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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	9574/13 - COM(2013) 267 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protective measures against pests of plants - Preparation for the upcoming trilogue

I. INTRODUCTION

1. On 6 May 2013, the Commission submitted to the European Parliament and to the Council the above-mentioned proposal, based on Article 43 of the Treaty on the Functioning of the European Union¹.
2. The Economic and Social Committee issued its opinion on 10 December 2013, and on 13 January 2014 the Committee of the Regions informed the Council that it would not issue an opinion.
3. The European Parliament adopted its opinion at first reading on 15 April 2014. This position was subsequently confirmed by the newly elected Parliament and Mrs. Anthea McINTYRE, ECR (UK) was appointed as the Rapporteur.

¹ Doc. 9574/13

4. Two national parliaments have delivered opinions on the application of the principles of subsidiarity and proportionality².
5. Following the preparatory work carried out by the Working Party on Protection and Inspection – Plant Health, the Working Party of the Chief Plant Health Officers (COPHS) and the Working Party of Agricultural Attachés/Phytosanitary experts, the Coreper (Part 1), at its meeting of 30 June 2015, gave a mandate³ to the Presidency to enter into negotiations with the European Parliament.
6. Five informal trilogues took place, on 22 September, 17 and 27 October, 10 and 24 November 2015. A number of technical meetings were also held, to prepare the informal trilogues. Chapters I to V of the proposal have been discussed up to now.

II. STATE OF PLAY

7. Negotiations proceeded at a slower pace than expected. It has nevertheless been possible to reach a provisional agreement on a number of issues. As regards issues related to implementing and delegated acts, only preliminary discussions took place and it will be possible to finalise an agreement only when a final compromise on the whole text is reached.
8. The issues which have been subject to a provisional agreement with the European Parliament are presented below (Cf. Point A); Coreper is invited to confirm its support to the provisional agreement reached.
9. A list of open issues is contained in point B below. The Presidency is seeking guidance from the Coreper on the negotiating line to take.

² Doc.11870/13 and 12254/13

³ Doc. 10108/15 REV2

A. Issues on which a provisional agreement was reached with the European Parliament

1. Scope of the Regulation (Article 1)

10. Paragraph (1) of Article 1 corresponds now to the Commission proposal - only parasitic plants are included in the scope of the Regulation. However, a new paragraph (1a) has been introduced to ensure that in exceptional cases also non-parasitic plants can be included in the scope. The criteria inserted to qualify those exceptional cases are taken from international guidelines and were already set out in Annex II of the Commission proposal (severe economic, social and environmental impact for the Union territory).
11. The second sub-paragraph in paragraph (1a) clarifies that no overlaps shall exist with the non-parasitic plants regulated under Article 4(1) of Regulation (EU) 1143/2014 on the prevention and management of the introduction and spread of invasive alien species. This addition was requested by the European Parliament for the sake of clarity. In any case, effective coordination within Commission services and between the relevant standing committees will be necessary to ensure that overlaps are avoided.

2. Definitions (Article 2)

12. It was provisionally agreed with the European Parliament, for the sake of clarity and consistency, to stick to the definitions existing under the International Plant Protection Convention (IPPC). However, in a limited number of cases, it was necessary to fine tune the wording of those definitions, in order to ensure their full compatibility with the Union legal order (paragraph (2) - 'plant products'; paragraph (10i) - 'phytosanitary measure').

3. Derogations for technical purposes (Articles 8; 46; 54)

13. The European Parliament insisted that the word "technical" is vague and that its interpretation could prove very problematic. It was therefore agreed to replace it throughout the text with the expression "official testing", which should capture the relevant activities. Should it be needed to further specify that notion, a recital should provide the proper solution.

4. Notification obligations for persons other than professional operators (Article 15a)

14. The European Parliament considered that imposing on private persons an obligation to notify the presence of Union quarantine pests within a set deadline would have been disproportionate (especially given that no set deadline is specified for notifications by professional operators): instead of a deadline, the term "immediately" has been inserted.

5. Role of stakeholders in contingency plans, simulation exercises, action plans for priority pests (Articles 24; 25; 26)

15. As a horizontal position, the European Parliament emphasized the importance it attaches to the role of stakeholders in the actions aimed at tackling priority pests. As a compromise proposal, the Council agreed to amend Articles 24 and 25 to foresee a consultation of relevant stakeholders during the drafting of action plans and their involvement in simulation exercises. But the Council firmly opposed AM 60, which would create the obligation for competent authorities to consult operators prior to the adoption of contingency plans; instead, the Council proposed to insert new language in Article 26, to clarify that action plans are just the application to concrete cases of the principles set out in contingency plans drafted pursuant to Article 24 (and in consultation with stakeholders).

6. Measures for Union regulated non-quarantine pests on plants for planting (Article 37(2a))

16. At the end of paragraph (2a), language has been inserted to clarify that measures adopted under the plant health Regulation do not prejudice other measures adopted pursuant to existing seed directives. This addition was necessary for reasons of legal clarity; it does not change the substance of the provision.

7. Prohibitions/equivalent requirements for the entry into the Union territory/protected zones (Articles 40; 41; 49; 50)

17. These Articles were redrafted for the sake of legal clarity. The substance remains unchanged.

8. Specific import conditions for the introduction into the Union territory of high risk plants, plant products and other objects (Articles 41a and 48; Annex IIIA)

18. Paragraphs (1) and (3) of Article 41a have been slightly amended, to clarify that there shall be no overlap with the temporary measures adopted pursuant to Article 47, and to highlight the provisional nature of the listing under Article 41a.
19. Article 48 has been amended to allow the modification of Annex IIIA through a delegated act, but only to adapt it to the developments of technical and scientific knowledge and relevant international standards.
20. The wording of Annex IIIA has been streamlined, since the previous version could lead to different interpretations. Its content and mechanisms have not changed. Therefore, it is still clear that a plant, plant product or other object is not automatically listed as high risk when it fulfils only one of the criteria: there is a margin of appreciation for the Commission and for the standing committee (the wording "may be considered" is used). In other words, the fulfilment of at least one of the criteria is a necessary condition for the listing, but not a sufficient one.

