant shall, if requested by the Community reference laboratory, provide samples and analytical standards.

4. The conclusion of the Authority shall include details on the procedure of the evaluation and the properties of the active substance concerned.

5. The Authority shall establish the format for its conclusion which shall include details on the procedure of the evaluation and the properties of the active substance concerned.

6. The time limits for the Authority's opinion on applications concerning maximum residue levels set out in Article 11 and for decisions on applications concerning maximum residue levels set out in Article 14 of Regulation (EC) No 396/2005 shall be without prejudice to the time limits laid down in this Regulation

Article 13

Approval Regulation

1. Within six months of receiving the conclusion from the Authority, the Commission shall present a report, hereinafter referred to as 'the review report', and a draft Regulation to the Committee referred to in Article 79(1), taking into account the draft assessment report by the rapporteur Member State and the conclusion of the Authority.

The applicant shall be given the possibility to submit comments on the review report.

2. On the basis of the review report, other factors legitimate to the matter under consideration and the precautionary principle where the conditions laid down in Article 7(1) of Regulation (EC) No 178/2002 are relevant, a Regulation shall be adopted in accordance with the regulatory procedure referred to in Article 79(3), providing that:

- (a) an active substance is approved, subject to conditions and restrictions, as referred to in Article 6, where appropriate;
- (b) an active substance is not approved; or
- (c) the conditions of the approval are amended.

3. In case the approval provides for the submission of further confirmatory information as referred to in point (f) of Article 6, the Regulation shall provide the time limit to submit the information to the Member States, the Commission and the Authority.

The rapporteur Member State shall assess the additional information and submit its assessment to the other Member States, the Commission and the Authority without delay and at the latest six months after the receipt of the additional information.

4. Approved active substances shall be included in the Regulation referred to in Article 78(3) containing the list of active substances already approved. The Commission shall maintain a list of approved active substances electronically available to the public.

Subsection 3

Renewal and review

Article 14

Renewal of approval

1. On application the approval of an active substance shall be renewed where it is established that the approval criteria provided for in Article 4 are satisfied.

Article 4 shall be deemed to be satisfied where this has been established with respect to one or more representative uses of at least one plant protection product containing that active substance.

Such renewal of the approval may include conditions and restrictions, as referred to in Article 6.

2. The renewal of the approval shall be for a period not exceeding fifteen years. The renewal of approval of active substances covered by Article 4(7) shall be for a period not exceeding five years.

Article 15

Application for renewal

1. The application provided for in Article 14 shall be submitted by a producer of the active substance to a Member State, with a copy to the other Member States, the Commission and the Authority, no later than three years before the expiry of the first approval.

2. When applying for renewal, the applicant shall identify new data he intends to submit and demonstrate that they are necessary, because of data requirements or criteria which were not applicable on first approval of the active substance or because his request is for an amended approval. He shall at the same time submit a timetable of any new and ongoing studies.

The applicant shall identify, giving reasons, the parts of the information submitted that he requests to be kept confidential in accordance with Article 63 and at the same time any data protection claims pursuant to Article 59.

Article 16

Access to the information for renewal

The Authority shall, without delay, make available to the public the information provided by the applicant under Article 15, excluding any information for which confidential treatment has been requested and justified pursuant to Article 63, unless there is an overriding public interest in its disclosure.

Article 17

Extension of approval period for the duration of the procedure

Where for reasons beyond the control of the applicant it appears that the approval is likely to expire before a decision has been taken on renewal, a decision shall be adopted in accordance with the regulatory procedure referred to in Article 79(3), postponing the expiry of the approval period for that applicant for a period sufficient to examine the application.

A Regulation postponing the expiry for a period sufficient to examine the application shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 79(5) where an applicant could not give the three years' notice required under Article 15(1) because the active substance was included in Annex I to Directive 91/414/EEC for a duration which expired before ... (*).

The length of that period shall be established on the basis of the following:

- (a) the time needed to provide the information requested;
- (b) the time needed to complete the procedure;
- (c) where appropriate, the need to ensure the establishment of a coherent work programme, as provided for in Article 18.

Article 18

Work programme

The Commission may establish a work programme grouping together similar active substances setting priorities on the basis of safety concerns for human and animal health or the environment and taking into account, as far as possible, the need for an effective control and resistance management of target pest. The programme may require interested parties to submit all the necessary data to the Member States, the Commission and the Authority within a period provided for in the programme.

(*) 54 months from the date of entry into force of this Regulation.

The programme shall include the following:

Article 21

- (a) the procedures concerning the submission and assessment of applications for renewal of approvals;
- (b) the necessary data to be submitted;
- (c) the time periods for submission of such data;
- (d) rules on the submission of new information;
- (e) time period for assessment and decision making;
- (f) the allocation of evaluation of active substances to Member States, taking into account a balance in the responsibilities and work to be done among Member States acting as rapporteurs.

Review of approval

1. The Commission may review the approval of an active substance at any time. It may take into account the request of a Member State to review the approval of an active substance.

Where, in the light of new scientific and technical knowledge it considers that there are indications that the substance no longer satisfies the approval criteria provided for in Article 4, or further information required in accordance with point (f) of Article 6 has not been provided, it shall inform the Member States, the Authority and the producer of the active substance, setting a time period for the producer to submit its comments.

2. The Commission may ask the Member States and the Authority for an opinion, or for scientific or technical assistance. The Member States may provide their comments to the Commission within three months from the request. The Authority shall provide its opinion or the results of its work to the Commission within three months of the request.

3. Where the Commission concludes that the approval criteria provided for in Article 4 are no longer satisfied, or the further information required in accordance with point (f) of Article 6 has not been provided, a Regulation to withdraw or amend the approval shall be adopted in accordance with the regulatory procedure referred to in Article 79(3).

Article 19

Implementing measures

A Regulation, adopted in accordance with the regulatory procedure referred to in Article 79(3), shall set out the provisions necessary for the implementation of the renewal procedure, including, where relevant, the implementation of a work programme, as provided for in Article 18.

Article 13(4) and Article 20(2) shall apply.

Article 20

Renewal Regulation

Subsection 4

1. A Regulation shall be adopted in accordance with the regulatory procedure referred to in Article 79(3), providing that:

Derogations

- (a) the approval of an active substance is renewed, subject to conditions and restrictions where appropriate; or
- (b) the approval of an active substance is not renewed.

Article 22

Low-risk active substances

2. Where the reasons for not renewing the approval permit it, the Regulation referred to in paragraph 1 shall provide for a grace period not exceeding one year for the placing on the market and in addition a maximum of one year for the disposal, storage, and use of existing stocks of the plant protection products concerned.

1. An active substance complying with the criteria provided for in Article 4 shall be approved for a period not exceeding 15 years by way of derogation from Article 5, where it is considered a low-risk active substance and where it may be expected that plant protection products containing that substance will pose only a low risk to human and animal health and the environment as provided for in Article 47(1).

In the case of a withdrawal of the approval or if the approval is not renewed because of the immediate concerns for human health or animal health or the environment, the plant protection products concerned shall be withdrawn from the market immediately.

2. Articles 4 and 6 to 21 and Section 5 of Annex II shall apply. Low-risk active substances shall be listed separately in the Regulation referred to in Article 13(4).

3. Article 13(4) shall apply.

3. The Commission may review and if necessary specify new criteria for approving an active substance as low-risk active substance in accordance with Article 78(1)(a).

*Article 23***Approval criteria for basic substances**

1. Basic substances shall be approved in accordance with paragraphs 2 to 6. By way of derogation from Article 5, the approval shall be for an unlimited period of time.

For the purpose of paragraphs 2 to 6 of this Article, a basic substance is an active substance which:

- (a) is not a substance of concern; and
- (b) is not predominantly used for plant protection purposes but nevertheless is useful in plant protection either directly or in a product consisting of the substance and a simple diluent; and
- (c) is not placed on the market as a plant protection product.

2. By way of derogation from Article 4, a basic substance shall be approved where any relevant evaluations, carried out in accordance with other Community legislation regulating the use of that substance for purposes other than for a plant protection product, show that the substance has neither an immediate or delayed harmful effect on human or animal health nor an unacceptable effect on the environment.

3. By way of derogation from Article 7 an application for the approval of a basic substance shall be submitted by a Member State or by any interested party to the Commission.

The application shall be accompanied by the following information:

- (a) any evaluations of its possible effects on human or animal health or the environment carried out in accordance with other Community legislation regulating the use of the substance; and
- (b) other relevant information on its possible effects on human or animal health or the environment.

4. The Commission shall ask the Authority for an opinion, or for scientific or technical assistance. The Authority shall provide its opinion or the results of its work to the Commission within three months of the request.

5. Articles 6 and 13 shall apply. Basic substances shall be listed separately in the Regulation referred to in Article 13(4).

6. The Commission may review the approval of a basic substance at any time. It may take into account the request of a Member State to review the approval.

Where the Commission considers that there are indications that the substance no longer satisfies the criteria provided for in paragraphs 1 to 3 it shall inform the Member States, the Authority and the interested party, setting a time period for their comments to be submitted.

The Commission shall ask the Authority for an opinion, or for scientific or technical assistance. The Authority shall provide its opinion or the results of its work to the Commission within three months of the request.

Where the Commission concludes that the criteria referred to in paragraph 1 are no longer satisfied, a Regulation to withdraw or amend the approval shall be adopted in accordance with the regulatory procedure referred to in Article 79(3).

*Article 24***Candidates for substitution**

1. An active substance complying with the criteria provided for in Article 4 shall be approved as a candidate for substitution if it meets one or more of the additional criteria laid down in point 4 of Annex II. By way of derogation from Article 14(2), the approval may be renewed once or more for a period not exceeding ten years.

2. Without prejudice to paragraph 1, Articles 4 to 21 shall apply. Candidates for substitution shall be listed separately in the Regulation referred to in Article 13(4).

*SECTION 2***Safeners and synergists***Article 25***Approval of safeners and synergists**

1. A safener or synergist shall be approved, where it complies with Article 4.

2. Articles 5 to 21 shall apply.

3. Similar data requirements to those referred to in Article 8(4) shall be defined for safeners and synergists in accordance with the regulatory procedure with scrutiny referred to in Article 79(4).

*Article 26***Safeners and synergists already on the market**

By ... (*), a Regulation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 79(4) establishing a work programme for the gradual review of synergists and safeners on the market when that Regulation enters into force. The Regulation shall include notification, evaluation, assessment and decision-making procedures. It shall require interested parties to submit all the necessary data to the Member States, the Commission and the Authority within a specified time period.

(*) 60 months from the date of entry into force of this Regulation.

SECTION 3

Unacceptable co-formulants

Article 27

Co-formulants

1. A co-formulant shall not be accepted for inclusion in a plant protection product where it has been established that:

- (a) its residues, consequent on application consistent with good plant protection practice, and having regard to realistic conditions of use, have a harmful effect on human or animal health or on groundwater or an unacceptable effect on the environment; or
- (b) its use, consequent on application consistent with good plant protection practice and having regard to realistic

conditions of use, has a harmful effect on human or animal health or an unacceptable effect on plants, plant products or the environment.

2. Co-formulants which shall not be accepted for inclusion in a plant protection product pursuant to paragraph 1 shall be included in Annex III in accordance with the regulatory procedure with scrutiny referred to in Article 79(4).

3. The Commission may review co-formulants at any time. It may take into account relevant information provided by Member States.

4. Article 81(2) shall apply.

5. Detailed rules for the implementation of this Article may be established in accordance with the regulatory procedure referred to in Article 79(3).

CHAPTER III

PLANT PROTECTION PRODUCTS

SECTION 1

Article 29

Authorisation

Subsection 1

Requirements and contents

Article 28

Authorisation for placing on the market and use

1. A plant protection product shall not be placed on the market or used unless it has been authorised in the Member State concerned in accordance with this Regulation.

2. By way of derogation from paragraph 1, no authorisation shall be required in the following cases:

- (a) use of products containing exclusively one or more basic substances;
- (b) placing on the market and use of plant protection products for research or development purposes in accordance with Article 54;
- (c) production, storage or movement of a plant protection product intended for use in another Member State, provided that the product is authorised in that Member State and that the Member State of production, storage or movement has put in place inspection requirements to ensure that the plant protection product is not used in its territory;
- (d) production, storage or movement of a plant protection product intended for use in a third country provided that the Member State of production, storage or movement has put in place inspection requirements to ensure that the plant protection product is exported from its territory;
- (e) placing on the market and use of plant protection products for which a parallel trade permit has been granted in accordance with Article 52.

