



Council of the
European Union

Brussels, 22 November 2023
(OR. en, de, fr)

15528/23

LIMITE

AGRILEG 297
AGRI 721
PHYTOSAN 113
CODEC 2184

Interinstitutional File:
2023/0378(COD)

CONTRIBUTION

From: General Secretariat of the Council

To: Delegations

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/2031 of the European Parliament and of the Council as regards multiannual survey programmes, notifications concerning the presence of regulated non-quarantine pests, temporary derogations from import prohibitions and special import requirements and establishment of procedures for granting them, temporary import requirements for high risk plants, plant products and other objects, the establishment of procedures for the listing of high risk plants, the content of phytosanitary certificates, the use of plant passports and as regards certain reporting requirements for demarcated areas and surveys of pest – comments from AT, BE, BG, CZ, DK, EE, FR, FI, DE, IE, IT, LT, LV, NL, PL, PT, SI and SE

Delegations will find in Annex comments from AT, BE, BG, CZ, DK, EE, FI, FR, DE, IE, IT, LT, LV, NL, PL, PT, SI and SE on the above proposal.

AUSTRIA

Austria would like to thank the Spanish Presidency and the European Commission for the possibility to submit comments concerning the proposal COM(2023) 661 amending Regulation (EU) 2016/2031 (PHR), discussed at the Council Working Party with the COPHS on 7 November 2023.

Generally Austria welcomes and supports the proposal, for example rationalizing the reporting obligations by the establishment of an electronic system for the submission of the reports (even though the existing electronic tools are sufficient at the moment) and extending the frequency of performing the multi-annual survey programmes from 5-7 to 10 years.

Nevertheless there are some comments:

1. Amendments concerning Article 71 (2)

At present time we do not consider this amendment to be proportionate to be implemented for pest which are already present in the EU (RNQP). In particular, the indication of the full wording of the additional declarations for RNQP on the phytosanitary certificate, has the consequence that in the course of import inspections, on the one hand, information on PC must be verified and, on the other hand, the correctness of the RNQP measures have to be checked. It is also noted that it will be impossible to check compliance with the RNQP thresholds in practice during the import control system.

Therefore we consider it absolutely necessary to evaluate the consequences of such far-reaching amendments not only for third countries but also for border control posts in the EU.

We suggest withdrawing this proposed amendment or at least to postpone them to allow more time to adequately examine the implementation and consequences of such far-reaching amendments.

2. Amendments concerning Article 88

We fully support these amendments concerning a possible definition of exceptions for the attachment of the plant passport. It has to be ensured that the trade units must be traceable in the absence of a physical plant passport. When creating exceptions, feasibility by the operators and the competent authorities has to be taken into account.

In addition, we would also be in favour of further exceptions being included in the delegated act with regard to more flexible issuing options for plant passports and specific definition and detailed rules on distant sales.

The convening of an expert group in this regard is also strongly supported.

3. New request for amending Article 94 (“Plant passports replacing phytosanitary certificates”)

After a series of plant passports audit in the MS we consider that there is a need to amend the Article 94 of the Regulation (EU) 2016/2031 concerning issuing of plant passports or certified copies of a PC after the import inspection at BCP. The fact that after an import inspection the consignments are released with a validated CHED-PP, which can be viewed and retrieved by all parties involved (authorities, forwarding companies and importers), makes an additional issue of further documents superfluous. In addition, copies of the PC and/or e-phytos are stored digital in TRACES system, accompany the consignment and may be consulted if needed by national authorities and EU (DG-Sante).

We therefore believe that Article 94 could be adapted accordingly and would strongly support to promote the use of documentation in the digital TRACES system instead of issuing certified copies of PC or plant passports at the BCP.

BELGIUM

Comments from Belgium on the proposal for a Regulation of the European Parliament and of the Council amending the Plant Health Law (Regulation (EU) 2016/2031)

Further to the request for written comments on Document No ST 14398/23 at the Working Party on Plants and Plant Health Questions (Chief Plan Health Officers) of 07 November 2023, Belgium submits the below comments on recitals, suggested amendments of articles and new Member States requests for addition.

