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From:	Presidency
To:	Council
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the production and making available on the market of plant reproductive material (plant reproductive material law) (Text with EEA relevance) - <i>State of play</i>

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Delegations will find attached a report from the Presidency outlining the state of play and providing guidance for future work.

# Proposal for a Regulation of the European Parliament and of the Council on the production and making available on the market of plant reproductive material

## *Presidency state of play report*

### I. INTRODUCTION

On 6 May 2013 the Commission submitted a proposal for a regulation on plant reproductive material to the Council and Parliament. The draft text is part of the legislative review package of five proposals on animal and plant health, official controls, plant reproductive material and the rules governing the management of expenditure. The Commission's proposal is intended to consolidate and update the existing legislation, fragmented into twelve Council Directives.

In the Council, three Presidencies (IE, LT, EL) have been involved in the technical examination of this file. The Irish Presidency started the technical examination of the Commission proposal. The Lithuanian Presidency presented a progress report to the AGRI/FISH Council on 16 December 2013. The progress report identified a number of issues requiring further discussion. The Hellenic Presidency completed the technical examination (with the exception of Part IV on forest reproductive material and the relevant Annexes) and started to draft a compromise text on Articles 16 to 29.

On 14 February 2014, the European Parliament Committee on Agriculture and Rural Development adopted a report for submission to the plenary calling for the Commission proposal to be rejected and for the Commission to withdraw its proposal and table a new one. On 11 March 2014, the European Parliament's plenary voted against the Commission's proposal. Following the Commission's refusal to withdraw its proposal and table a new one, MEPs voted a legislative resolution in order to finalise the Parliament's first reading. The Commission's proposal was rejected by 650 votes to 15.

## II. DISCUSSIONS AT COREPER

In the light of the Parliament's vote, the Presidency referred the issue to the Committee of Permanent Representatives in order to decide to pursue one of the four options outlined in document 7937/14. At its meeting on 26 March 2014, the Committee held a general policy debate and decided to pursue the option of making a contribution to the debate on the architecture of a possible revised Commission proposal or proposals and, for that purpose, to gather the views of Member States about the new draft text or texts during the Working Party meetings scheduled for May. On this occasion, the Commission acknowledged the need to amend the proposal and showed a willingness to incorporate the Council's views in the future text.

Following the instructions from the Committee of Permanent Representatives, the Working Party on Agricultural Questions (Seeds and Propagating Material) held two meetings. The Hellenic Presidency steered the debate around four horizontal questions with a view to bringing out the constituent elements which would serve as a basis for the future architecture of the Commission's revised proposal.

1. scope of the proposal and simplification of the basic legal acts (from twelve Directives to one Regulation);
2. legal security and use of delegated and implementing acts;
3. cost recovery; and
4. effectiveness, efficiency, harmonisation among Member States and reduction of administrative burden.

This report builds on the conclusions of the progress report presented by the Lithuanian Presidency (17654/13 ) and examines a range of key issues around those four main horizontal questions.

### **III. KEY ISSUES**

#### **1. Scope of the proposal and simplification of the basic legal acts (from twelve Directives to one Regulation)**

Discussions in Council have clearly indicated that delegations are not in favour of including forest reproductive material in the scope of the proposal and that it should be excluded.

Moreover, given the simplification of the basic legal acts (from twelve Directives to one Regulation), the "one size fits all" approach is not satisfactory for all types of plant reproductive material (forest reproductive material, agricultural crops, vegetables, fruit plants, vine, ornamentals, niche market material, etc.). The current structure of the proposal is therefore not appropriate for all sectors. The revised proposal should recognise that there are areas in agriculture that should be approached in a different way, with less prescriptive requirements.

Furthermore, the text should only focus on operators with commercial activities (professionals). Marketing and any other transaction between private persons (such as amateurs and hobby gardeners) should be excluded from the scope.

The misunderstanding about what the Regulation should apply to needs to be clarified in many instances. Some fundamental changes are needed to accommodate the needs of the plant reproductive material sector. Moreover, the Annexes and exclusions laid down in the current proposal need further clarification in order to be clear and precise.