Requirements for the authorisation for placing on the market

1. Without prejudice to Article 50 a plant protection product shall only be authorised where following the uniform principles referred to in paragraph 6 it complies with the following requirements:

- (a) its active substances, safeners and synergists have been approved;
- (b) where its active substance, safener or synergist is produced by a different source, or by the same source with a change in the manufacturing process and/or manufacturing location:
 - (i) the specification, pursuant to Article 38, does not deviate significantly from the specification included in the Regulation approving that substance, safener or synergist; and
 - (ii) the active substance, safener or synergist has no more harmful effects within the meaning of Article 4(2) and (3) due to its impurities than if it had been produced in accordance with the manufacturing process specified in the dossier that supported the approval;
- (c) its co-formulants are not included in Annex III;
- (d) in the light of current scientific and technical knowledge, it complies with the requirements provided for in Article 4(3);
- (e) the nature and quantity of its active substances, safeners and synergists and, where appropriate, any toxicologically, ecotoxicologically or environmentally relevant impurities and co-formulants can be determined by appropriate methods;

- (f) its residues, resulting from authorised uses, and which are of toxicological, ecotoxicological or environmental relevance, can be determined by appropriate methods in general use;
- (g) its physical and chemical properties have been determined and deemed acceptable for the purposes of the appropriate use and storage of the product;
- (h) for plant or plant products to be used as feed or food, where appropriate, the maximum residue levels for the agricultural products affected by the use referred to in the authorisation have been set or modified in accordance with Regulation (EC) No 396/2005.
2. The applicant shall demonstrate that the requirements provided for in points (a) to (g) of paragraph 1 are met.
3. Compliance with the requirements set out in point (b) and points (d) to (g) of paragraph 1 shall be established by official or officially recognised tests and analyses carried out under agricultural, plant health and environmental conditions relevant to the use of the plant protection product in question and representative of the conditions prevailing in the zone where the product is intended to be used.
4. With respect to point (e) of paragraph 1, harmonised methods may be adopted in accordance with the regulatory procedure referred to in Article 79(3).
5. Article 81 shall apply.
6. Uniform principles for evaluation and authorisation of plant protection products shall contain the requirements set out in Annex VI to Directive 91/414/EEC and shall be laid down in Regulations adopted in accordance with the advisory procedure referred to in Article 79(2) without any substantial modifications. Subsequent amendments to these Regulations shall be adopted in accordance with Article 78(1)(c).

Article 30

Provisional authorisations

1. By way of derogation from Article 29(1)(a), Member States may authorise for a provisional period not exceeding three years, the placing on the market of plant protection products containing an active substance not yet approved, provided that:
- (a) the decision on approval could not be finalised within a time period of 30 months from the date of admissibility of the application, extended with any additional time period set in accordance with Article 9(2), Article 11(3) or Article 12(3); and
- (b) pursuant to Article 9 the dossier on the active substance is admissible in relation to the proposed uses; and
- (c) the Member State concludes that the active substance can satisfy the requirements of Article 4(2) and (3) and that the

- plant protection product may be expected to satisfy the requirements of points (b) to (g) of Article 29(1); and
- (d) maximum residue levels have been established in accordance with Regulation (EC) No 396/2005.
2. In such cases the Member State shall immediately inform the other Member States and the Commission of its assessment of the dossier and of the terms of the authorisation, giving at least the information provided for in Article 57(1).
3. The provisions set in paragraphs 1 and 2 shall apply until ... (*). If necessary, that time limit may be extended in accordance with the regulatory procedure with scrutiny referred to in Article 79(4).

Article 31

Contents of authorisations

1. The authorisation shall define plants or plant products and non-agricultural areas (e.g. railways, public areas, storage rooms) on which and the purposes for which the plant protection product may be used.
2. The authorisation shall set out the requirements relating to the placing on the market and use of the plant protection product. Those requirements shall as a minimum include the conditions of use necessary to comply with the conditions and requirements provided for in the Regulation approving the active substances, safeners and synergists.
- The authorisation shall include a classification of the plant protection product for the purpose of Directive 1999/45/EC. Member States may provide that authorisation holders shall classify or update the label without undue delay following any change to the classification and labelling of the plant protection product in accordance with Directive 1999/45/EC. In such case, they shall immediately inform the competent authority thereof.
3. The requirements referred to in paragraph 2 may include among others the following:

- (a) a restriction with respect to the distribution and use of the plant protection product taking into consideration requirements imposed by other community provisions in order to protect the health of the distributors, users, bystanders and workers concerned and the environment; such restriction shall be indicated on the label;
- (b) the obligation before the product is used to inform any neighbours who could be exposed to the spray drift and who have requested to be informed;
- (c) designation of categories of users, such as professional and non-professional;
- (d) the approved label;
- (e) the maximum dose per hectare in each application;

(*) 78 months from the date of entry into force of this Regulation.

- (f) the maximum number of applications per year and interval between applications;
- (g) the period between the last application and consumption of the plant product where applicable;
- (h) the pre-harvest interval, where applicable;
- (i) the re-entry interval;
- (j) the packaging size and material.

Article 32

Duration

1. The period of authorisation shall be laid down in the authorisation.

Without prejudice to Article 44 the duration of an authorisation shall be set for a period not exceeding one year from the date of expiry of the approval of the active substances, safeners and synergists contained in the plant protection product and thereafter for as long as the active substances, safeners and synergists contained in the plant protection product are approved.

This period shall allow the examination as provided for in Article 43 to be carried out.

2. Authorisations may be granted for shorter periods to synchronise the re-evaluation of similar products for the purposes of a comparative assessment of products containing candidates for substitution as provided for in Article 50.

Subsection 2

Procedure

Article 33

Application for authorisation or amendment of an authorisation

1. An applicant who wishes to place a plant protection product on the market shall apply for an authorisation or amendment of an authorisation himself, or through a representative, to each Member State where the plant protection product is intended to be placed on the market.

2. The application shall include the following:

- (a) a list of intended uses in each zone as indicated in Annex I and the Member States where the applicant has made or intends to make an application;
- (b) a proposal as to which Member State the applicant expects to evaluate the application in the zone concerned. In case of an application for use in greenhouses, as post-harvest treatment, for treatment of empty storage rooms and for seed treatment only one Member State shall be proposed, which

evaluates the application considering all zones. In this case the applicant shall send the summary or complete dossier as referred to in Article 8 to other Member States on request;

- (c) where relevant, a copy of any authorisations already granted for that plant protection product in a Member State;
- (d) where relevant, a copy of any conclusion of the Member State assessing equivalence as referred to in Article 38(2).

3. The application shall be accompanied by the following:

- (a) for the plant protection product concerned, a complete and a summary dossier for each point of the data requirements of the plant protection product;
- (b) for each active substance, safener and synergist contained in the plant protection product, a complete and a summary dossier for each point of the data requirements of the active substance, safener and synergist;
- (c) for each test or study involving vertebrate animals, a justification of the steps taken to avoid unnecessary testing;
- (d) the reasons why the test and study reports submitted are necessary for first authorisation or for amendments to the conditions of the authorisation;
- (e) where relevant a copy of the application for a maximum residue level as referred to in Article 7 of Regulation (EC) No 396/2005 or a justification for not supplying such information;
- (f) where relevant for an amendment of an authorisation an assessment of all information submitted in accordance with point (g) of Article 8(1);
- (g) a draft label.

4. When submitting his application, the applicant may pursuant to Article 63, request certain information, including certain parts of the dossier, to be kept confidential and shall physically separate the information.

He shall at the same time submit the complete list of studies submitted pursuant to Article 8(2) and a list of test and study reports for which any claims for data protection pursuant to Article 59 are requested.

Upon a request for access to information the Member State examining the application shall decide what information is to be kept confidential.

5. Where requested by the Member State the applicant shall submit his application in the national or official languages of that Member State or one of those languages.

6. On request, the applicant shall provide the Member State with samples of the plant protection product and analytical standards of its ingredients.

*Article 34***Exemption from the submission of studies**

1. Applicants shall be exempted from supplying the test and study reports referred to in Article 33(3) where the Member State to which an application is made has the test and study reports concerned and the applicants demonstrate that they have been granted access in accordance with Article 59, 61 or 62 or that any data protection period has expired.
2. However, applicants to whom paragraph 1 applies shall provide the following information:
 - (a) all necessary data for the identification of the plant protection product including its complete composition as well as a declaration that no unacceptable co-formulants are used;
 - (b) the information needed to identify the active substance, safener or synergist, where they have been approved, and to establish whether the conditions for approval are met and comply with point (b) of Article 29(1), where appropriate;
 - (c) on the request of the concerned Member State, the data needed to demonstrate that the plant protection product has comparable effects to the plant protection product for which they show access to the protected data.

*Article 35***Member State examining the application**

The application shall be examined by the Member State proposed by the applicant, unless another Member State in the same zone agrees to examine it. The Member State which will examine the application shall inform the applicant.

At the request of the Member State examining the application, the other Member States in the same zone to which an application has been submitted shall cooperate to ensure a fair division of the workload.

The other Member States within the zone to which an application has been submitted shall refrain from proceeding with the file pending assessment by the Member State examining the application.

In case an application has been made in more than one zone, Member States evaluating the application shall agree on the evaluation of data which are not related to the environmental and agricultural conditions.

*Article 36***Examination for authorisation**

1. The Member State examining the application shall make an independent, objective and transparent assessment in the light of current scientific and technical knowledge using guidance documents available at the time of application. It shall give all Member States in the same zone the opportunity to submit comments to be considered in the assessment.

It shall apply the uniform principles for evaluation and authorisation of plant protection products, referred to in Article 29(6), to establish, as far as possible, whether the plant protection product meets the requirements provided for in Article 29 in the same zone, where used in accordance with Article 55, and under realistic conditions of use.

The Member State examining the application shall make available its assessment to the other Member States within the same zone. The format of the assessment report shall be established in accordance with the advisory procedure referred to in Article 79(2).

2. The Member States concerned shall grant or refuse authorisations accordingly on the basis of the conclusions of the assessment of the Member State examining the application as provided for in Articles 31 and 32.

3. By way of derogation from paragraph 2 and subject to Community law, appropriate conditions may be imposed with respect to the requirements referred to in points (a) and (b) of Article 31(3) and other risk mitigation measures deriving from specific conditions of use.

Where the concerns of a Member State related to human or animal health or the environment cannot be controlled by the establishment of national risk mitigation measures referred to in the first subparagraph, a Member State may as a last resort refuse authorisation of the plant protection product in its territory if, due to its very specific environmental or agricultural circumstances, it has substantiated reasons to consider that the product in question poses a serious risk to human or animal health or the environment.

It shall immediately inform the applicant and the Commission of its decision and provide a technical or scientific justification therefore.

Member States shall provide for a possibility to challenge decision refusing the authorisation of such product before the national courts or other instances of appeal.

*Article 37***Time period for examination**

1. The Member State examining the application shall decide within twelve months of receiving it whether the requirements for authorisation are met.

Where the Member State needs additional information, it shall set a time period for the applicant to supply it. In that case, the twelve-month period shall be extended by the additional time period granted by the Member State. The additional time period shall be at maximum six months and shall cease at the moment when the additional information is received by the Member State. Where at the end of that period the applicant has not submitted the missing elements, the Member State shall inform the applicant that the application is inadmissible.

2. The time-limits provided for in paragraph 1 shall be suspended while applying the procedure set out in Article 38.

3. For an application for authorisation of a plant protection product containing an active substance not yet approved, the Member State examining the application shall start the evaluation as soon as it has received the draft assessment report referred to in Article 12(1). In case the application concerns the same plant protection product and the same uses as contained in the dossier referred to in Article 8, the Member State shall decide on the application at the latest within six months of the active substance being approved.

4. The other Member States concerned shall at the latest within 90 days of the receipt of the assessment report and the copy of the authorisation of the Member State examining the application decide on the application as referred to in Article 36(2) and (3).

Article 38

Assessment of equivalence under point (b) of Article 29(1)

1. Where it is necessary to establish for an active substance, safener or synergist whether a different source or, for the same source a change of the manufacturing process and/or manufacturing location complies with point (b) of Article 29(1), this shall be assessed by the Member State which acted as rapporteur for the active substance, safener or synergist as referred to in Article 7(1) unless the Member State examining the application as referred to in Article 35 agrees to assess the equivalence. The applicant shall submit all necessary data to the Member State assessing equivalence.

2. After giving the applicant the opportunity to submit his comments, which the applicant shall also communicate to the rapporteur Member State or the Member State examining the application as the case may be, the Member State assessing equivalence shall prepare a report on equivalence within 60 days from receiving the application and shall communicate the report to the Commission, the other Member States and the applicant.

3. In case of a positive conclusion on equivalence and where no objection to this conclusion has been raised, point (b) of Article 29(1) shall be considered to be complied with. However, where a Member State examining the application does not agree with the conclusion of the rapporteur Member State or vice versa, it shall inform the applicant, the other Member States and the Commission stating its reasons.

The concerned Member States shall try to reach agreement on whether point (b) of Article 29(1) is complied with. They shall provide the applicant with an opportunity to submit his comments.

4. Where the Member States concerned do not reach agreement within 45 days the Member State assessing equivalence shall submit the matter to the Commission. A decision on whether the conditions referred to in point (b) of Article 29(1) are complied with shall be adopted in accordance with the regulatory procedure referred to in Article 79(3). The 45-day period begins on the date on which the Member State examining the application for authorisation informed the rapporteur Member State or vice versa that it does not agree with the conclusion of the latter, in accordance with paragraph 3.

Before such a decision is adopted, the Commission may ask the Authority for an opinion, or for scientific or technical assistance which shall be provided within three months of the request.