General comment from Belgium.

Current marketing directives are still including RNQP listings. Those listings can thus be found in two different legislations, and this could be confusing. This proposal should avoid any legislative incoherences.

Recitals

Item Comments from Belgium

1

2

3

4

5

6

7

Belgium could agree to extend the period from 5 or 7 years to 10 years. This acquiescence depends on a clarification of the related recitals. It should be specified that this amendment seeks to

8 * give the necessary flexibility to Member States in order to enable them to adapt their multiannual survey programs to encountered situations and

* take into account challenges in relation to accessibility of detection techniques and availability of the necessary resources.

9

10

11

Belgium would like to emphasize the importance of consistency with other EU legislation (including those under discussion) related to OCR and PRM (marketing directives).

12 Belgium states that this recital shall be clarified and modified after amending article 1 (7) related to Article 37 (10) of the PHL ("measures " to be taken in case of RNQP).

13

14

Belgium suggests the following correction of the following typographical mistake:

15 “ For purposes of clarity and transparency, the Commission should be empowered to adopt implementing acts providing for such derogations. For reasons of completeness, those acts should also set out the temporary measures ~~f~~ which are necessary to reduce the respective phytosanitary risk to an acceptable level and which allow the appropriate time for the full assessment of all pest risks, which are not yet fully assessed in relation to the particular plants, plant products or other objects. This will allow, once the respective assessment is completed, in accordance with the principles of Section 2 of Annex II to Regulation (EU) 2016/2031, those plants, plant products or other objects to be kept in or removed from the list of commodities in accordance with Article 40(3) or Article 41(3) of Regulation (EU) 2016/2031.”

16

17

18

Belgium suggests modifying the text as follows:

19 “The Commission should be empowered to adopt a delegated act, supplementing this Regulation by setting out procedures to be complied with for the listing of high risk plants, plant products and other objects. That procedure should include all of the following elements: ~~the preparation, content and submission of the respective dossiers by the third countries concerned~~ the preparation of the respective evidence for the assessment; the actions to be taken following the reception of those dossiers; the procedures on the performance of the respective risk assessment; the handling of dossiers concerning confidentiality and data protection. This is necessary because, experience has shown that a specified procedure in respect of listing high risk plants could guarantee transparency and consistency to Member States, third countries and the professional operators concerned.”

20

21

22

23

24

25

26

27

28

29

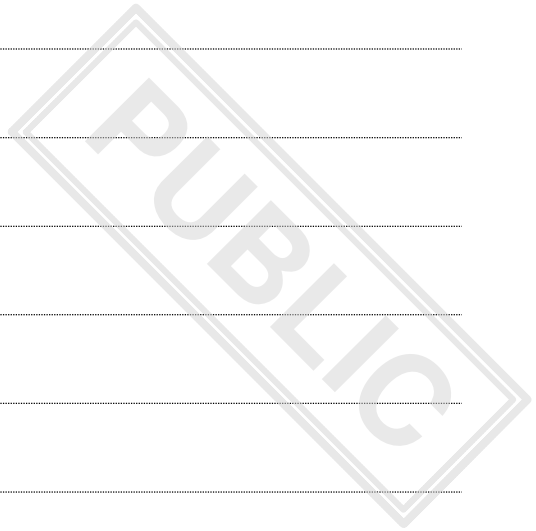
30

31

32

33

34



European Commission suggested amendments of the articles

Item Comments from Belgium

1 Belgium supports this amendment.

Belgium supports the European Commission's willingness to reduce administrative burdens. With that respect, Belgium advocates the use of the following wording:

2 “... Those reports shall include information on the type of locations where the surveys were conducted, ~~the timing of the surveys~~, the pests and the plants, plant products or other objects concerned, the number of inspections and samples taken, and the finding of each pest concerned...”. If article 22(3) is modified, the reporting template in Commission Implementing Regulation (EU) 2020/1231 should also be adjusted.

3 Belgium could agree to extend the period from 5 or 7 years to 10 years. The reason for this prolongation should be better explained in the related recitals.

