

Brussels, 31 October 2024
(OR. en)

14909/24

**Interinstitutional File:
2023/0228(COD)**

LIMITE

**AGRI 764
AGRILEG 418
SEMENCES 154
PHYTOSAN 184
FORETS 243
IA 189
CODEC 1981**

NOTE

From:	General Secretariat of the Council
To:	Committee of Permanent Representatives (part 1)
No. Cion doc.:	11503/23 + ADD 1
Subject:	Proposal for a Regulation of the Parliament and of the Council on the production and marketing of forest reproductive material, amending Regulations (EU) 2016/2031 and 2017/625 of the European Parliament and of the Council and repealing Council Directive 1999/105/EC (Regulation on forest reproductive material) <i>- Guidance for further work</i>

I. INTRODUCTION

1. On 6 July 2023 the European Commission submitted a legislative proposal on the production and marketing of forest reproductive material (FRM) in the Union, amending Regulations (EU) 2016/2031 and 2017/625 and repealing Council Directive 1999/105/EC.
2. Council Directive 1999/105/EC on forest reproductive material has been successful so far in fostering an internationally competitive FRM sector and guaranteeing the identity and high quality of all FRM in the EU. However, since the Council Directive dates back to 1999 and there have been a number of new technical developments in the sector over the past few decades, it has now become essential to revise the legislation in order to ensure that the FRM sector maintains its competitiveness.

3. The proposed revision aims to create a more harmonised, efficient, uniform and effective legal framework across the Union that can ensure the availability of FRM suitable for future challenges, support the conservation and sustainable use of forest genetic resources, whilst also making sure that the new legislation is coherent with the Plant Health Regulation and harmonises official controls in the FRM sector.
4. The European Economic and Social Committee was consulted and delivered its opinion on 13 December 2023¹. The European Parliament adopted its position at first reading on 24 April 2024².

II. WORK WITHIN THE COUNCIL

5. The Council's discussions at technical level have been ongoing for almost one and a half years. The Commission presented the proposal and its impact assessment³ at an informal videoconference of the members of the Working Party on Genetic Resources and Innovation in Agriculture (hereinafter 'the Working Party') on 6 July 2023, which was followed by a presentation at the meeting of the Agriculture and Fisheries Council on 25 July 2023.
6. The examination of the proposal continued under the Spanish Presidency, which presented a progress report to the Agriculture and Fisheries Council in December 2023⁴. Building on the progress made during the Spanish Presidency, under the Belgian Presidency the entire proposal was examined and a progress report presented to the Agriculture and Fisheries Council in June 2024⁵.
7. Under the Hungarian Presidency, four Working Party meetings have so far taken place. In the latest Presidency text⁶ most of the articles are close to being agreed upon by delegations, subject to minor amendments, and only the proposed redrafted text on official controls remains controversial.

1 5402/24.

2 [Texts adopted - Production and marketing of forest reproductive material - 24 April 2024.](#)

3 11694/23 (the examination of the impact assessment was carried out on the basis of the checklist).

4 16142/23 + COR 1.

5 11145/24.

6 11451/24.