5. Detailed rules and procedures for the implementation of paragraphs 1 to 4 may be established in accordance with the regulatory procedure referred to in Article 79(3), after consultation of the Authority.

Article 39

Reporting and exchange of information on applications for authorisation

1. Member States shall compile a file on each application. Each file shall contain the following:

- (a) a copy of the application;
- (b) a report containing information on the evaluation of and decision on the plant protection product; the format of the report shall be established in accordance with the advisory procedure referred to in Article 79(2);
- (c) a record of the administrative decisions taken by the Member State concerning the application and of the documentation provided for in Article 33(3) and Article 34 together with a summary of the latter;
- (d) the approved label, where applicable.

2. On request, Member States shall, without delay, make available to the other Member States, the Commission and the Authority a file containing the documentation provided for in points (a) to (d) of paragraph 1.

3. On request, applicants shall provide a copy of the documentation to be submitted with an application pursuant to Article 33(3) and Article 34 to Member States, the Commission and the Authority.

4. Detailed rules for the implementation of paragraphs 2 and 3 may be established in accordance with the regulatory procedure referred to in Article 79(3).

Subsection 3

Mutual recognition of authorisations*Article 40***Mutual recognition**

1. The holder of an authorisation granted in accordance with Article 29 may apply for an authorisation for the same plant protection product, the same use and under the comparable agricultural practices in another Member State under the mutual recognition procedure, provided for in this subsection, in the following cases:

- (a) the authorisation was granted by a Member State (reference Member State) which belongs to the same zone;
- (b) the authorisation was granted by a Member State (reference Member State) which belongs to a different zone provided that the authorisation for which the application was made is not used for the purpose of mutual recognition in another Member State within the same zone;
- (c) the authorisation was granted by a Member State for use in greenhouses, or as post-harvest treatment, or for treatment of empty rooms or containers used for storing plant or plant products, or for seed treatment, regardless of the zone to which the reference Member State belongs.

2. Where a plant protection product is not authorised in a Member State because no application for an authorisation has been submitted in that Member State, official or scientific bodies involved in agricultural activities or professional agricultural organizations may apply, with the consent of the authorisation holder, for an authorisation for the same plant protection product, the same use and under the same agricultural practices in that Member State under the mutual recognition procedure referred to in paragraph 1. In that case the applicant has to demonstrate that the use of such a plant protection product is of general interest for the Member State of introduction.

In case the authorisation holder refuses its consent, the competent authority of the Member State concerned may accept the application, on grounds of public interest.

*Article 41***Authorisation**

1. The Member State to which an application under Article 40 is submitted shall authorise the plant protection product concerned under the same conditions as the Member State examining the application except where Article 36(3) applies.

2. By way of derogation from paragraph 1, the Member State may authorise the plant protection product where:

- (a) an authorisation under point (b) of Article 40(1) was applied for;
- (b) it contains a candidate of substitution;
- (c) Article 30 has been applied; or
- (d) it contains a substance approved in accordance with Article 4(7).

*Article 42***Procedure**

1. The application shall be accompanied by the following:
 - (a) a copy of the authorisation granted by the reference Member State as well as a translation of the authorisation into an official language of the Member State receiving the application;
 - (b) a formal statement that the plant protection product is identical to that authorised by the reference Member State;
 - (c) a complete or summary dossier as required in Article 33(3) when requested by the Member State;
 - (d) an assessment report of the reference Member State containing information on the evaluation and decision on the plant protection product.
2. The Member State to which an application under Article 40 is submitted shall decide on the application within 90 days.
3. When requested by the Member State the applicant shall submit his application in the national or official languages of that Member State or one of those languages.

Subsection 4

Renewal, withdrawal and amendment*Article 43***Renewal of authorisation**

1. An authorisation shall be renewed upon application by the authorisation holder, provided that the requirements referred to in Article 29 are still met.
2. Within three months from the renewal of the approval of an active substance, safener or synergist contained in the plant protection product, the applicant shall submit the following information:
 - (a) a copy of the authorisation of the plant protection product;
 - (b) any new information required as a result of amendments in data requirements or criteria;

- (c) evidence that the new data submitted are the result of data requirements or criteria which were not in force when the authorisation of the plant protection product was granted or necessary to amend the conditions of approval;
- (d) any information required to demonstrate that the plant protection product meets the requirements set out in the Regulation on the renewal of the approval of the active substance, safener or synergist contained in it;
- (e) a report on the monitoring information, where the authorisation was subject to monitoring.

3. Member States shall check compliance of all plant protection products containing the active substance, safener or synergist concerned with any conditions and restrictions provided for in the Regulation renewing the approval under Article 20.

The Member State referred to in Article 35 within each zone shall coordinate the compliance check and assessment of the information submitted for all Member States within that zone.

4. Guidelines on the authorisation of compliance checks may be established in accordance with the advisory procedure referred to in Article 79(2).

5. Member States shall decide on the renewal of the authorisation of a plant protection product at the latest twelve months after the renewal of the approval of the active substance, safener or synergist contained in it.

6. Where, for reasons beyond the control of the holder of the authorisation, no decision is taken on the renewal of the authorisation before its expiry, the Member State in question shall extend the authorisation for the period necessary to complete the examination and adopt a decision on the renewal.

Article 44

Withdrawal or amendment of an authorisation

1. Member States may review an authorisation at any time where there are indications that a requirement referred to in Article 29 is no longer satisfied.

A Member State shall review an authorisation where it concludes that the objectives of Article 4(1)(a)(iv) and (b)(i) and Article 7(2) and (3) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽¹⁾ may not be achieved.

2. Where a Member State intends to withdraw or amend an authorisation, it shall inform the authorisation holder and give him the possibility to submit comments or further information.

⁽¹⁾ OJL 327, 22.12.2000, p. 1.

3. The Member State shall withdraw or amend the authorisation, as appropriate, where:

- (a) the requirements referred to in Article 29 are not or are no longer satisfied;
- (b) false or misleading information was supplied concerning the facts on the basis of which the authorisation was granted;
- (c) a condition included in the authorisation has not been met; or
- (d) the authorisation holder fails to comply with his obligations resulting from this Regulation.

4. Where a Member State withdraws or amends an authorisation in accordance with paragraph 3, it shall immediately inform the holder of the authorisation, the other Member States, the Commission and the Authority. The other Member States belonging to the same zone shall withdraw or amend the authorisation accordingly taking into account national conditions and risk mitigation measures except for cases where second to fourth subparagraphs of Article 36(3) have been applied. Article 46 shall apply where appropriate.

Article 45

Withdrawal or amendment of an authorisation at the request of the authorisation holder

1. An authorisation may be withdrawn or amended at the request of the holder of the authorisation, who shall state the reasons for his request.

2. Amendments may only be granted where it is established that the requirements referred to in Article 29 continue to be met.

3. Article 46 shall apply where appropriate.

Article 46

Grace period

Where a Member State withdraws or amends an authorisation or does not renew it, it may grant a grace period for the disposal, storage, placing on the market and use of existing stocks.

Where the reasons for withdrawal, amendment or not renewing the authorisation permit it the grace period shall be limited and not exceed six months for the placing on the market and an additional maximum of one year for the disposal, storage, and use of existing stocks of the plant protection products concerned.

Subsection 5

Special cases*Article 47***Placing on the market of low-risk plant protection products**

1. Where all the active substances contained in a plant protection product are low-risk active substances as referred to in Article 22, that product shall be authorised as a low-risk plant protection product provided no specific risk mitigation measures are needed following a risk assessment. This plant protection product shall also meet the following requirements:

- (a) the low-risk active substances, safeners and synergists contained in it have been approved under Chapter II;
- (b) it does not contain a substance of concern;
- (c) it is sufficiently effective;
- (d) it does not cause unnecessary pain and suffering to vertebrates to be controlled;
- (e) it complies with points (b), (c) and (e) to (h) of Article 29(1).

These products are referred to hereinafter as 'low-risk plant protection products'.

2. An applicant for authorisation of a low-risk plant protection product shall demonstrate that the requirements set out in paragraph 1 are met and shall accompany the application with a complete and summary dossier for each point of the data requirements of the active substance and the plant protection product.

3. The Member State shall decide within 120 days on whether to approve an application for authorisation of a low-risk plant protection product.

Where the Member State needs additional information, it shall set a time limit for the applicant to supply it. In that case, the period specified shall be extended by the additional time limit granted by the Member State.

The additional time period shall be of a maximum of six months and shall cease at the moment when the additional information is received by the Member State. Where at the end of that period the applicant has not submitted the missing elements, the Member State shall inform the applicant that the application is inadmissible.

4. Unless otherwise specified, all provisions relating to authorisations under this Regulation shall apply.

*Article 48***Placing on the market and use of plant protection products containing a genetically modified organism**

1. A plant protection product which contains an organism falling within the scope of Directive 2001/18/EC shall be examined in respect of the genetic modification in accordance with that Directive, in addition to the assessment under this Chapter.

An authorisation under this Regulation shall not be granted for such a plant protection product unless written consent, as referred to in Article 19 of Directive 2001/18/EC, has been granted for it.

2. Unless otherwise specified, all provisions relating to authorisations under this Regulation shall apply.

*Article 49***Placing on the market of treated seeds**

1. Member States shall not prohibit placing on the market and use of seeds treated with plant protection products authorised for that use in at least one Member State.

2. Where there are substantial concerns that treated seeds as referred to in paragraph 1 are likely to constitute a serious risk to human or animal health or to the environment and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned, measures to restrict or prohibit the use and/or sale of such treated seeds shall be taken immediately in accordance with the regulatory procedure referred to in Article 79(3). Before taking such measures the Commission shall examine the evidence and may request an opinion from the Authority. The Commission may set a time limit within which such an opinion shall be provided.

3. Articles 70 and 71 shall apply.

4. Without prejudice to other Community legislation concerning the labeling of seeds, the label and documents accompanying the treated seeds shall include the name of the plant protection product with which the seeds were treated, the name(s) of the active substance(s) in that product, standard phrases for safety precautions as provided for in Directive 1999/45/EC and risk mitigation measures set out in the authorisation for that product where appropriate.

Article 50

Comparative assessment of plant protection products containing candidates for substitution

1. A comparative assessment shall be performed by Member States when evaluating an application for authorisation for a plant protection product containing an active substance approved as a candidate for substitution. Member States shall not authorise or shall restrict the use of a plant protection product containing a candidate for substitution where the comparative assessment weighing up the risks and benefits, as set out in Annex IV, demonstrates that:

- (a) for the uses specified in the application an authorised plant protection product, or a non-chemical control or prevention method, already exists which is significantly safer for human or animal health or the environment; and
- (b) the plant protection product or non-chemical control or prevention method referred to in point (a) does not present significant economic or practical disadvantages; and
- (c) the chemical diversity of the active substances is adequate to minimize the occurrence of resistance in the target organism; and
- (d) the consequences on minor use authorisations are taken into account.

2. By way of derogation from Article 36(2) Member States may in exceptional cases also apply the provisions of paragraph 1 of this Article when evaluating an application for authorisation of a plant protection product not containing a candidate for substitution or a low-risk active substance, if a non-chemical control or prevention method exists for the same use and it is in general use in that Member State.

3. By way of derogation from paragraph 1, a plant protection product containing a candidate for substitution shall be authorised without comparative assessment in cases where it is necessary to acquire experience first through using that product in practice.

Such authorisations shall be granted for a period not exceeding five years.

4. For plant protection products containing a candidate for substitution Member States shall perform the comparative assessment provided for in paragraph 1 regularly and at the latest at renewal or amendment of the authorisation.

Based on the results of that comparative assessment, Member States shall maintain, withdraw or amend the authorisation.

5. Where a Member State decides to withdraw or amend an authorisation pursuant to paragraph 4, that withdrawal or

amendment shall take effect five years after the decision of the Member State or at the end of the approval period of the candidate for substitution where that period ends earlier.

6. Unless otherwise specified, all provisions relating to authorisations under this Regulation shall apply.

Article 51

Extension of authorisations for minor uses

1. The authorisation holder, official or scientific bodies involved in agricultural activities, professional agricultural organisations or professional users may ask for the authorisation of a plant protection product already authorised in the Member State concerned to be extended to minor uses not yet covered by that authorisation.

2. Member States shall extend the authorisation provided that:

- (a) the intended use is minor in nature;
- (b) the conditions referred to in points (b), (d) and (e) of Article 4(3) and point (h) of Article 29(1) are satisfied;
- (c) the extension is in the public interest; and
- (d) the documentation and information to support the extension of use has been submitted by the persons or bodies referred to in paragraph 1, especially data on the magnitude of residues and where necessary on the risk assessment to the operator, worker and bystander.

3. The extension may take the form of an amendment to the existing authorisation or may be a separate authorisation, in accordance with the administrative procedures of the Member State concerned.

4. When Member States grant an extension of authorisation for a minor use, they shall inform if necessary the authorisation holder and request him to change the labelling accordingly.

Where the authorisation holder declines, the Member States shall ensure that users are fully and specifically informed as to instructions for use, by means of an official publication or an official website.

The official publication or where applicable the label shall include a reference to the liability of the person using the plant protection product with respect to failures on the efficacy or to phytotoxicity of the product for which the minor use was granted. The minor use extension shall be separately identified in the label.