4 Belgium supports this amendment.

5 /

6 Belgium supports this amendment.

Belgium seeks clarity and consistency on the terminologies/definitions in the different European legislation referring to RNQPs. Belgium specifically wants to draw European Commission attention on cases where RNQPs above thresholds are detected during import controls (namely referring to the ‘introduction’ step) and moved then within the European Union territory (meaning ‘in the EU market’). The OCR is currently not incorporating those ‘Introducing’ and ‘Moving into the EU market’ terminologies and rather uses the word ‘Entering the Union’. Article 66 of the OCR has, for instance, the following title: “*Measures to be taken in cases of non-compliant consignments in cases of non-compliant consignments entering the* 7 *Union*”. As defined in the OCR, ‘entering the Union’ or ‘entry into the Union’ means : “*the action of bringing animals and goods into one of the territories that are listed in Annex I to this Regulation from outside these territories, except in relation to the rules referred to in point (g) of Article 1(2) for which these terms mean the action of bringing goods into the ‘Union territory’ as defined in the second subparagraph of Article 1(3) of Regulation (EU) 2016/2031*”. Belgium highlights thus that this divergence in terminologies also implies different interpretations. It should be clarified if ‘moving into the EU market’ bears the same meaning as ‘entering the Union’.

Belgium suggests the following correction of two typographical errors:

“The Commission is empowered to adopt a delegated act, in accordance with Article 105, supplementing this Regulation by setting out the procedure to conduct the listing of high risk plants, plant products and other objects.

That procedure shall provide for all the following elements:

8

- (a) the preparation of the ~~resepetive~~ **respective** evidence for the assessment of the high risk plants, plant ~~plant~~ products and other objects;*
- (b) the actions to be taken following the reception of that evidence;*
- (c) the procedures of the respective assessment;*
- (d) handling of dossiers concerning confidentiality and data protection.”*

9

/

10 Belgium supports this amendment.

*

Belgium wants to draw the attention to the fact that this new requirement will have a lot of practical implications. For example, if thresholds are different for each class of material (pre-basic, basic, certified), will it become compulsory to mention the class of material on the phytosanitary certificate ? Will all the options for RNQP requirements be available in the PHYTO module of TRACES NT?

11

* Therefore, Belgium insists that this new requirement will have no additional administrative burden for the verification during import controls. Finally, as other Member States have pointed out, it is important to remember that compliance with these requirements should also be verifiable in other ways (during physical checks, random asymptomatic samples if necessary, during audits carried out in the third country by COM...)

* Lastly, although discussions on the FRM and PRM regulations are ongoing, it should be remembered that the directives on the marketing of certified plants and seeds are still in force. It is important to ensure and maintain consistency between such EU legislations PHL -PRM/FRM (current and under discussion) related to terminology and status of (regulated) pest. It is essential both for professional operators and for the Member States, which are responsible in particular for informing the business sector and controlling the EU rules.

* Belgium could accept the empowerment of the European Commission to adopt a derogations list for plants, plant products and other objects. This list should however be thoroughly and deeply discussed at a technical level.

* Belgium understands that those rules can be adopted either in an implementing act or in a delegated act (i.e. a twilight case). However, in this case, the adoption of an implementing act is preferred.

* Belgium does not agree on giving a physical phytosanitary passport exemption based on the speed of plants, plant products or other objects trade.

12

* Belgium fully supports the comment made by Hungary on the necessity to always be able to trace plants, plant products and other objects. The key principle of traceability (included in both PHL and OCR) between goods (plants) and the documentation/electronic systems is thus primordial and should be included in this amendment.

* Since physical attachment will not be the unique possible attachment available, then Belgium is emphasizing the need to develop alternative methods which in case of 'new' harmful pests detection will enable rapid and proper identification and traceability of plants, plant products and other objects.

13 /

14 Belgium supports this amendment.

15 /

New Member States suggested amendments

Item Comments from Belgium

1 Belgium finds the discussion with respect to the settlement of exceptions in case of emergency situations interesting and useful but cannot further express its views on this topic without reading the full proposal of Portugal.