9. Phytosanitary transit (Article 45)⁴

21. The European Parliament accepted to withdraw all its amendments. As a compromise, it was agreed to reintroduce the provisions of paragraph (1) (a): those would ensure that operators do not abuse the system of phytosanitary transit, while constituting a very limited additional administrative burden.

⁴ In the 4th column of doc. 14622/15 no reference should be made to 'phytosanitary seals' and the wording of paragraph (1)(b) should correspond to the original Commission proposal.

10. Temporary measures (Article 47)

22. Article 47 has been slightly amended, to clarify that it shall focus on "newly identified pest risks" and that there shall be no overlap with Article 41a.

11. Movement out of the Union territory (Article 60)

23. The European Parliament and the Commission considered that paragraph (3) of Article 60 should be kept. Thus the exported plants, plant products or other objects should be covered by the Union rules set out in article 41, on special requirements for reducing the pest risk to an acceptable level.

12. Register of professional operators (Article 61)

24. Paragraph (1) was redrafted to improve readability: points (a) and (aa) were merged; points (c) and (e) to (h) were regrouped under the new points (da) and (db). The substance remains unchanged⁵.
25. In paragraph (3) a new point (aa) was introduced, to exempt from the registration obligation professional operators supplying seeds directly to final users⁶.

⁵ In the 4th column of doc. 14622/15 paragraph (1) (b) should not be deleted.

⁶ The wording of paragraph (3) (aa) in Doc. 14622/15 has been amended, following a technical meeting with the European Parliament on 2 December 2015 and subject to confirmation at the next trilogue: it now reads "(aa) it supplies exclusively and directly to final users **small quantities of** seeds, other than the seeds subject Article 68a;"

13. Phytosanitary certificates for seeds - inclusion of seeds under Article 68 or Article 68a - consistency changes to Annex VIA

26. At the fifth trilogue on 24 November 2015, the Commission suggested to move seeds from paragraph (1) (c) of Article 68 to Article 68a. In the Commission view, such a change would be justified by the low risk usually associated to seeds. It would imply that a phytosanitary certificate would not be required automatically for seeds, but only if they are listed pursuant to Article 68a.
27. At the technical meeting on 2 December 2015, and subject to confirmation at the next trilogue, the European Parliament indicated that it can support the Council position on Articles 68, 68a and Annex VIA, as presented in the third column of doc. 14621/15.

The Coreper is invited to confirm its support on the provisional agreement reached with the European Parliament on the above issues.

B. Issues which are still open for discussion between the co-legislators

1. Priority pests (Articles 6, 24(3) and Annex II Section 2)

28. The European Parliament presented a proposal on provisions related to priority pests:
- i. deletion of the 10% threshold that priority pest can constitute out of the total of quarantine pests (Article 6 (2));
 - ii. reinstatement of the Commission proposal for Article 6 (1) (a): pests fulfilling the conditions of Annex II Section I (2) (c) could not be listed as priority pests;
 - iii. in Annex II Section 2, references to a numerical value to determine the economic impact impact would be removed;
 - iv. reinstatement of the Commission proposal for Article 24 (3): contingency plans for the all the priority pests of the list adopted pursuant to Article 6 should be established within one year.
29. The Presidency reacted with a proposal, as follows:
- i. the deletion of the 10% threshold could be accepted;
 - ii. in Article 6 (1) (a) the Commission proposal is not acceptable; the Council position should be maintained, considering that under Annex II Section I (2)(c) fall several pests (notably pests attacking potatoes) which have a major impact on a number of Member states; those pests cannot be excluded "a priori" from the list of priority pests;
 - iii. the European Parliament suggestions for Annex II Section 2 could be accepted, since they are broadly in line with the Council position;
 - iv. the reinstatement of the Commission proposal for Article 24 (3) is not acceptable, but the Council could modify its position to foresee a 4 year deadline for the establishment of the bulk of contingency plans for the priority pests included in the list, following to its adoption; for any subsequent addition of a priority pest to the list, the deadline to establish a contingency plan will be anyway one year.

The Coreper is invited to confirm its support on the above Presidency proposal.

2. Provisions concerning implementing and delegated acts

30. The agreement on these provisions is tentative and will be finalised only at the last stage of the negotiation, through a package deal.
31. However, some preliminary compromises have been reached. In a number of Articles the European Parliament accepted implementing acts, but Council had to accept to fine tune their scope (Articles 20, 22, 27, 43, 65) - a similar redrafting is still ongoing for the provisions under Article 59a.
32. Other provisions remain open for discussion in Articles 5, 6, 32, 34, 37, 44, 46. They notably include the procedures to adopt the lists of quarantine pests, priority pests and regulated non-quarantine pests. Flexibility on both sides will be required in order to reach an agreement.

The Coreper is invited to endorse the preliminary compromises reached in this area and to agree to grant some margin of manoeuvre to the Presidency in relation to the procedure to adopt lists.

III. CONCLUSION

33. In the light of the above, the Coreper is invited:
 - to confirm its support on the provisional agreement reached on the issues referred to under point II A of this note and reflected in the text set out in the fourth column of document 14622/15;
 - to endorse the preliminary compromises reached on the issues referred to under point II B 3 of this note and reflected in the text set out in the fourth column of document 14622/15;
 - to confirm to the Presidency the negotiating line to take on issues still open for discussion referred to under point II B of this note.