5. The applicants referred to in paragraph 1 may also apply for authorisation of a plant protection product for minor uses in accordance with Article 40(1) provided that a plant protection product concerned is authorised in that Member State. Member States shall authorise such uses in accordance with the provisions of Article 41 provided that the uses are considered also minor in the Member States of application.

6. Member States shall establish and regularly update a list of minor uses.

7. Unless otherwise specified, all provisions relating to authorisations under this Regulation shall apply.

Article 52

Parallel trade

1. A plant protection product that is authorised in one Member State (Member State of origin) may, subject to granting a parallel trade permit, be introduced, placed on the market or used in another Member State (Member State of introduction), if this Member State determines that the plant protection product is identical in composition to a plant protection product already authorised in its territory (reference product). The application shall be submitted to the competent authority of the Member State of introduction.

2. From receiving a complete application a parallel trade permit shall be granted in a simplified procedure within 45 working days if the plant protection product to be introduced is identical in terms of paragraph 3. Member States shall on request provide each other with the information necessary to assess whether the products are identical within 10 working days of receiving the request. The procedure for granting a parallel trade permit is interrupted from the day the request for information is sent to the competent authority of the Member State of origin until the complete information required is delivered to the competent authority of the Member State of introduction.

3. Plant protection products shall be considered as identical to the reference products if:

- (a) they have been manufactured by the same company or by an associated undertaking or under licence in accordance with the same manufacturing process;
- (b) they are identical in specification and content of the active substances, safeners and synergists, and in the type of formulation; and
- (c) they are either the same or equivalent in the co-formulants present and the packaging size, material or form, in terms of the potential adverse impact on the safety of the product with regard to human or animal health or the environment.

4. The application for a parallel trade permit shall include the following information:

- (a) the name and registration number of the plant protection product in the Member State of origin;
- (b) the Member State of origin;
- (c) the name and address of the authorisation holder in the Member State of origin;
- (d) the original label and instructions for use with which the plant protection product to be introduced is distributed in the Member State of origin if it is considered as necessary for the examination by the competent authority of the Member State of introduction. This competent authority may require a translation of the relevant parts of the original instructions for use;
- (e) the name and address of the applicant;
- (f) the name to be given to the plant protection product to be distributed in the Member State of introduction;
- (g) a draft label for the product intended to be placed on the market;
- (h) a sample of the product which is intended to be introduced if it is considered as necessary by the competent authority of the Member State of introduction;
- (i) the name and registration number of the reference product.

The information requirements may be amended or completed and further details and specific requirements shall be established in case of application for a plant protection product for which a parallel trade permit has already been granted and in case of an application for a plant protection product for a personal use in accordance with the regulatory procedure with scrutiny referred to in Article 79(4).

5. A plant protection product for which a parallel trade permit has been issued shall be placed on the market and used only in accordance with the provisions of the authorisation of the reference product. To facilitate monitoring and controls the Commission shall set out specific control requirements for the product to be introduced in a Regulation referred to in Article 68.

6. The parallel trade permit shall be valid for the duration of authorisation of the reference product. If the authorisation holder of the reference product applies for a withdrawal of authorisation in accordance with Article 45(1) and the requirements of Article 29 are still fulfilled, the validity of the parallel trade permit shall expire by the date on which the authorisation of the reference product would normally have expired.

7. Without prejudice to specific provisions in this Article, Articles 44, 45, 46, and 55 and Article 56(4) and Chapters VI to X shall apply to parallel traded plant protection products correspondingly.

8. Without prejudice to Article 44 a parallel trade permit may be withdrawn if the authorisation of the introduced plant protection product is withdrawn in the Member State of origin because of safety or efficacy reasons.

9. Where the product is not identical in terms of paragraph 3 to the reference product, the Member State of introduction may only grant the authorisation required for placing on the market and use in accordance with Article 29.

10. The provisions of this Article shall not apply to plant protection products which are authorised in the Member State of origin in accordance with Article 53 or 54.

Subsection 6

Derogations

Article 53

Emergency situations in plant protection

1. By way of derogation from Article 28, in special circumstances a Member State may authorise, for a period not exceeding 120 days, the placing on the market of plant protection products, for limited and controlled use, where such a measure appears necessary because of a danger which cannot be contained by any other reasonable means.

The Member State concerned shall immediately inform the other Member States and the Commission of the measure taken, providing detailed information about the situation and any measures taken to ensure consumer safety.

2. The Commission may ask the Authority for an opinion, or for scientific or technical assistance.

The Authority shall provide its opinion or the results of its work to the Commission within one month of the request.

3. If necessary, a decision shall be taken, in accordance with the regulatory procedure referred to in Article 79(3), as to when and under what conditions the Member State:

- (a) may or may not extend the duration of the measure or repeat it; or
- (b) shall withdraw or amend its measure.

4. Paragraphs 1 to 3 shall not apply to plant protection products containing or composed of genetically modified organisms unless such release has been accepted in accordance with Directive 2001/18/EC.

Article 54

Research and development

1. By way of derogation from Article 28, experiments or tests for research or development purposes involving the release into the environment of an unauthorised plant protection product or involving unauthorised use of plant protection product may be carried out if the Member State in whose territory the experiment or test is to be carried out has assessed the available data and granted a permit for trial purposes. The permit may limit the quantities to be used and the areas to be treated and may impose further conditions to prevent any harmful effects on human or animal health or any unacceptable adverse effect on the environment, such as the need to prevent entry into the food chain of feed and food containing residues unless a relevant provision has already been established under Regulation (EC) No 396/2005.

The Member State may authorise a programme of experiments or tests in advance or require a permit for each experiment or test.

2. An application shall be submitted to the Member State in whose territory the experiment or test is to be conducted, together with a dossier containing all the available data to permit an assessment of possible effects on human or animal health or the possible impact on the environment.

3. Permit for trial purposes shall not be granted for experiments or tests involving the release into environment of a genetically modified organism unless such release has been accepted under Directive 2001/18/EC.

4. Paragraph 2 shall not apply if the Member State has granted the person concerned the right to undertake certain experiments and tests and has determined the conditions under which the experiments and tests have to be undertaken.

5. Detailed rules for the application of this Article, in particular the maximum quantities of plant protection products that may be released during experiments or tests and the minimum data to be submitted in accordance with paragraph 2, may be adopted in accordance with the regulatory procedure referred to in Article 79(3).

SECTION 2

Use and information*Article 55***Use of plant protection products**

Plant protection products shall be used properly.

Proper use shall include the application of the principles of good plant protection practice and compliance with the conditions established in accordance with Article 31 and specified on the labelling. It shall also comply with the provisions of Directive 2008/.../EC and, in particular, with general principles of integrated pest management, as referred to in Article 13 and in Annex III to that Directive, which shall apply at the latest by 1 January 2014.

*Article 56***Information on potentially harmful or unacceptable effects**

1. The holder of an authorisation for a plant protection product shall immediately notify the Member States that granted an authorisation of any new information concerning that plant protection product, the active substance, its metabolites, a safener, synergist or co-formulant contained in the plant protection product, which suggests that the plant protection product no longer complies with the criteria set out in Articles 29 and 4 respectively.

In particular, potentially harmful effects of that plant protection product, or of residues of an active substance, its metabolites, a safener, synergist or co-formulant contained in it, on human or animal health or on groundwater, or their potentially unacceptable effects on plants or plant products or the environment shall be notified.

To this end the authorisation holder shall record and report all suspected adverse reactions in humans related to the use of the plant protection product.

The obligation to notify shall include relevant information on decisions or assessments by international authorisation or by public bodies which authorise plant protection products or active substances in third countries.

2. The notification shall include an assessment of whether and how the new information means that the plant protection product or the active substance, its metabolites, a safener, or synergist or co-formulant no longer comply with the requirements set out in Article 29 and Article 4 or Article 27, respectively.

3. Without prejudice to the right of Member States to adopt interim protective measures the Member State which first granted an authorisation within each zone shall evaluate the information received and inform the other Member States, belonging to the same zone, where it decides to withdraw or amend the authorisation under Article 44.

It shall inform the other Member States and the Commission where it considers that the conditions of the approval of the active substance, safener or synergist contained in the plant protection product are no longer fulfilled or whether in the case of a co-formulant it has been considered unacceptable and propose that the approval be withdrawn or the conditions amended.

4. The holder of an authorisation for a plant protection product shall report annually to the competent authorities of the Member States which authorised his plant protection product if he has any information available relating to the lack of expected efficacy, the development of resistance and to any unexpected effect on plants, plant products or the environment.

*Article 57***Obligation to keep information available**

1. Member States shall keep information electronically available to the public on plant protection products authorised or withdrawn in accordance with this Regulation, containing at least:

- (a) the name or business name of the holder of the authorisation and the authorisation number;
- (b) the trade name of the product;
- (c) the type of preparation;
- (d) the name and amount of each active substance, safener or synergist which it contains;
- (e) the classification, risk and safety phrases in accordance to Directive 1999/45/EC and to the Regulation referred to in Article 65;
- (f) the use or uses for which it is authorised;
- (g) the reasons for withdrawal of an authorisation if they are related to safety concerns.

2. The information referred to in paragraph 1 shall be readily accessible and updated at least once every three months.

3. In accordance with the regulatory procedure referred to in Article 79(3), an authorisation information system may be set up to facilitate the application of paragraphs 1 and 2 of this Article.

CHAPTER IV

ADJUVANTS

Article 58

Placing on the market and use of adjuvants

1. An adjuvant shall not be placed on the market or used unless it has been authorised in the Member State concerned in accordance with the conditions established in the Regulation referred to in paragraph 2.

2. Detailed rules for the authorisation of adjuvants, including data requirements, notification, evaluation, assessment and decision making procedure shall be set out in a Regulation to be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 79(4).

3. Article 81(3) shall apply.

CHAPTER V

DATA PROTECTION AND DATA SHARING

Article 59

Data protection

1. Test and study reports shall benefit from data protection under the conditions laid down in this Article.

The protection shall apply to test and study reports concerning the active substance, safener or synergist, adjuvants and the plant protection product as referred to in Article 8(2) when they are submitted to a Member State by an applicant for authorisation under this Regulation, hereinafter referred to as 'the first applicant', provided that those test and study reports were:

- (a) necessary for the authorisation or an amendment of an authorisation in order to allow the use on another crop; and
- (b) certified as compliant with the principles of good laboratory practice or of good experimental practice.

Where a report is protected, it may not be used, by the Member State which received it for the benefit of other applicants for authorisation of plant protection products, safeners or synergists and adjuvants, except as provided in paragraph 2 of this Article, in Article 62 or in Article 80.

The period of data protection is ten years starting at the date of first authorisation in that Member State, except as provided in paragraph 2 of this Article or in Article 62. That period is extended to 13 years for plant protection products covered by Article 47.

Those periods shall be extended by three months for each extension of authorisation for minor uses as defined in Article 51(1), except where the extension of authorisation is based on extrapolation, if the applications for such authorisations are made by the authorisation holder at the latest five years after the date of the first authorisation in that Member State. The total period of data protection may in no case exceed 13 years. For plant protection products covered by Article 47 the total period of data protection may in no case exceed 15 years.

The same data protection rules as for the first authorisation shall also apply to test and study reports submitted by third parties for the purpose of extension of authorisation for minor uses as referred to in Article 51(1).

A study shall also be protected if it was necessary for the renewal or review of an authorisation. The period for data protection shall be 30 months. The first to fourth subparagraphs shall apply with due changes.

2. Paragraph 1 shall not apply:

- (a) to test and study reports for which the applicant has submitted a letter of access; or
- (b) where any period of data protection granted for the test and study reports concerned in relation to another plant protection product has expired.

3. Data protection under paragraph 1 shall only be granted where the first applicant has claimed data protection for test and study reports concerning the active substance, safener or synergist, adjuvant and the plant protection product at the time of submitting the dossier and has provided to the Member State concerned for each test or study report the information referred to in point (e) of Article 8(1) and in point (d) of Article 33(3) as well as confirmation that a period of data protection has never been granted for the test or study report or that any period granted has not expired.

Article 60

List of test and study reports

1. For each active substance, safener and synergist and adjuvant, rapporteur Member States shall prepare a list of the test and study reports necessary for first approval, amendment of approval conditions or renewal of the approval and make it available to the Member States and the Commission.

2. For each plant protection product which they authorise, Member States shall keep and make available to any interested party upon request:

- (a) a list of the test and study reports concerning the active substance, safener or synergist, adjuvant and the plant protection product necessary for first authorisation, amendment of the authorisation conditions or renewal of the authorisation; and
- (b) a list of test and study reports for which the applicant claimed data protection under Article 59 and any reasons submitted in accordance with that Article.

3. The lists provided for in paragraphs 1 and 2 shall include information on whether those test and study reports were certified as compliant with the principles of good laboratory practice or of good experimental practice.

Article 61

General rules on avoidance of duplicative testing

1. In order to avoid duplicate testing, any persons intending to seek an authorisation for a plant protection product shall, before carrying out tests or studies, consult the information referred to in Article 57 to find out if and to whom an authorisation has already been granted for a plant protection product containing the same active substance, safener or synergist or for an adjuvant. The competent authority shall on request from the applicant provide him with the list of test and study reports prepared in accordance with Article 60 for that product.