2 Belgium fully supports the principle of the establishment of an 'emergency team' and is looking forward to the legislative proposal. It should further be analyzed what the impact is under the 'Global COM budget' Co-financing system.

BULGARIA**Written comments from Bulgaria on a Proposal for amending Regulation 2016/2031**

2023/0378 (COD); COM(2023)661

Further to the request for written comments on proposal for amending the Regulation 2016/2031 at the working party on Plants and Plant Health Questions (Chief Plant Health Officers) of 07

November 2023, Bulgaria submits the following comments:

Bulgaria appreciate the Commission for preparing the document and is positively disposed to the amendment proposed in the text. Supports in general the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/2031.

Bulgaria fully supports and appreciate including in the proposal of the establishment an emergency teams, also the measures supporting the official activities in case of emergence phytosanitary issues.

Rationalization of the reporting obligation

Article 18(6) concerning reporting of demarcation zones.

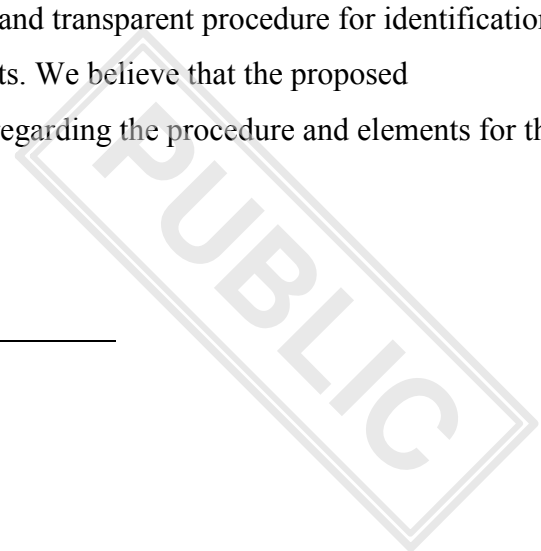
We support the Commission's initiative regarding the replacing of the annual reporting of the number and location of established demarcation zones.

Article 23 concerning multiannual surveys programs.

Regarding extending the duration of multiannual programs from 5-7 to 10 years, for us in the text is not clearly pointed how in practice that provision should be applied, implementing the programmes and rules for reporting, taking into consideration the dynamics in the trade matters and changes in the climate that affect the development of pests.

Regarding the empowering the Commission to adopt new acts, Bulgaria in general supports the Commission's initiative to improve legal certainty and clarity for competent authorities and professional operators, both in the EU and in third countries, and we hope that the adoption of new acts should not burden the already not light plant health legislation.

We support the Commission's initiative regarding clear and transparent procedure for identification, listing and delisting of high-risk plants and plant products. We believe that the proposed amendment would bring more transparency and clarity regarding the procedure and elements for the evaluation of high-risk plants and plant products.



CZECH REPUBLIC



Central Institute for Supervising
and Testing in Agriculture
ISO 9001 certified

Plant Health

Rue Belliard, 232

BE-1049 Bruxelles



SANTE-G1-PLANT-HEALTH@ec.europa.eu

Unit: Section of seed, planting material and plant health Ref. Number:

Handled by: Our Ref.: UKZUZ 196956/2023

E-mail:

Telephone:

Address: Date: 15th November 2023

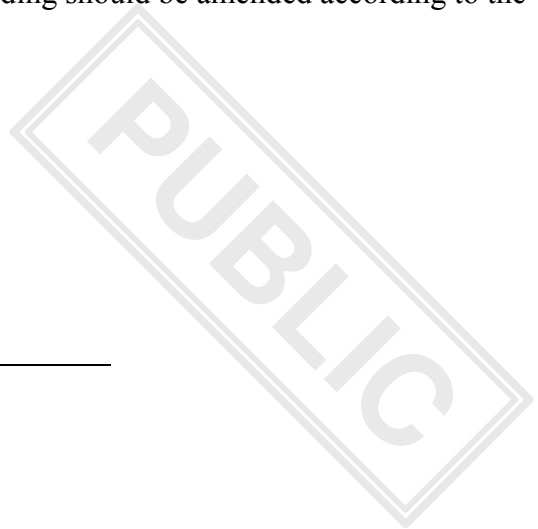
Dear colleagues,

We would like to inform you that our comments concerning the proposal for a Regulation amending Regulation (EU) 2016/2031 (PHR) are as follows:

1. **We suggest replacing the obligation to issue a verified copy of a phytosanitary certificate (PC) at the border control post (BPC) mentioned in the Art. 94 (2) PHR with the use of a CHED-PP document or adding another option (the use of a CHED-PP document) to Art. 94 PHR.** There is also the possibility to replace a phytosanitary certificate by a plant passport (paragraph 1 of this article). However, it is not realistic for the importer to issue a plant passport immediately after finalisation of the import phytosanitary inspection (the importer is not present at the BPC; the delivery of the commodity is often performed by a transport company, etc.). It seems to be more convenient to provide the commodity with a CHED-PP document that identifies the commodity and includes the result of the import phytosanitary inspection (including e.g., sampling). A CHED-PP document is a record from the IMSOC (TRACES NT). We think that providing the commodity with a CHED-PP document is faster and less expensive than creating certified copies of original phytosanitary certificates.
2. **We would like to add another requirement concerning the elements that should be included in the application for registration in Art. 66 (2) PHR. The element is “a statement concerning the intention of the professional operator to operate an e-shop”.**
3. **We support the proposal of Portugal concerning the empowerment of competent authorities to act in emergency situations in the field of plant health.**
4. **Page 16, paragraph 8 of the proposal:**
 - We suggest rewording the second sentence as follows: "*As experience has shown, Member States need to design and develop those programmes for a longer period to be able to implement them properly.*" The original wording refers to the time needed for preparation rather than the time for implementation. The third sentence should then be amended accordingly.
 - **The last sentence:**
 - a) Does it mean that the Member States which have already prepared their programmes with termination before 2029 (e.g. in 2027) will have to adapt and resubmit them?
 - b) We do not consider it suitable to terminate the 10-year period by 14 December, it should cover the whole calendar year.

Page 21, paragraph 2 of the proposal: The wording should be amended according to the above proposed change.

Thank you very much for considering our comments.



DENMARK



**Ministry of Food, Agriculture
and Fisheries of Denmark**
Danish Agricultural Agency

The Spanish Presidency to the EU

23-405-000018

REF. HENDLA/JSH/BRL

November 15 2023

Initial remarks re. proposal for amendments to the plant health regulation. COM (2023) 661 Final

Dear Colleagues,

As requested at the recent COPHS -meeting on the 7th of November 2023 please find here some initial remarks and observations from Denmark on the proposal presented by the Commission (COM (2023) 661 Final).

All in all, we recognize the majority of the specific proposals for amendments from former discussions and preliminary conclusions drawn from a number of previous COPHS -meeting. One can draw a direct line to the elements (ii); (iii); (iv); (v); (vi) and (viii) described in the explanatory memorandum part to the proposal. The remaining four elements ((i); (vii); (ix) and (x)) seems to be additional, valid clarifications, alignments and rationalisations. Some additional elements were also discussed in COPHS earlier but are not included in the present proposal. They relate to elements regarding the plant passport regime and we acknowledge the need for further reflections. We realise that it is too early to reflect in the proposal the question whether or not the rules on plant passports for the movement of plants traded by means of sales through distance contracts needs amendments. However, we find the subject important and propose that further discussions on this is facilitated in a working group setting as soon as possible and that a consistent stance on this preferably is agreed following those discussions and following the conclusions to be drawn from the current series of plant passport audits in Member States.

Denmark needs to analyse further the whole set of specific proposals for amendments, including the choice of empowerments to The Commission to adopt delegated or implementing acts. However, please note our general support to the fact that amendments to the plant health regulation are needed and our acknowledgement of the chosen elements to be amended.

We look forward to the upcoming discussions and further cooperation on the proposal. We also welcome additional text on the two elements discussed at the 7th of November meeting, that is the possible establishment of an “emergency” team and possible derogations from the rules for tender at outbreaks. That said, it is important not to introduce several new elements to the draft regulation, if the intention is a fast approval of the regulation.

