



Council of the
European Union

Brussels, 17 December 2015
(OR. en)

15143/15

LIMITE

AGRI 658
AGRILEG 246
PHYTOSAN 61
CODEC 1696

Interinstitutional File:
2013/0141 (COD)

NOTE

From:	General Secretariat of the Council
To:	Coreper
Subject:	Proposal for a Regulation of the European Parliament and of the Council on protective measures against pests of plants - Confirmation of the final compromise text with a view to an agreement

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. On 4 December 2015 Coreper agreed, by qualified majority, on a revised mandate to the Presidency, to prepare for the final steps of negotiations with the European Parliament, with a view to concluding a pre-negotiated second reading agreement.
7. Seven informal trilogues took place in total, on 22 September, 17 and 27 October, 10 and 24 November, 8 and 16 December 2015. A number of technical meetings were also held, to prepare the informal trilogues. The entire proposal has been examined during those seven trilogues.

II. STATE OF PLAY

8. During the last trilogue, a provisional agreement was confirmed with the European Parliament on the entire text. In addition to the issues for which a provisional agreement had already been reached (these are set out in the fourth column of document 15142/15) a provisional agreement could be reached also on the last open issues referred to under point A and point B below.

² Doc.11870/13 and 12254/13

³ Doc. 10108/15 REV2

A. Provisions on implementing/delegated acts (IA/DA)

9. In order to reach an agreement on the whole IA/DA provisions, it was necessary to show some degree of flexibility and to accept a DA procedure on a number of Articles. The exact wording of the text of the proposal will be adjusted accordingly during technical meetings between the three institutions to be held early next year.
10. The full list of IA/DA provisions as resulting from these discussions is presented in the Annex to this note.

1. Listing of pests (Articles 5(2), 6(2), 37(2))

11. The European Parliament had strongly insisted throughout the negotiations to introduce all the three lists of pests (quarantine pests, priority pests, regulated non-quarantine pests), which are the core of the proposal, as Annexes to the text, to be modified through a DA procedure. The provisional agreement reached maintains the Council position for Articles 5(2) and 37(2): the two lists of quarantine pests and regulated non-quarantine pests will first be adopted and subsequently be modified through an IA procedure.
12. In order to reach a deal with the European Parliament it was necessary to accept partially its request on the list of priority pests. The Presidency obtained that this list is not in an Annex to the text, but had to concede that it is first adopted and subsequently modified through a DA procedure.

2. Provisions related to technical elements

13. On the majority of provisions related to more technical elements (32 out of 43) the provisional agreement reflects the Council position (see Annex).
14. On the remaining ones, it was necessary to accept a DA procedure or to accept limited redrafting. In Articles 8(6), 18(5a), 32(4a), 34(1), 44(2), 46(6), 61 (3b), 71(4), 82(4), 84(2), 92(1) a DA procedure is now foreseen. However, in Articles 32 (4a), 82(4), 92(1), the Presidency could obtain that the additional text that the Council had introduced to better frame the delegation of powers is maintained. In Article 91a(2), although the IA procedure could be maintained, in line with the Council position, the Presidency had to accept that a “may” replaces the “shall”.

3. Consultation of (Member States) experts prior to the transmission of delegated acts to the Council and the Parliament

15. In Article 98(1a), the Council position for a closer involvement of Member States experts during the drafting of delegated acts by the Commission has been duly taken into account.
16. It was agreed that the wording of the standard clause (recital 70 and Article 98) will be reviewed in accordance with the text of the Interinstitutional Agreement in force at the time of the adoption of the new Regulation on plant health. It is to be noted that the adoption of the new Interinstitutional Agreement should precede the adoption of the new Regulation on plant health.

B. Reference to the legislation on official controls

17. This is a legal rather than a political matter, but the European Parliament insisted that the co-legislators agree on the principle during trilogues. Considering that the new Regulation on official controls will probably not be in force at the time of the adoption of the Regulation on plant health, and that all references to it would be legally void, it was agreed to revise all these references so that they relate to the legislation on official controls currently in force instead.
18. The legal redrafting of the provisions involved will be carried out by the three institutions at technical meetings early next year, prior to the legal-linguistic review of the text.
19. In that context, it was also agreed to introduce a stand alone definition of competent authority (Article 2(5)), which mirrors the wording which has been provisionally agreed during the negotiations on the proposal on official controls.

III. CONCLUSION

20. In the light of the above, the Coreper is invited to confirm its support on the provisional agreement reached, as set out in this note and in the fourth column of document 15142/15 REV 1+ ADD1.