III. MAIN OUTSTANDING ISSUE

8. The harmonisation of the framework for official controls on FRM is an essential part of the Commission proposal. Currently there is significant variation between Member States in terms of the total number and type of official controls as regards FRM. The Commission proposal includes changes to the Official Controls Regulation (OCR) to make it applicable to FRM and to add specific rules on controls of FRM. Under the proposal, the basic rules and principles of official controls would apply to the production and marketing of FRM, including those relating to the powers of authorities, delegation of tasks, and certification. The Commission would be empowered to adopt special rules for official controls on FRM marketing and professional operators, as needed. Risk-based official controls, aligned with the provisions of the OCR, would be introduced using common IT tools for official controls such as the Information Management System for Official Controls (IMSOC), thus simplifying import controls. Risk-based official controls would allow official controls to be carried out in a more focussed and efficient way and it would be possible to report suspected cases of frauds through a secure IT portal. Training activities would be organised to train official inspectors in Member States.
9. The advantages and disadvantages of including the FRM legislation within the scope of Regulation (EU) 2017/625 on official controls have been thoroughly discussed by the Working Party since July 2023. A large number of delegations were initially opposed to this citing the specific nature of official controls in the FRM sector and the need for flexibility in the organisation of official controls. Many delegations also expressed concerns about the potentially greater administrative and financial burden.
10. Successive presidencies have worked tirelessly to address the above concerns while at the same time preserving the objective of harmonising official controls on FRM at EU level. The Belgian Presidency amended the text of the Commission proposal to simplify the provisions on official controls, to increase flexibility for Member States and to take account of the particularities of the FRM sector. The Belgian Presidency introduced in particular, in a new Article 31a, a number of derogations to certain OCR provisions which refer to:
 - Article 6 (Audits),

- Article 11 (Transparency of official controls),
- Article 29(b) point (iv) (Accreditation of delegated bodies), and
- Articles 109 to 114 (Multi-annual national control plans and reports).

In addition, the Presidency proposed a longer transitional period (5 instead of 3 years after the entry into force of the Regulation) to give sufficient time to Member States to adapt to the new system (Article 33).

11. Despite these changes three delegations submitted an alternative proposal during the Working Party on 12 and 13 September 2024⁷. Their proposal would remove any reference to OCR from the FRM Regulation, whilst introducing new articles and chapters on official controls for the sector. Certain delegations and the Commission have expressed the view that this alternative proposal is incomplete and could therefore create legal loopholes and uncertainties. In addition, they indicated that Member States would not be able to use IT tools such as IMSOC (a tool which is widely used by several sectors and ensures a high level of traceability), or to follow training courses. This situation would, in their view, result in obstacles to the movement of FRM in the internal market and increase costs for controls to ensure equivalence between the different systems.
12. In its latest draft text⁸ the Hungarian Presidency proposed additional derogations to the OCR provisions in Article 31a which refer to:
 - Articles 5(1) to (4) (General obligations concerning the competent authorities and the organic control authorities),
 - Articles 9(1) and (2) (General rules on official controls – frequency of official controls),
 - Article 33 point (a) (Obligations of the delegating competent authorities – audits),
 - Articles 34 to 42 (Sampling, analyses, tests and diagnoses, official laboratories),
 - Articles 78 to 85 (Financing of official controls and of other official activities),
 - Articles 92 to 101 (Reference laboratories and reference centres)

The Presidency further developed specific rules on official controls for FRM in a new Article 31c.

⁷ WK 11321/24.

⁸ 14451/24.

All these changes aim to mitigate concerns expressed by delegations on conflicts of interest, training of staff, frequency of controls, record keeping, reporting, audits, delegation of official controls tasks and delegation of powers to the Commission expressed by delegations.

Moreover, the Hungarian Presidency further proposed to postpone the application of the amendments to the OCR Regulation by 2 additional years.

13. The Presidency considers that its latest draft text represents the best achievable balance. It preserves the objectives of the revision of the current Directive while taking account of the main concerns raised by delegations and still establishing a harmonised and transparent official controls framework for FRM across the Union. Nevertheless, delegations remain divided on the issue. While several delegations support the latest Presidency text a number of others continue to oppose the insertion of the FRM sector under the scope of the OCR, reiterating that it would increase the financial and administrative burden for competent authorities.

IV. **CONCLUSION**

In light of the latest state of play at technical level, the Presidency considers that guidance from the Permanent Representatives Committee on the way forward on the official control provisions is necessary.

The Permanent Representatives Committee is invited to discuss the matter on the basis of the following question:

Do you support the approach followed by so far by the Presidency of maintaining FRM under the scope of the OCR while introducing targeted derogations and developing specific provisions for FRM? Can you identify additional derogations/specific provisions that are still required?