Yours sincerely,

ESTONIA

Estonia supports the proposals presented by the Commission for amending Regulation 2016/2031.

Additionally, we endorse the proposal made at the meeting of Chief Plant Health Officers, on November 7, 2023, to create an expert team that would advise on outbreaks of quarantine plant pests.

During the same meeting colleagues from Finland, Germany, Slovenia, and Denmark highlighted the need for a clearer interpretation of sales through distance contracts. We also recognize the necessity to bring clarity in this regard, ensuring a unified approach for Member States to implement.

Best Regards

Deputy Director General

Agriculture and Food Board

FINLAND

Generally we have positive approach to this Regulation and this proposal aims to clarity and transparency and streamlining of regulation 2016/2013. However, we have some detailed comments on certain points.

Article 37 and notification of non-compliances concerning RNQP's in EU:

Article 66 of (EU) 2017/625 concerns measures to be taken in cases of non-compliant consignments entering the Union. Is the intention to apply these measures also to goods moving within the EU? To our understanding the principle regarding RNQPs has been that it is the responsibility of the operators to ensure that the consignments moving within EU are in compliance with the RNQP requirements - and therefore to decide on the measures taken to ensure compliance (without Competent Authority ordering specific measures).

Article 88 concerning plant passport and derogation from the physical attachment of plant passport:

We would like to propose the following modification: “due to their size, shape, *way of packaging* or speed of their trade” to take into account cases where few individual plants of several different plant species are collected into one box for further delivery. In these kind of cases, the packing or transporting unit can't be considered as a trade unit. To be noted that it is very difficult in practice to attach the plant passport to every trade unit. It would be more practical if plant passports could be in accompanying documents, which would help keeping records also. We do not see very useful to have derogations from the obligation to attach the plant passports to the trade unit - instead there should be a general rule for all and possibility to have plant passports in accompanying documents (invoices, delivery notes) whenever this is appropriate.

We regret that amendments concerning distant sales are not included in the proposal. Controls should be risk based and thus we do not see benefits of requirements of plant passports in distant sales to final consumer. We would welcome the definition of distant sales. As proposed in a Working Group of Plant Passports, the local distant sales within MS and long distant sales to other Member States could be separated - so that plant passports to final consumers would be required in long distance sales. To harmonize the practices between MS and to solve part of the problems related to use and attachment of plant passports, the possibility to use multispecies plant passports should be clearly stated in the regulation.

FRANCE



Paris, le 15 novembre 2023

NOTE DES AUTORITÉS FRANÇAISES

À LA COMMISSION EUROPÉENNE

DG SANTE

Unité G1 - SANTE-G1-plant-health@ec.europa.eu

ET À LA PRÉSIDENTE DU CONSEIL DE L'UNION EUROPÉENNE

Secrétariat général du Conseil

Objet : Note des autorités françaises sur la proposition de Règlement du Parlement européen et du Conseil de la Commission modifiant le Règlement (UE) 2016/2031 relatif à la santé des végétaux

Les autorités françaises remercient la Commission européenne pour la présentation lors de la réunion des COPHS du 7 novembre 2023 de la « Proposition de RÈGLEMENT DU PARLEMENT EUROPÉEN ET DU CONSEIL de la Commission modifiant le règlement (UE) 2016/2031 du Parlement européen et du Conseil relatif à la santé des végétaux en ce qui concerne les programmes de prospection pluriannuels, les notifications concernant la présence d'organismes réglementés non de quarantaine, les dérogations temporaires aux interdictions d'importation et aux exigences particulières à l'importation et l'établissement de procédures pour leur octroi, les exigences temporaires à l'importation pour les végétaux, produits végétaux et autres objets à haut risque, l'établissement de procédures d'inscription sur la liste des végétaux à haut risque, le contenu des

certificats phytosanitaires et l'utilisation des passeports phytosanitaires, et en ce qui concerne certaines obligations d'information relatives aux zones délimitées et aux prospections sur la présence d'organismes nuisibles », document ST 14398/23 du 19 octobre 2023.