Table of IA/DA provisions

IA: implementing act	
DA: delegated act	
BA: basic act	

List of IA/DA where the three institutions are in agreement since the beginning

Article	notes	COM	EP	Council	agreement
7(1)	amendment of Annex II - section 1	DA	DA	DA	DA
20	amendment of Annex IV	DA	DA	DA	DA
32(3)	establishment of protected zones	IA	(IA)	IA	IA
38	amendment of Annex II - section 4	DA	(DA)	DA	DA
40 (1),(2)	Introduction of commodities	IA	(IA)	IA	IA
41 (1),(2)	special requirements	IA	(IA)	IA	IA
42(1)	equivalent requirements	IA	(IA)	IA	IA
43(1)	info to travellers	IA	(IA)	IA	IA
44(3)	frontier zones - uniform conditions for movement	IA	(IA)	IA	IA
47	temporary measures	IA	IA	IA	IA
48	amendment Annex III	DA	(DA)	DA	DA
49(1);(2);(4)	introduction into PZ	IA	(IA)	IA	IA
50	special requirements for PZ	IA	(IA)	IA	IA
67(4)	amendment of Annex V	DA	(DA)	DA	DA
68(1)	listing for phytosanitary certificates	IA	(IA)	IA	IA

69	listing for phytosanitary certificates - PZ	IA	(IA)	IA	IA
70(2)	maximum quantities for travellers	IA	(IA)	IA	IA
74	listing for plant passports	IA	(IA)	IA	IA
75	listing for plant passports -PZ	IA	(IA)	IA	IA
76(2)	exception for small quantities	DA	(DA)	DA	DA
78(4)	amendment of Annex VI	DA	(DA)	DA	DA
78 (5)	format of plant passports	IA	(IA)	IA	IA
91(2)	adaptation to ISPM	DA	(DA)	DA	DA
93(1)	elements of attestations	DA	(DA)	DA	DA
93(3)	format of attestations	IA	(IA)	IA	IA
94(4)	amendment of Annex VIII -part A	DA	(DA)	DA	DA
95(5)	amendment of Annex VIII -part B	DA	(DA)	DA	DA
96(5)	amendment of Annex VIII -part C	DA	(DA)	DA	DA
96(6)	issuance of pre-export certificates	IA	(IA)	IA	IA

List of IA/DA on the agenda of trilogues

Provisions where the provisional agreement with Parliament does not reflect Council position are highlighted in yellow					
Article	notes	COM	EP	Council	agreement
1(2)	territorial scope	DA	(BA)	BA	BA
5(2)	listing - QP	IA	DA	IA	IA
6(2)	listing - priority pests	IA	DA	IA	DA
7(2)	amendment of Annex II - section 2	DA	(DA)	BA	BA
8 (6)	Derogations for use of QP	DA	(DA)	IA	DA
11(3)	notification of QP	DA	(DA)	BA	BA
18(5a)	derogations for surveys			IA	DA
21(3)	reports on surveys			IA	IA

22(3)	multiannual survey programs	DA	DA	IA	IA
25(4)	simulation exercises for priority pests	DA	BA	BA	BA
27(1),(2),(6)	QP (measures, eradication/containment, emergency procedure)	IA	DA	IA	IA
29 (1),(2),(6)	pests not listed as QP (measures, eradication/containment, emergency procedure)	IA	(IA)	IA	IA
30	amendment of Annex II - section 3	DA	(DA)	BA	BA
32(4a)	detailed rules for surveys	DA	(DA)	IA	DA
34(1)	detailed rules for surveys in PZ	DA	(DA)	IA	DA
35(2), (4)	link with 32(3)			IA	IA
37(2)	listing - RNQP	IA	DA	IA	IA
37(2a)	measures for RNQP			IA	IA
41a (3),(4)	specific import conditions - high risk			IA	IA
41a (6)	procedure for risk assessment			IA	IA
41b(2)	adapt to ISPM 15			DA	DA
44(2)	frontier zones - definition	DA	(DA)	IA	DA
45(3)	format of declaration for transit	DA	(DA)	BA	BA
45(4)	content of declaration for transit	DA	(DA)	BA	BA
46(6)	use of commodities for exhibitions etc.	DA	(DA)	IA	DA
48a(3)	repeal/amendment of temporary measures by MS			IA	IA
56b(2)	quarantine stations/confinement facilities			IA	IA
59(3)	Release from quarantine stations/ CF (new)			IA	IA
59a(1)	quarantine stations/confinement facilities (deleted)			IA	deleted
61(3a)	further categories/requirements for registration	DA	BA	DA	DA
61 (3b)	maximum figures for small quantities	DA	BA	IA	DA
65 (3a)	accessibility of records			IA	IA
68a	listing for phytosanitary certificates - no 100% checks			IA	IA
71(4)	conditions for phytosanitary certificates	DA	(DA)	IA	DA
72(3)	invalidation of the electronic phytosanitary certificates			IA	IA

76(1)	plant passports requirements for PZ			IA	IA
78(2a)	specify exceptions from traceability codes			IA	IA
78(6)	issuance of electronic plant passports			IA	IA
82(4)	visual examinations	DA	(DA)	IA	DA
84(2)	knowledge of professional operators	DA	(DA)	IA	DA
86(3)	elements of risk management plans	DA	(DA)	BA	BA
91(4)	format specifications of wood packaging mark	IA	(IA)	BA	BA
91a(2)	repairing of wood			IA	IA
92(1)	authorisation of operators for wood marking	DA	(DA)	IA	DA
92(3)	supervision of operators by competent authorities	DA	(DA)	BA	BA
94(5)	format of phytosanitary certificates for export	IA	(IA)	BA	BA
95(6)	format of phytosanitary certificates for re-export	IA	(IA)	BA	BA
97a	rules on notification			IA	IA