The prospective applicant shall submit all data regarding the identity and impurities of the active substance he proposes to use. The enquiry shall be supported by evidence that the prospective applicant intends to apply for an authorisation.

2. The competent authority of the Member State, where satisfied that the prospective applicant intends to apply for an authorisation, shall provide him with the name and address of the holder or holders of previous relevant authorisations and shall at the same time inform the holders of the authorisations of the name and address of the applicant.

3. The prospective applicant for the authorisation and the holder or holders of relevant authorisations shall take all reasonable steps to reach agreement on the sharing of any test and study reports protected under Article 59 that are required by the applicant for authorisation of a plant protection product.

Article 62

Sharing of tests and studies involving vertebrate animals

1. Member States shall not accept repeated test and studies involving vertebrate animals or those initiated where conventional methods described in Annex II to Directive 1999/45/EC could reasonably have been used, in support of applications for authorisations. Any person intending to perform tests and studies involving vertebrate animals shall take the necessary measures to verify that those tests and studies have not already been performed or initiated.

2. The prospective applicant and the holder or holders of the relevant authorisations shall make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.

3. Where the prospective applicant and the holder or holders of the relevant authorisations of plant protection products containing the same active substance, safener or synergist, or of adjuvant cannot reach agreement on the sharing of test and study reports involving vertebrate animals, the prospective applicant shall inform the competent authority of the Member State mentioned in Article 61(1).

The failure to reach agreement, as provided in paragraph 2, shall not prevent the competent authority of that Member State from using the test and study reports involving vertebrate animals for the purpose of the application of the prospective applicant.

4. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for an equal share of the costs incurred by him. The competent authority of the Member State may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law. Otherwise the parties may resolve the matter through litigation in the courts of the Member States. Awards from arbitration or litigation shall have regard to the principles determined in paragraph 2 and shall be enforceable in the courts of the Member States.

CHAPTER VI

PUBLIC ACCESS TO INFORMATION

Article 63

Confidentiality

1. A person requesting that information submitted under this Regulation is to be treated as confidential shall provide verifiable evidence to show that the disclosure of the information might undermine his commercial interests, or in the protection of privacy and the integrity of the individual.

2. Disclosure of the following information shall normally be deemed to undermine the protection of the commercial interests or of privacy and the integrity of the individuals concerned:

- (a) the method of manufacture;
- (b) the specification of impurity of the active substance except for the impurities that are considered to be toxicologically, ecotoxicologically or environmentally relevant;

- (c) results of production batches of the active substance including impurities;
- (d) methods of analysis for impurities in the active substance as manufactured except for methods for impurities that are considered to be toxicologically, ecotoxicologically or environmentally relevant;
- (e) links between a producer or importer and the applicant or the authorisation holder;
- (f) information on the complete composition of a plant protection product;
- (g) names and addresses of persons involved in testing on vertebrate animals.

3. This Article is without prejudice to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ⁽¹⁾.

CHAPTER VII

PACKAGING, LABELLING AND ADVERTISING OF PLANT PROTECTION PRODUCTS AND ADJUVANTS

Article 64

Packaging and presentation

1. Plant protection products and adjuvants that may be mistaken for food, drink or feed shall be packaged in such a way as to minimise the likelihood of such a mistake being made.

2. Plant protection products and adjuvants available to the general public that may be mistaken for food, drink or feed shall contain components to discourage or prevent their consumption.

3. Article 9 of Directive 1999/45/EC shall also apply to plant protection products and adjuvants not covered by that Directive.

text of Article 16 and the text of the Annexes IV and V to Directive 91/414/EEC with any necessary modifications.

2. Member States may require samples or mock-ups of the packaging and drafts of labels and leaflets to be submitted before the authorisation is granted.

3. Where a Member State considers that additional phrases are necessary to protect human or animal health or the environment, it shall notify the other Member States and the Commission forthwith and shall forward the additional phrase or phrases and the reasons for these requirements.

Such phrases shall be considered for inclusion in the Regulation referred to in paragraph 1.

Pending that inclusion, the Member State may require the use of the additional phrase or phrases.

Article 66

Advertising

Article 65

Labelling

1. The labelling of plant protection products shall include the classification, labelling and packaging requirements of Directive 1999/45/EC and shall comply with the requirements set out in a Regulation adopted in accordance with the regulatory procedure with scrutiny referred to in Article 79(4).

That Regulation shall also contain standard phrases for special risks and safety precautions which supplement the phrases provided for by Directive 1999/45/EC. It shall incorporate the

1. Plant protection products which are not authorised shall not be advertised. Every advertisement for a plant protection product shall be accompanied by the sentences 'Use plant protection products safely. Always read the label and product information before use'. These sentences shall be easily legible and clearly distinguishable in relation to the whole advertisement. The words 'plant protection products' may be replaced by a more precise description of the product-type, such as fungicide, insecticide or herbicide.

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

2. The advertisement shall not include information in text or graphic form which could be misleading as regards possible risks to human or animal health or to the environment, such as the terms 'low risk', 'non-toxic' or 'harmless'.

Only in the case of low-risk plant protection products the term 'authorised as low-risk plant protection product in accordance with Regulation (EC) No .../2008' shall be allowed in the advertisement. It can not be used as a claim on the label of the plant protection product.

3. All statements used in advertising shall be technically justifiable.

4. Advertisements shall not contain any visual representation of potentially dangerous practices, such as mixing or application without sufficient protective clothing, not any use near food or use by or in the vicinity of children.

5. Advertising or promotional material shall draw attention to the appropriate warning phrases and symbols as laid down in the labelling.

CHAPTER VIII

CONTROLS

Article 67

Record-keeping

1. Producers, suppliers, distributors, importers, exporters and professional users of plant protection products shall keep records of the plant protection products they produce, import, export, store, use or place on the market for at least three years.

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 may request access to this information by addressing the competent authority.

2. Authorisation holders shall provide the competent authorities of the Member States with all data relating to the volume of sales of plant protection products in accordance with Regulation (EC) No .../2008 of the European Parliament and the Council of ... concerning statistics on plant protection products ⁽¹⁾.

3. Implementing measures to ensure the uniform application of paragraphs 1 and 2 may be adopted in accordance with the regulatory procedure referred to in Article 79(3).

Article 68

Monitoring and controls

Member States shall carry out official controls in order to enforce compliance with this Regulation. They shall finalise and transmit to the Commission a report on the scope and the results of these controls within six months of the end of the year to which the reports relate.

Commission experts shall carry out general and specific audits in the Member States for purposes of verifying the official controls carried out by the Member States.

A Regulation, adopted in accordance with the regulatory procedure with scrutiny referred to in Article 79(4), shall set out provisions for the controls, in particular on the production, packaging, labelling, storage, transport, marketing, formulation, parallel trade and use of plant protection products. It shall also contain provisions concerning the collection of information and reporting on suspected poisonings.

CHAPTER IX

EMERGENCIES

Article 69

Emergency measures

Where it is clear that an approved substance, safener, synergist or co-formulant or a plant protection product which has been authorised in accordance with this Regulation is likely to constitute a serious risk to human or animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned, measures to restrict or prohibit the use and/or sale of that substance or product shall be taken immediately in accordance with the regulatory procedure referred to in Article 79(3), either at the own initiative of the Commission or at the request of a Member State. Before taking such measures the Commission shall examine the evidence and may request an opinion from

⁽¹⁾ OJL ...

the Authority. The Commission may set a time limit within which such an opinion shall be provided.

Article 70

Emergency measures in cases of extreme urgency

By way of derogation from Article 69, the Commission may in cases of extreme urgency provisionally adopt emergency measures after consulting the Member State or Member States concerned and informing the other Member States.

As soon as possible, and at the latest after ten working days, those measures shall be confirmed, amended, revoked or extended in accordance with the regulatory procedure referred to in Article 79(3).

*Article 71***Other emergency measures**

1. Where a Member State officially informs the Commission of the need to take emergency measures, and no action has been taken in accordance with Article 69 or 70, the Member State may adopt interim protective measures. In this event, it shall immediately inform the other Member States and the Commission.

2. Within 30 working days, the Commission shall put the matter before the Committee referred to in Article 79(1) in accordance with the regulatory procedure referred to in Article 79(3) with a view to the extension, amendment or abrogation of the national interim protective measure.

3. The Member State may maintain its national interim protective measures until Community measures have been adopted.

CHAPTER X

ADMINISTRATIVE AND FINANCIAL PROVISIONS*Article 72***Penalties**

The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

The Member States shall notify those rules and any subsequent amendment to the Commission without delay.

2. Each Member State shall designate a coordinating national authority to coordinate and ensure all the necessary contacts with applicants, other Member States, the Commission and the Authority.

3. Member States shall ensure that competent authorities have a sufficient number of suitable qualified and experienced staff so that the obligations as defined in this Regulation shall be carried out efficiently and effectively.

4. Each Member State shall give the details concerning its national competent authority or authorities to the Commission, the Authority and the coordinating national authorities of the other Member States and inform them of any modifications thereof.

5. The Commission shall publish and keep updated on its website a list of the authorities referred to in paragraphs 1 and 2.

*Article 73***Civil and criminal liability**

The granting of authorisation and any other measures in conformity with this Regulation shall be without prejudice to general civil and criminal liability in the Member States of the producer and, where applicable, of the person responsible for placing the plant protection product on the market or using it.

*Article 76**Article 74***Fees and charges**

1. Member States may recover the costs associated with any work they carry out within the scope of this Regulation, by means of fees or charges.

2. Member States shall ensure that the fees or charges referred to in paragraph 1:

- (a) are established in a transparent manner; and
- (b) correspond to the actual cost of the work involved except if it is in public interest to lower the fees or charges.

The fees or charges may include a scale of fixed charges based on average costs for the work referred to in paragraph 1.

Expenditure by the Commission

1. The Commission may incur expenditure for activities contributing to the aims of this Regulation including the organisation of the following:

- (a) development of a harmonised system, including an appropriate database, for gathering and storing all information concerning active substances, safeners, synergists, co-formulants, plant protection products and adjuvants and for making such information available to the Member States, producers and other interested parties;
- (b) performance of studies needed to prepare and develop further legislation on the placing on the market and use of plant protection products and adjuvants;
- (c) performance of studies needed to harmonise procedures, decision-making criteria and data requirements;
- (d) coordination, if necessary by electronic means, of cooperation between Member States, the Commission and the Authority and measures to facilitate work sharing;

*Article 75***Competent authority**

1. Each Member State shall designate a competent authority or authorities to carry out the obligations of the Member States as defined in this Regulation.

- (e) development and maintenance of a coordinated electronic submission and evaluation system aimed at promoting electronic document exchange and work sharing between the applicants, the Member States, the Commission and the Authority;
 - (f) development of guidance to facilitate the day-to-day implementation of this Regulation;
 - (g) travel and subsistence expenses that Member States' experts incur as a result of the Commission appointing them to assist its experts in the framework of control activities laid down under Article 68;
 - (h) training of control staff;
 - (i) financing of other measures needed to ensure application of the Regulation adopted under Article 68.
2. The appropriations required under paragraph 1 shall be subject to authorisation by the budgetary authority each financial year.

Article 77

Guidance documents

The Commission may, in accordance with the advisory procedure referred to in Article 79(2), adopt or amend technical and other guidance documents for the implementation of this Regulation. The Commission may ask the Authority to prepare or to contribute to such guidance documents.

Article 78

Amendments and implementing measures

1. The following measures designed to amend non-essential elements of this Regulation *inter alia* by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 79(4):
- (a) amendments to the Annexes, taking into account current scientific and technical knowledge;
 - (b) amendments to the Regulations on data requirements for active substances and for plant protection products, as referred to in points (b) and (c) of Article 8(1), taking into account current scientific and technical knowledge;
 - (c) amendments to the Regulation on uniform principles for evaluation and authorisation of plant protection products, as referred to in Article 29(6), taking into account current scientific and technical knowledge;
 - (d) a Regulation postponing the expiry of the approval period referred to in the second subparagraph of Article 17;
 - (e) a Regulation on data requirements for safeners and synergists referred to in Article 25(3);

- (f) a Regulation establishing a work program for safeners and synergists referred to in Article 26;
- (g) inclusion of co-formulants in Annex III, as referred to in Article 27(2);
- (h) extension of the date of application of this Regulation to provisional authorisations, as referred to in Article 30(3);
- (i) information requirements for parallel trade, as referred to in Article 52(4);
- (j) detailed rules for adjuvants, as referred to in Article 58(2);
- (k) a Regulation containing the requirements of the labelling of plant protection products, as referred to in Article 65(1);
- (l) a Regulation on controls, as referred to in the third subparagraph of Article 68.

2. Any further measures necessary for the implementation of this Regulation may be adopted in accordance with the regulatory procedure referred to in Article 79(3).

3. In accordance with the advisory procedure referred to in Article 79(2), a Regulation shall be adopted containing the list of active substances included in Annex I to Directive 91/414/EEC. Those substances shall be deemed to have been approved under this Regulation.