By improving the structure and readability of the text and by adopting changes related to plant reproductive material intended for gardeners, niche markets, organic farming, etc., it would be possible to address issues linked with biodiversity and conservation of plant genetic resources (for example, by simplifying access to the market through lighter registration requirements for varieties of fruits and vegetables with no intrinsic value for agricultural production and for ornamentals).

The review proposal should be tailored to the needs of farmers, industry, all types of businesses, and should also favour PRM diversity in conventional and organic agriculture. Only in this way will the plant reproductive material market grow and create new business opportunities for European farmers and companies.

## **2. Legal security and use of delegated and implementing acts**

The proposal should create an environment providing legal security in that it should be possible to anticipate how the law will be applied. However, bearing in mind the simplification, the empowerments are too broad and uncertain, and leave too many issues open for additional requirements through delegated and implementing acts. A balance must be struck between simplification and legal certainty.

A single regulation with different parts/chapters/sections covering the different types of plant reproductive material would be preferable. It should consolidate eleven directives (forest reproductive material excluded) and have a clear and precise scope.

In relation to the Annexes, the list of species which are important for food and feed security and other important issues and require mandatory certification and the list of species that require Value for Cultivation and/or Use (VCU) should be included in the basic act (a revised Annex I or additional Annex). All the exclusions need to be clearly stated in the basic act. In this way, the number of secondary acts could be reduced.

## **3. Cost recovery**

In relation to the concept of cost recovery, there is a need to reflect on a system where costs are proportionate and where Member States could be given sufficient flexibility.

The Working Party is against providing for an exemption from fees for micro-enterprises. Given the nature of the plant reproductive material sector, the number of micro-enterprises is high and therefore a block exemption would create market distortions. Specific attention needs also to be given to trade-offs between supporting micro-enterprises and small-scale activities and preventing an abuse of the exemption.

If the scope of the Regulation is clear (professional and non-professional users) and there is simplified access to the market for certain types of plant reproductive material, then a reduction of costs for micro-businesses and individuals could be achieved. Moreover, consideration could be given to alternative measures to reduce costs.

#### **4. Effectiveness, efficiency, harmonisation among Member States and reduction of administrative burden**

The system has to change to improve its effectiveness and efficiency, and to increase the level of harmonisation among Member States. However, some of the proposed provisions would place an unnecessary administrative burden on Member States' competent authorities and operators. Further measures have to be considered to achieve these objectives at reduced cost.

In relation to the import/export system, delegations do not support any additional rules that are superfluous and could create additional costs for operators. The current system has largely proved itself and should not be more complex. It would therefore be better to identify the best practices with a view to retaining those and finding solutions which take into account the interests of stakeholders for matters of concern.

The revised proposal would need to be less prescriptive and maintain and probably simplify the current rules such as in the case of derogations (varieties not yet listed, material not finally certified, reduced germination requirements).

The mix and match approach to certification (meaning that any stage of certification would be carried out by competent authorities or by authorised professional operators under official supervision) is widely supported in Council but it should be clarified that the authorisation of certification is optional, does not mean lack of control and should consider the needs of small companies so that they are not at a disadvantage.

The ‘one key several doors’ principle for distinctness, uniformity and stability (DUS) testing and denominations for variety registration and protection (PVP) should be adopted and any other means of improving the system could be considered, such as participatory testing for VCU (Value for Cultivation and/or Use). In relation to VCU, the Working Party is of the opinion that only one type of VCU with sustainability elements should remain, owing to different agro-climatic conditions and crop use across the Union.

Considering the ambiguity of the current requirements and definition of 'heterogeneous material', the Working Party is of the view that the proposal by nine Member States for a positive definition of 'heterogeneous material'<sup>1</sup> is a good starting point.

#### **IV. CONCLUSION**

By adopting the above-mentioned changes, the system's effectiveness and efficiency will increase, as will the harmonisation level among Member States, thereby creating a level playing field within the EU market and a reduction of the administrative burden for Member States' competent authorities and operators.

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<sup>1</sup> 6323/14