Cette présentation a été suivie d'échanges entre la Commission et les États membres (EM) qui ont été invités à transmettre leurs commentaires pour le 15 novembre 2023. Dans ce cadre, les autorités françaises ont l'honneur de transmettre à la Commission et à la Présidence du Conseil de l'Union européenne (UE) leurs commentaires sur les amendements proposés au règlement relatif à la santé des végétaux (RSV).

De façon générale, les autorités françaises accueillent positivement la proposition de la Commission, qui prend en compte les propositions d'amendements législatifs identifiées lors des trois réunions des COPHS qui se sont tenues lors du premier semestre 2022 sous Présidence française du Conseil de l'UE, dans le cadre de la discussion des rapports de la Commission au Parlement européen et au Conseil sur l'application et l'efficacité des mesures phytosanitaires relatives aux importations, ainsi que sur l'expérience tirée, par les opérateurs, de l'extension du système de passeport phytosanitaire (PP) à tous les végétaux destinés à la plantation, publiés le 13 décembre 2021.

Les autorités françaises souhaitent cependant formuler des commentaires sur trois des quinze amendements proposés par la Commission.

Article 23, paragraphe 1, troisième alinéa : Réduction de la fréquence de 5-7 ans à 10 ans pour les programmes de prospection pluriannuels

Les autorités françaises comprennent les difficultés des EM qui ne sont pas en capacité de respecter leurs obligations en matière de prospections sur les organismes de quarantaine de l'Union (OQ) et sur les organismes nuisibles (ON) provisoirement considérés comme des OQ (article 22 du RSV). Elles craignent cependant que la programmation pluriannuelle des prospections (article 23 du RSV) ne soit encore plus compliquée à mettre en œuvre sur 10 ans que sur 5 à 7 ans, ne serait-ce que par suite de l'évolution permanente de la situation internationale et de la réglementation de l'UE.

D'un autre côté, les autorités françaises considèrent que pour réduire la charge pour les EM des prospections menées sur les OQ, il n'est pas envisageable de déréglementer des ON qui répondent toujours aux conditions pour être listés comme OQ, car il est indispensable de maintenir le niveau de protection de l'UE. Cependant, il convient que lors des réunions des Groupes de travail de la Commission sur la révision des annexes du Règlement d'exécution 2019/2072 et du Comité permanent des végétaux, des animaux, des denrées alimentaires et de l'alimentation animale (CPVADAAA), section santé des végétaux, nous soyons collectivement très vigilants afin de ne pas réglementer, ou de ne pas maintenir réglementés comme OQ, des ON qui, d'après notre appréciation du risque en tant que gestionnaires, n'auraient potentiellement pas, ou n'ont pas, une incidence économique, sociale et/ou environnementale inacceptable (critère de l'annexe I, section 1, point 4 du RSV). En effet, les catégorisations de l'EFSA ne semblent souvent pas suffisamment informatives en ce qui concerne l'impact des ON, à la différence des évaluations du risque phytosanitaire de l'EFSA qui sont cependant trop lourdes pour être menées sur tous les ON. Une meilleure prise en compte du critère de l'impact potentiel ou réel des ON devrait permettre d'éviter d'allonger indéfiniment la liste des OQ voire même de la réduire.

En ce qui concerne les prospections, les autorités françaises suggèrent comme piste pour réduire la charge de travail des EM d'alléger l'intensité d'échantillonnage des prospections menées dans le cadre des programmes pluriannuels d'un EM pour les OQ qui tout à la fois ne sont pas présents sur le territoire de l'Union, ne font pas l'objet d'interceptions et ne sont pas susceptibles de se disséminer naturellement à partir d'un pays tiers voisin de l'EM. En effet, pour de tels OQ les risques d'introduction sur le territoire de l'Union sont faibles grâce aux mesures phytosanitaires à l'importation de l'UE qui peuvent être considérées comme efficaces (pas d'interceptions). Par conséquent, il semble que des prospections plus légères pour ces OQ permettraient aux EM de mener une surveillance du territoire de l'Union mieux basée sur le risque, et donc plus efficace et rationalisée, ce qui permettrait d'assurer à un moindre coût du maintien du statut indemne de l'UE et donc de pouvoir continuer à justifier le maintien de nos exigences phytosanitaires à l'importation.