Article 79

Committee procedure

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health, as established by Article 58 of Regulation (EC) No 178/2002.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
5. Where reference is made to this paragraph, Article 5a(1) to (4) and (5)(b) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The time-limits laid down in Article 5a(3)(c) and (4)(b) and (e) of Decision 1999/468/EC shall be set at two months, one month and two months respectively.

CHAPTER XI

TRANSITIONAL AND FINAL PROVISIONS

Article 80

Transitional measures

1. Directive 91/414/EEC shall continue to apply, with respect to the procedure and the conditions for approval:

- (a) to active substances for which a decision has been adopted in accordance with Article 6(3) of Directive 91/414/EEC before ... (*); or
- (b) to active substances listed in Annex I to Regulation (EC) No 737/2007 ⁽¹⁾; or
- (c) to active substances for which completeness has been established in accordance with Article 16 of Regulation (EC) No 33/2008 ⁽²⁾; or
- (d) to active substances for which completeness has been established in accordance with Article 6 of Regulation (EC) No 33/2008 before ... (*).

On the basis of the examination carried out under Directive 91/414/EEC, a Regulation on the approval of such a substance shall be adopted in accordance with Article 13(2) of this Regulation. For active substances mentioned in point (b) of this paragraph that approval shall not be considered as the renewal of approval referred to in Article 14 of this Regulation.

2. Article 13(1) to (4) and Annexes II and III to Directive 91/414/EEC shall continue to apply with respect to active substances included in Annex I to that Directive and to active substances approved in accordance with paragraph 1 of this Article:

- (a) for a period of five years from the date of their inclusion or approval, for active substances covered by Article 8(2) of Directive 91/414/EEC;
- (b) for a period of ten years from the date of their inclusion or approval, for active substances which were not on the market on 26 July 1993;
- (c) for a period of five years from the date of the renewal of the inclusion or renewal of the approval, for active substances whose inclusion in Annex I to Directive 91/414/EEC expires by ... (**). This provision shall only apply to data necessary for the renewal of the approval and which were certified as compliant with the principles of good laboratory practice by that date.

3. Where Article 13 of Directive 91/414/EEC applies by virtue of paragraph 1 or paragraph 2 of this Article, it shall be subject to any special rules concerning Directive 91/414/EEC laid down in the Act of Accession by which a Member State joined the Community.

4. For active substances for which the first approval expires by ... (***), the application provided for in Article 14 shall be

(*) 18 months from the date of entry into force of this Regulation.

⁽¹⁾ OJ L 169, 29.6.2003, p. 10.

⁽²⁾ OJ L 15, 18.1.2008, p. 5.

(**) 24 months after the date of publication of this Regulation.

(***) 36 months from the date of entry into force of this Regulation.

submitted by a producer of the active substance to a Member State, with a copy to the other Member States, the Commission and the Authority, no later than two years before the expiry of the first approval.

5. Applications for authorisations of plant protection products:

- (a) under Article 4 of Directive 91/414/EEC which are pending in the Member States; or
- (b) which are due to be amended or withdrawn following an inclusion in Annex I to Directive 91/414/EEC or following an approval in accordance with paragraph 1 of this Article,

on ... (*) shall be decided on the basis of national law in force before that date.

After that decision, this Regulation shall apply.

6. Products labeled in accordance with Article 16 of Directive 91/414/EEC may continue to be placed on the market until ... (****).

7. By ... (*****), the Commission shall establish a list of substances included in Annex I of Directive 91/414/EEC which satisfy the criteria set out in point 4 of Annex II to this Regulation and to which the provisions of Article 50 of this Regulation shall apply.

Article 81

Derogation for safeners and synergists, co-formulants and adjuvants

1. By way of derogation from Article 28(1), a Member State may, for a period of five years following the adoption of the programme referred to in Article 26, authorise the placing on the market in its territory of plant protection products containing safeners and synergists, which have not been approved, where they are included in that programme.

2. By way of derogation from Article 27 and without prejudice to Community law, Member States may apply national provisions for co-formulants not included in Annex III until ... (*****).

Where, after ... (*****), a Member State has serious grounds for considering that a co-formulant not included in Annex III is likely to constitute a serious risk to human or animal health or the environment, it may temporarily prohibit or restrict the application of a co-formulant in question within its territory. It shall immediately inform the other Member States and the Commission thereof and give reasons for its decision. Article 71 shall apply.

(****) 66 months from the date of entry into force of this Regulation.

(*****) 78 months from the date of entry into force of this Regulation.

3. By way of derogation from Article 58(1) Member States may apply national provisions for authorisation of adjuvants until the adoption of detailed rules referred to in Article 58(2).

Article 82

Review clause

By ... (*), The Commission shall present a report to the European Parliament and the Council on the functioning of mutual recognition of authorisations and in particular on the application by the Member States of the provisions referred to in Article 36(3) and Article 50(2), the division of the Community into three zones and on the application of the criteria for the approval of active substances, safeners and synergists as set out in Annex II and the impact thereof on the diversification and competitiveness of agriculture as well as on human health and on the environment. The report may be accompanied, if necessary, by the appropriate legislative proposals to amend those provisions.

Article 83

Repeal

Without prejudice to Article 80, Directives 79/117/EEC and 91/414/EEC, as amended by the acts listed in Annex V, are repealed with effect from ... (**), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in that Annex.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

References to the repealed Directives shall be construed as references to this Regulation. In particular, references in other Community legislation, such as Regulation (EC) No 1782/2003, to Article 3 of Directive 91/414/EEC shall be construed as references to Article 55 of this Regulation.

Article 84

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

By ... (**), the Commission shall adopt the following:

- (a) a Regulation containing the list of the active substances already approved at the moment of adoption of that Regulation;
- (b) a Regulation on data requirements for active substances, as referred to in Article 8(1)(b);
- (c) a Regulation on data requirements for plant protection products, as referred to in Article 8(1)(c);
- (d) a Regulation on uniform principles for risk assessment for plant protection products, as referred to in Article 36;
- (e) a Regulation containing the requirements of the labelling of plant protection products, as referred to in Article 65(1).

This Regulation shall apply from ... (**).

(*) 60 months from the date of entry into force of this Regulation.

(**) 18 months from the date of entry into force of this Regulation.

ANNEX I

Definition of zones for the authorisation of plant protection products as referred to in Article 3(15)*Zone A — North*

The following Member States belong to this zone:

Denmark, Estonia, Latvia, Lithuania, Finland, Sweden

Zone B — Centre

The following Member States belong to this zone:

Belgium, Czech Republic, Germany, Ireland, Luxembourg, Hungary, Netherlands, Austria, Poland, Romania, Slovenia, Slovakia, United Kingdom

Zone C — South

The following Member States belong to this zone:

Bulgaria, Greece, Spain, France, Italy, Cyprus, Malta, Portugal

ANNEX II

Procedure and criteria for the approval of active substances, safeners and synergists pursuant to Chapter II**1. Evaluation**

- 1.1. During the process of evaluation and decision-making provided for in Articles 4 to 21, the rapporteur Member State and the Authority shall cooperate with applicants to resolve any questions on the dossier quickly or to identify at an early stage any further explanations or additional studies necessary for the evaluation of the dossier, including information to eliminate the need for a restriction of the approval, or to amend any proposed conditions for the use of the plant protection product or to modify its nature or its composition in order to ensure full satisfaction of the requirements of this Regulation.
- 1.2. The evaluation by the Authority and the rapporteur Member State must be based on scientific principles and be made with the benefit of expert advice.
- 1.3. During the process of evaluation and decision-making provided for in Articles 4 to 21, Member States and the Authority shall take into consideration any further guidance developed in the framework of the Standing Committee on the Food Chain and Animal Health for the purposes of refining, where relevant, the risk assessments.

2. General decision-making criteria

- 2.1. Article 4 shall only be considered as complied with, where, on the basis of the dossier submitted, authorisation in at least one Member State is expected to be possible for at least one plant protection product containing that active substance for at least one of the representative uses.

2.2. Submission of further information

In principle an active substance, safener or synergist shall only be approved where a complete dossier is submitted.

In exceptional cases an active substance, safener or synergist may be approved even though certain information is still to be submitted where:

- (a) the data requirements have been amended or refined after the submission of the dossier; or,
- (b) the information is considered to be confirmatory in nature, as required to increase the confidence in the decision.

2.3. Restrictions on approval

Where necessary, the approval may be subject to conditions and restrictions as referred to in Article 6.

Where the rapporteur Member State considers that the dossier provided lacks certain information, to the effect that the active substance could only be approved subject to restrictions, it shall contact the applicant at an early stage to obtain more information which may possibly enable these restrictions to be removed.

3. Criteria for the approval of an active substance**3.1. Dossier**

The dossiers submitted pursuant to Article 7(1) shall contain the information needed to establish, where relevant, Acceptable Daily Intake (ADI), Acceptable Operator Exposure Level (AOEL) and Acute Reference Dose (ARfD).

In the case of an active substance, safener or synergist for which one or more representative uses includes use on feed or food crops or leads indirectly to residues in food or feed, the dossier submitted pursuant to Article 7(1) shall contain the information necessary to carry out a risk assessment and for enforcement purposes.

The dossier shall in particular:

- (a) permit any residue of concern to be defined;
- (b) reliably predict the residues in food and feed, including succeeding crops;

- (c) reliably predict, where relevant, the corresponding residue level reflecting the effects of processing and/or mixing;
- (d) permit a maximum residue level to be defined and to be determined by appropriate methods in general use for the commodity and, where appropriate, for products of animal origin where the commodity or parts of it is fed to animals;
- (e) permit, where relevant, concentration or dilution factors due to processing and/or mixing to be defined.

The dossier submitted pursuant to Article 7(1) shall be sufficient to permit, where relevant, an estimate of the fate and distribution of the active substance in the environment, and its impact on non-target species.

3.2. *Efficacy*

An active substance alone or associated with a safener or synergist shall only be approved where it has been established for one or more representative uses that the plant protection product, consequent on application consistent with good plant protection practice and having regard to realistic conditions of use is sufficiently effective. This requirement shall be evaluated in accordance with the uniform principles for evaluation and authorisation of plant protection products referred to in Article 29(6).

3.3. *Relevance of metabolites*

Where applicable the documentation submitted shall be sufficient to permit the establishment of the toxicological, ecotoxicological or environmental relevance of metabolites.

3.4. *Composition of the active substance, safener or synergist*

- 3.4.1. The specification shall define the minimum degree of purity, the identity and maximum content of impurities and, where relevant, of isomers/diastereo-isomers and additives, and the content of impurities of toxicological, ecotoxicological or environmental concern within acceptable limits.
- 3.4.2. The specification shall be in compliance with the relevant Food and Agriculture Organisation specification as appropriate, where such specification exists. However, where necessary for reasons of protection of human or animal health or the environment, stricter specifications may be adopted.

3.5. *Methods of analysis*

- 3.5.1. The methods of analysis of the active substance, safener or synergist as manufactured and of determination of impurities of toxicological, ecotoxicological or environmental concern or which are present in quantities greater than 1 g/kg in the active substance, safener or synergist as manufactured, shall have been validated and shown to be sufficiently specific, correctly calibrated, accurate and precise.
- 3.5.2. The methods of residue analysis for the active substance and relevant metabolites in plant, animal and environmental matrices and drinking water, as appropriate, shall have been validated and shown to be sufficiently sensitive with respect to the levels of concern.
- 3.5.3. The evaluation has been carried out in accordance with the uniform principles for evaluation and authorisation of plant protection products referred to in Article 29(6).

3.6. *Impact on human health*

- 3.6.1. Where relevant, an ADI, AOEL and ARfD shall be established. When establishing such values an appropriate safety margin of at least 100 shall be ensured taking into account the type and severity of effects and the vulnerability of specific groups of the population.
- 3.6.2. An active substance, safener or synergist shall only be approved if, on the basis of assessment of higher tier genotoxicity testing carried out in accordance with the data requirements for the active substances, safeners or synergists and other available data and information, including a review of the scientific literature, reviewed by the Authority, it is not or has not to be classified, in accordance with the provisions of Directive 67/548/EEC, as mutagen category 1 or 2.

- 3.6.3. An active substance, safener or synergist shall only be approved, if, on the basis of assessment of carcinogenicity testing carried out in accordance with the data requirements for the active substances, safener or synergist and other available data and information, including a review of the scientific literature, reviewed by the Authority, it is not or has not to be classified, in accordance with the provisions of Directive 67/548/EEC, as carcinogen category 1 or 2, unless the exposure of humans to that active substance, safener or synergist in a plant protection product, under realistic proposed conditions of use, is negligible, i.e. the product is used in closed systems or in other conditions excluding contact with humans and where residues of the active substance, safener or synergist concerned on food and feed do not exceed the default value set in accordance with point (b) of Article 18(1) of Regulation (EC) No 396/2005.
- 3.6.4. An active substance, safener or synergist shall only be approved if, on the basis of assessment of reproductive toxicity testing carried out in accordance with the data requirements for the active substances, safeners or synergists and other available data and information, including a review of the scientific literature, reviewed by the Authority, it is not or has not to be classified, in accordance with the provisions of Directive 67/548/EEC, as toxic for reproduction category 1 or 2, unless the exposure of humans to that active substance, safener or synergist in a plant protection product, under realistic proposed conditions of use, is negligible, i.e. the product is used in closed systems or in other conditions excluding contact with humans and where residues of the active substance, safener or synergist concerned on food and feed do not exceed the default value set in accordance with point (b) of Article 18(1) of Regulation (EC) No 396/2005.
- 3.6.5. An active substance, safener or synergist shall only be approved if, on the basis of the assessment of Community or internationally agreed test guidelines or other available data and information, including a review of the scientific literature, reviewed by the Authority, it is not considered to have endocrine disrupting properties that may cause adverse effect in humans, unless the exposure of humans to that active substance, safener or synergist in a plant protection product, under realistic proposed conditions of use, is negligible, i.e. the product is used in closed systems or in other conditions excluding contact with humans and where residues of the active substance, safener or synergist concerned on food and feed do not exceed the default value set in accordance with point (b) of Article 18(1) of Regulation (EC) No 396/2005.

3.7. *Fate and behaviour in the environment*

- 3.7.1. An active substance, safener or synergist shall only be approved where it is not considered to be a persistent organic pollutant (POP).

A substance that fulfils all three of the criteria of the sections below is a POP.

3.7.1.1. Persistence

An active substance, safener or synergist fulfils the persistence criterion where there is evidence that the time it takes for a degradation of 50 % (DT50) in water is greater than two months, or that its DT50 in soil is greater than six months, or that its DT50 in sediment is greater than six months.

3.7.1.2. Bioaccumulation

An active substance, safener or synergist fulfils the bioaccumulation criterion where there is:

- evidence that its bio-concentration factor or bioaccumulation factor in aquatic species is greater than 5 000 or, in the absence of such data, that the partition coefficient n-octanol/water ($\log K_{ow}$) is greater than 5; or
- evidence that the active substance, safener or synergist present other reasons for concern, such as high bioaccumulation in other non-target species, high toxicity or ecotoxicity.

3.7.1.3. Potential for long-range environmental transport

An active substance, safener or synergist fulfils the potential for long-range environmental transport criterion where:

- measured levels of the active substance, safener or synergist in locations distant from the sources of its release are of potential concern; or

- monitoring data show that long-range environmental transport of the active substance, safener or synergist, with the potential for transfer to a receiving environment, may have occurred via air, water or migratory species; or
 - environmental fate properties and/or model results demonstrate that the active substance, safener or synergist has a potential for long-range environmental transport through air, water or migratory species, with the potential for transfer to a receiving environment in locations distant from the sources of its release. For an active substance safener or synergist that migrates significantly through the air, its DT50 in air is to be greater than two days.
- 3.7.2. An active substance, safener or synergist shall only be approved if it is not considered to be a persistent, bioaccumulative and toxic (PBT) substance.

A substance that fulfils all three of the criteria of the sections below is a PBT substance.

3.7.2.1. Persistence

An active substance, safener or synergist fulfils the persistence criterion where:

- the half-life in marine water is higher than 60 days, or
- the half-life in fresh or estuarine water is higher than 40 days, or
- the half-life in marine sediment is higher than 180 days, or
- the half-life in fresh or estuarine water sediment is higher than 120 days, or
- the half-life in soil is higher than 120 days.

Assessment of persistency in the environment shall be based on available half-life data collected under appropriate conditions, which shall be described by the applicant.

3.7.2.2. Bioaccumulation

An active substance, safener or synergist fulfils the bioaccumulation criterion where the bioconcentration factor is higher than 2 000.

Assessment of bioaccumulation shall be based on measured data on bioconcentration in aquatic species. Data from both freshwater and marine water species can be used.

3.7.2.3. Toxicity

An active substance, safener or synergist fulfils the toxicity criterion where:

- the long-term no-observed effect concentration for marine or freshwater organisms is less than 0,01 mg/l, or
- the substance is classified as carcinogenic (category 1 or 2), mutagenic (category 1 or 2), or toxic for reproduction (category 1, 2, or 3), or
- there is other evidence of chronic toxicity, as identified by the classifications: T, R48 or Xn, R48 pursuant to Directive 67/548/EEC.

- 3.7.3. An active substance, safener or synergist shall only be approved if it is not considered to be a very persistent and very bioaccumulative substance (vPvB).

A substance that fulfils both of the criteria of the sections below is a vPvB substance.

3.7.3.1. Persistence

An active substance, safener or synergist fulfils the 'very persistent' criterion where:

- the half-life in marine, fresh or estuarine water is higher than 60 days, or
- the half-life in marine, fresh or estuarine water sediment is higher than 180 days, or
- the half-life in soil is higher than 180 days.

3.7.3.2. Bioaccumulation

An active substance, safener or synergist fulfils the 'very bioaccumulative' criterion where the bioconcentration factor is greater than 5 000.

3.8. *Ecotoxicology*

3.8.1. An active substance, safener or synergist shall only be approved if the risk assessment demonstrates risks to be acceptable in accordance with the criteria laid down in the uniform principles for evaluation and authorisation of plant protection products referred to in Article 29(6) under realistic proposed conditions of use of a plant protection product containing the active substance safener or synergist. The assessment must take into account the severity of effects, the uncertainty of the data, and the number of organism groups which the active substance safener or synergist is expected to affect adversely by the intended use.

3.8.2. An active substance, safener or synergist shall only be approved if, on the basis of the assessment of Community or internationally agreed test guidelines, it is not considered to have endocrine disrupting properties that may cause adverse effects on non-target organisms unless the exposure of non-target organisms to that active substance in a plant protection product under realistic proposed conditions of use is negligible.

3.9. *Residue definition*

An active substance, safener or synergist shall only be approved if, where relevant, a residue definition can be established for the purposes of risk assessment and for enforcement purposes.

3.10. *Fate and behaviour concerning groundwater*

An active substance shall only be approved where it has been established for one or more representative uses, that consequently after application of the plant protection product consistent with realistic conditions on use, the predicted concentration of the active substance or of metabolites, degradation or reaction products in groundwater complies with the respective criteria of the uniform principles for evaluation and authorisation of plant protection products referred to in Article 29(6).

4. **Candidate for substitution**

An active substance shall be approved as a candidate for substitution pursuant to Article 24 where any of the following conditions are met:

- its ADI, ARfD or AOEL is significantly lower than those of the majority of the approved active substances within groups of substances/use categories,
- it meets two of the criteria to be considered as a PBT substance,
- there are reasons for concern linked to the nature of the critical effects (such as developmental neurotoxic or immunotoxic effects) which, in combination with the use/exposure patterns, amount to situations of use that could still cause concern, e.g. high potential of risk to groundwater; even with very restrictive risk management measures (such as extensive personal protective equipment or very large buffer zones),
- it contains a significant proportion of non-active isomers,
- it is or is to be classified, in accordance with the provisions of Directive 67/548/EEC, as carcinogen category 1 or 2, in case the substance has not been excluded in accordance with the criteria laid down in point 3.6.3,
- it is or is to be classified, in accordance with the provisions of Directive 67/548/EEC, as toxic for reproduction category 1 or 2 in case the substance has not been excluded in accordance with the criteria laid down in point 3.6.4,
- if, on the basis of the assessment of Community or internationally agreed test guidelines or other available data and information, reviewed by the Authority, it is considered to have endocrine disrupting properties that may cause adverse effect in humans in case the substance has not been excluded in accordance with the criteria laid down in point 3.6.5.

5. Low-risk active substances

An active substance shall not be considered of low risk where it is or has to be classified in accordance with Directive 67/548/EEC as at least one of the following:

- carcinogenic,
- mutagenic,
- toxic to reproduction,
- sensitising,
- very toxic or toxic,
- explosive,
- corrosive.

It shall also not be considered as of low risk if:

- persistent (half life in soil is more than 60 days), or
- bioconcentration factor is higher than 100, or
- it is deemed to be an endocrine disrupter.

ANNEX III

List of co-formulants which are not accepted for inclusion in plant protection products as referred to in Article 27

ANNEX IV

Comparative assessment pursuant to Article 50**1. Conditions for comparative assessment**

Where refusal or withdrawal of an authorisation of a plant protection product in favour of an alternative plant protection product or a non-chemical control or prevention method is considered, hereinafter referred to as 'substitution', the alternative must, in the light of scientific and technical knowledge, show significantly lower risk to health or the environment. An assessment of the alternative shall be performed to demonstrate whether it can be used with similar effect on the target organism and without significant economic and practical disadvantages to the user or not.

Further conditions for refusal or withdrawal of an authorisation are:

- (a) substitution shall be applied only where other methods or the chemical diversity of the active substances is sufficient to minimise the occurrence of resistance in the target organism; and
- (b) substitution shall be applied only to plant protection products where their use presents a significantly higher level of risk to human health or the environment; and
- (c) substitution shall be applied only after allowing for the possibility, where necessary, of acquiring experience from use in practice, where not already available.

2. Significant difference in risk

A significant difference in risk shall be identified on a case-by-case basis by the competent authorities. The properties of the active substance and plant protection product, and the possibility of exposure of different population subgroups (professional or non-professional users, bystanders, workers, residents, specific vulnerable groups or consumers) directly or indirectly through food, feed, drinking water or the environment shall be taken into account. Other factors such as the stringency of imposed restrictions on use and prescribed personal protective equipment shall also be considered.

For the environment, if relevant, a factor of at least 10 for the toxicity/exposure ratio (TER) of different plant protection products is considered a significant difference in risk.

3. Significant practical or economic disadvantages

Significant practical or economic disadvantage to the user is defined as a major quantifiable impairment of working practices or business activity leading to inability to maintain sufficient control of the target organism. Such a major impairment might be, for example, where no technical facilities for the use of the alternative are available or economically feasible.

Where a comparative assessment indicates that restrictions on and/or prohibitions of use of a plant protection product could cause such disadvantage, then this shall be taken into account in the decision-making process. This situation shall be substantiated.

ANNEX V

Repealed Directives and their successive amendments as referred to in Article 83

A. Directive 91/414/EEC

Acts amending Directive 91/414/EEC	Deadline for transposition
Directive 93/71/EEC	3 August 1994
Directive 94/37/EC	31 July 1995
Directive 94/79/EC	31 January 1996
Directive 95/35/EC	30 June 1996
Directive 95/36/EC	30 April 1996
Directive 96/12/EC	31 March 1997
Directive 96/46/EC	30 April 1997
Directive 96/68/EC	30 November 1997
Directive 97/57/EC	1 October 1997
Directive 2000/80/EC	1 July 2002
Directive 2001/21/EC	1 July 2002
Directive 2001/28/EC	1 August 2001
Directive 2001/36/EC	1 May 2002
Directive 2001/47/EC	31 December 2001
Directive 2001/49/EC	31 December 2001
Directive 2001/87/EC	31 March 2002
Directive 2001/99/EC	1 January 2003
Directive 2001/103/EC	1 April 2003
Directive 2002/18/EC	30 June 2003
Directive 2002/37/EC	31 August 2003
Directive 2002/48/EC	31 December 2002
Directive 2002/64/EC	31 March 2003
Directive 2002/81/EC	30 June 2003
Directive 2003/5/EC	30 April 2004
Directive 2003/23/EC	31 December 2003
Directive 2003/31/EC	30 June 2004
Directive 2003/39/EC	30 September 2004
Directive 2003/68/EC	31 March 2004
Directive 2003/70/EC	30 November 2004
Directive 2003/79/EC	30 June 2004
Directive 2003/81/EC	31 January 2005

Acts amending Directive 91/414/EEC	Deadline for transposition
Directive 2003/82/EC	30 July 2004
Directive 2003/84/EC	30 June 2004
Directive 2003/112/EC	30 April 2005
Directive 2003/119/EC	30 September 2004
Regulation (EC) No 806/2003	—
Directive 2004/20/EC	31 July 2005
Directive 2004/30/EC	30 November 2004
Directive 2004/58/EC	31 August 2005
Directive 2004/60/EC	28 February 2005
Directive 2004/62/EC	31 March 2005
Directive 2004/66/EC	1 May 2004
Directive 2004/71/EC	31 March 2005
Directive 2004/99/EC	30 June 2005
Directive 2005/2/EC	30 September 2005
Directive 2005/3/EC	30 September 2005
Directive 2005/25/EC	28 May 2006
Directive 2005/34/EC	30 November 2005
Directive 2005/53/EC	31 August 2006
Directive 2005/54/EC	31 August 2006
Directive 2005/57/EC	31 October 2006
Directive 2005/58/EC	31 May 2006
Directive 2005/72/EC	31 December 2006
Directive 2006/5/EC	31 March 2007
Directive 2006/6/EC	31 March 2007
Directive 2006/10/EC	30 September 2006
Directive 2006/16/EC	31 January 2007
Directive 2006/19/EC	30 September 2006
Directive 2006/39/EC	31 July 2007
Directive 2006/41/EC	31 January 2007
Directive 2006/45/EC	18 September 2006
Directive 2006/64/EC	31 October 2007
Directive 2006/74/EC	30 November 2007
Directive 2006/75/EC	31 March 2007
Directive 2006/85/EC	31 January 2008

Acts amending Directive 91/414/EEC	Deadline for transposition
Directive 2006/104/EC	1 January 2007
Directive 2006/131/EC	30 June 2007
Directive 2006/132/EC	30 June 2007
Directive 2006/133/EC	30 June 2007
Directive 2006/134/EC	30 June 2007
Directive 2006/135/EC	30 June 2007
Directive 2006/136/EC	30 June 2007
Directive 2007/5/EC	31 March 2008
Directive 2007/6/EC	31 July 2007
Directive 2007/21/EC	12 December 2007
Directive 2007/25/EC	31 March 2008
Directive 2007/31/EC	1 September 2007
Directive 2007/50/EC	31 May 2008
Directive 2007/52/EC	31 March 2008
Directive 2007/76/EC	30 April 2009
Directive 2008/40/EC	30 April 2009
Directive 2008/41/EC	30 June 2009
Directive 2008/45/EC	8 August 2008
Directive 2008/66/EC	30 June 2009

B. Directive 79/117/EEC

Acts amending Directive 79/117/EEC	Deadline for transposition
Directive 83/131/EEC	1 October 1984
Directive 85/298/EEC	1 January 1986
Directive 86/214/EEC	—
Directive 86/355/EEC	1 July 1987
Directive 87/181/EEC	1 January 1988 and 1 January 1989
Directive 87/477/EEC	1 January 1988
Directive 89/365/EEC	31 December 1989
Directive 90/335/EEC	1 January 1991
Directive 90/533/EEC	31 December 1990 and 30 September 1990
Directive 91/118/EEC	31 March 1992
Regulation (EC) No 807/2003	—
Regulation (EC) No 850/2004	—

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 19 July 2006 the Commission submitted to the Council a proposal for a Regulation of the European Parliament and of the Council concerning the placing of plant protection products on the market ⁽¹⁾. The proposal is based on Articles 37(2) and 152(4)(b) of the Treaty.
2. The European Parliament adopted its opinion at first reading on 23 October 2007 ⁽²⁾. The Economic and Social Committee and the Committee of the Regions delivered their opinions on 14 March and 1 February 2007 respectively.
3. On 15 September 2008, the Council adopted its Common Position in accordance with Article 251 of the Treaty.

II. OBJECTIVES

The proposal replaces Directive 91/414/EEC and aims at achieving

- higher protection of human beings, animals and the environment in the context of authorisation and the placing on the market of plant protection products;
- better harmonisation and availability of plant protection products; and
- an update and simplification of procedures for the approval of active substances and the authorisation of plant protection products.

Its main elements concern in particular:

- the approval of active substances at EU level in accordance with a list of clearer and stricter criteria which will exclude from the market those substances with a very hazardous profile;
- a system of mutual recognition of authorisations between Member States belonging to the same zone, the EU territory being divided into three zones with similar agricultural, climatic and environmental conditions;
- a procedure for low-risk substances and plant protection products;
- the definition of the role of the European Food Safety Authority (EFSA); and
- provisions to avoid unnecessary animal testing.

The Council has introduced new provisions concerning parallel trade, seed treatment and the establishment of national provisional authorisations.

III. ANALYSIS OF THE COMMON POSITION

1. GENERAL OBSERVATIONS

The Council has incorporated the following amendments in full: 41, 59, 67, 79, 81, 96, 124, 153, 155, 157, 159, 195, 196, 197, 212, 213, 226, 286 and 301.

It has also included in part or in principle amendments 5, 6, 10, 11, 14, 18, 22, 29, 31, 32, 33, 34, 39, 43, 45, 46, 54, 62, 64, 66, 77, 78, 80, 82, 84, 87, 89, 95, 97, 109, 121, 122, 126, 130, 134, 136, 141, 143, 149, 163, 169, 175, 176, 177, 180, 181, 183, 185, 188, 189, 190, 201, 206, 248, 251, 296, 300 and 305.

Amendments 1, 2, 3, 8, 15-17, 23, 28, 30, 35, 37, 38, 40, 42, 44, 47-48, 52, 55, 58, 68-69, 70-71, 73-74, 83, 85-86, 88, 91, 101, 103-106, 110-111, 113, 117-118, 120, 127-129, 132, 135, 137-139, 142, 144, 146-148, 150, 152, 154, 158, 161-162, 164-166, 168, 171, 173, 179, 191-192, 194, 198, 202, 204-205, 207-208, 211, 214, 216, 219, 221-222, 226, 228-230, 232, 235-242, 245-246, 249-250, 253, 255, 267, 276, 287, 293, 295, 299, 303 and 304 have not been taken up in the Common Position, the Council sharing the same opinion as the Commission.

⁽¹⁾ An amended proposal was submitted on 11 March 2008.

⁽²⁾ 14184/07.

Amendments 7, 9, 11, 20-21, 24-26, 36, 49-51, 53, 56, 57, 75-76, 92-94, 98-100, 107-108, 114-116, 119, 131, 133, 140, 145, 156, 160, 167, 170, 184, 199, 203, 215, 217, 218, 220, 224-225, 244, 252, 274 and 297 which were accepted fully or in part by the Commission, have not been included in the Common Position, the Council departing from the Commission's views.

Certain amendments, such as 281 (provisional authorisations), 90 (renewal period for the approval of active substances), 198 (data protection for the studies necessary for renewal or review of the authorisation), 210 (confidentiality of names and addresses of persons involved in testing on vertebrate animals) and 223 (cost recovery by Member States) were totally or partially incorporated in the Common Position although they were not accepted initially by the Commission.

The Common Position also includes other changes, not envisaged by the European Parliament, which address a number of concerns expressed by the Member States in the course of the negotiations. A number of technical and editorial amendments were also introduced to define the scope of some provisions, to make the wording of the Regulation more explicit and also to guarantee legal certainty or to increase its consistency with other Community instruments.

The Commission has accepted the Common Position agreed by the Council.

2. SPECIFIC COMMENTS

a) Provisions included in the original proposal

Legal basis

The Council considered that, as the main purpose of the Regulation was to ensure the effective functioning of the internal market in plant protection products, Article 95 was the correct legal basis. The Council, however, decided to adopt a dual legal basis including Article 37(2) as a gesture towards the Commission.

Definitions

The Council took up those amendments which provide appropriate clarifications of the text of the definitions or which were essential because new provisions were introduced in the text (e.g. amendments 41, 45, 46). However, in some cases, the Council preferred to place the new definitions within the Articles containing the provisions on those areas (e.g. definitions of parallel trade, identical, rapporteur Member State or low-risk). The Council has deleted the definition of Integrated Pest Management from the Commission's proposal and has instead inserted a link to the Directive on sustainable use of pesticides in Article 52. The Council could not incorporate amendment 53 as it considered that priority to non-chemical methods was not an essential element of good plant protection practice.

The Council has also inserted a number of additional definitions such as 'authorisation holder', 'professional user', 'minor use', 'greenhouse', 'post-harvest treatment', 'biodiversity', 'competent authority', 'advertisement', 'relevant metabolite' and 'impurity'. It deleted the definitions of 'animals' and 'integrated pest management'.

Approval of active substances

The Council inserted in Article 4 a sequential approach in the evaluation of the criteria set out in Annex II whereby points 3.6.2 to 3.6.4 and 3.7 of that Annex should be verified first before examining the rest of the criteria.

The Council, like Parliament, strongly believes that strict criteria for the approval of active substances need to be listed in order to protect human health and the environment.

The Council has introduced in point 3.6 of Annex II a clear definition of negligible exposure to carcinogenic, endocrine disrupting or toxic for reproduction substances and has established that mutagenic category 1 or 2 active substances should be banned even if human contact with those substances was negligible. It nevertheless thought it necessary to introduce, for exceptional cases, a derogation clause limited in time for those substances which are essential for the protection of a crop even if they do not meet the criteria.

The Council could not agree with the European Parliament's view that active substances with neurotoxic or immunotoxic properties should be excluded but it agreed to consider them as candidates for substitution.

Like the Parliament, the Council opposed the unlimited renewal of approval of active substances as proposed by the Commission but established a maximum period of 15 years instead of 10 as requested by the Parliament in amendment 90.

Procedures

The Council has endeavoured to further streamline the procedures for approval of active substances and authorisation of plant protection products. It has paid particular attention to tightening the deadlines and defining more precisely the roles of the various players involved (Member States, the Commission, the European Food Safety Authority (EFSA)). The Council has thus accepted in full or in part a number of European Parliament amendments that tend in this direction and rejected others which might either cause unnecessary delays, such as part of amendment 141, or not allow enough time for the adequate completion of some stages of the procedures (e.g. amendment 86).

Low-risk active substances

The Council, like the Parliament, thought it useful to further explain the concept of 'low risk' but instead of adding a definition in Article 3 or extra clarifications in Article 22 as proposed by the European Parliament (amendments 43 and 301) it has inserted more detailed criteria in Annex II.

Regarding data protection for low-risk plant protection products, the Council has extended the period of protection to a maximum of 13 years instead of 15 as proposed by the European Parliament (amendment 287). In case the authorisation of a low-risk plant protection product is extended to minor uses the data protection period could then be extended to up to 15 years.

Candidates for substitution

The Council has also clarified the criteria for active substances to be identified as candidates for substitution. The Council felt it was necessary to extend the period of approval from seven to ten years and has therefore not accepted amendment 106.

The Council was unable to agree with amendments 170, 171, 173, all of 251 and 253 extending, in particular, comparative assessment to all plant protection products. The text of Article 48 has nevertheless been redrafted in order to give Member States the option, in exceptional cases, of not authorising or of restricting the use of a plant protection product which does not contain a candidate for substitution or a low-risk substance if a non-chemical method exists.

Mutual recognition of authorisations

The Council was not able to accept those amendments relating to the zonal authorisation and mutual recognition (in particular amendments 15, 19, 52, 137, 138, 139, 147, 148, 152, 166 and 230). On the contrary, the Council has confirmed the division into authorisation zones as proposed by the Commission and the system of compulsory mutual recognition of authorisations as it believes it is a good way to ensure the reduction of administrative burdens and the quick and wider availability for European farmers of plant protection products. The Council has extended this system to plant protection products for minor uses and has provided additional flexibility (e.g. the recognition of authorisations between Member States belonging to different zones or the possibility for a professional organisation to apply for an authorisation).

The Council introduced provisions establishing that Member States impose additional risk mitigation measures relevant to their territory and, exceptionally, can refuse authorisations granted in another Member State in order to protect human or animal health or the environment. The Council has also inserted a review clause whereby a report is to be drawn up by the Commission within five years of the Regulation's entry into force.

National Provisional Authorisations (Article 29a)

Member States decided to bring back the provisional authorisations as a transitional measure as they feared delays in the authorisation of plant protection products. They thought the new system needed to be tested first to check if deadlines could be met. National provisional authorisations will only be granted for a limited period of time (three years) and under certain circumstances. The Council and the Parliament's views substantially converge on this issue (amendment 281).

Animal testing

The Council has taken note of the European Parliament particular interest in avoiding or minimising animal testing (amendments 6, 9, 23, 24, 55, 66, 75, 92, 108, 130, 208 and 225) and has incorporate them, where possible, in the text of the Common Position.

Comitology

The Council has modified the Commission's proposal to bring it into line with the new Comitology Decision 2006/512/EC amending Decision 1999/468/EC and introducing the new regulatory procedure with scrutiny. The Council could accept amendments 109 and part of 141 but amendments 93, 94, 99, 100, 119, 120, 142, 158, 184, 219, 224, 226, 227 were not taken on board. In some cases the Council could not accept the regulatory procedure with scrutiny if the measures to be taken were of a purely implementational nature. In cases concerning the simple transfer of the requirements already contained in the Annexes to Directive 91/414/EC to the new Regulation or the adoption of non-binding guidelines, the Council was of the opinion that the advisory committee procedure was more appropriate.

Concerning amendments 108, 221 and 225 the Council did not agree with the procedure proposed (Article 251 of the Treaty). It thought instead that the most appropriate comitology procedure would be that of 'regulatory with scrutiny' as the Regulations to be adopted following the provisions laid down in those articles would supplement the basic act by adding new non-essential elements.

b) New provisions included in the Common Position

Following discussions in Council, provisions regarding the following areas were added to the text of the Common Position:

Treated seeds (Article 47a)

Delegations considered that it was necessary to insert provisions on this area so as to protect the free movement of seeds treated with plant protection products in the EU unless they might pose a serious threat for human or animal health or the environment..

Parallel trade

The provisions concerning parallel trade were added by the Council following an almost unanimous request by Member States. The Council has thus incorporated amendment 286 and has adapted the provisions on parallel trade to the most recent jurisprudence. It has also introduced the requirement of official controls in this area.

Adjuvants

The Council has inserted provisions establishing that detailed rules for the authorisation of adjuvants should be set out following a comitology procedure.

IV. CONCLUSIONS

The Council considers that its Common Position represents a balanced and realistic solution for a number of concerns expressed on the Commission's proposal and looks forward to a constructive discussion with the European Parliament with a view to reaching a workable agreement on this Regulation.