Les autorités françaises suggèrent de discuter cette proposition en réunion des COPHS et, si elle recevait un accueil favorable de la Commission et des EM, d'envisager de mandater l'EFSA pour le passage en revue de la liste des OQ afin de déterminer ceux pour lesquels des prospections allégées sont envisageables au vu notamment des trois critères listés ci-dessus. Il suffirait pour chaque OQ d'une simple réponse oui/non (ON susceptible ou non de bénéficier ou pas de prospections allégées, de la même façon que certains couples produits/pays bénéficient d'une fréquence réduite de contrôles à l'importation), et non pas de hiérarchiser la liste des OQ en quantifiant leur risque d'introduction ce qui serait beaucoup trop lourd et difficile. Bien entendu, en cas d'évolution de la situation pour un ON, cette liste serait susceptible d'évoluer.

En conclusion, les autorités françaises considèrent que des prospections non allégées, et *a fortiori* des prospections basées sur des statistiques, ne sont justifiées que pour les OQ présentant des risques élevés d'introduction ou de foyers, et qu'en revanche des prospections allégées devraient être prévues pour les OQ pour lesquels les risques d'introduction sont faibles.

Article 37, nouveau paragraphe 10 : Nouvelles mesures prévues en cas d'introduction ou de déplacement sur le territoire de l'Union d'organismes réglementés non de quarantaine sur des végétaux propices à leur dissémination

Les nouvelles dispositions prévoient que lorsque des végétaux destinés à la plantation introduits ou déplacés sur le territoire de l'Union ne respectent pas le seuil de tolérance pour des organismes réglementés non de quarantaine (ORNQ), les EM adoptent les mesures nécessaires, conformément à l'article 66, paragraphe 3, du règlement (UE) 2017/625 relatif aux contrôles officiels (RCO).

Les autorités françaises font cependant remarquer que l'article 66 du RCO traite des « mesures à prendre lorsque des envois non conformes entrent dans l'Union » et donc théoriquement uniquement des importations, même si les autorités françaises comprennent bien que des mesures miroirs doivent s'appliquer pour la circulation dans l'Union.

Elles notent en outre que les mesures prévues au paragraphe 3 de l'article 66 du RCO sont les suivantes :

- a) destruction de l'envoi ou du lot, mesure qui peut être jugée disproportionnée en cas de dépassement du seuil de tolérance pour un ORNQ,
- b) réexpédition de l'envoi ou du lot à l'extérieur de l'Union, mesure non applicable pour un envoi ou un lot en circulation dans l'UE,
- c) soumission de l'envoi ou du lot à un traitement spécial ou à tout autre mesure nécessaire pour assurer le respect des exigences en matière de mesures de protection contre les ON, et, s'il y a lieu, destination de l'envoi ou du lot à des fins autres que celles initialement prévues.

En ce qui concerne les mesures visées au point c), les autorités françaises souhaiteraient s'assurer qu'elles peuvent couvrir les mesures fréquemment utilisées pour les ORNQ, et notamment par exemple :

- le tri des végétaux pour éliminer de l'envoi ou du lot uniquement les végétaux pour lesquels le seuil de tolérance de l'ORNQ est dépassé ;
- le changement d'usage prévu des végétaux, celui-ci pouvant constituer une mesure suffisante, alors que dans le point c) il est introduit par un « et » faisant suite à une autre mesure, et non par un « ou » qui permettrait de le considérer comme une possible mesure individuelle, suffisante à elle seule.

En conclusion, les autorités françaises craignent que les mesures de l'article 66, paragraphe 3, du RCO ne visent que la protection du territoire de l'Union à l'importation contre des OQ et ne soient par conséquent disproportionnées pour des ORNQ pour lesquels des mesures moins contraignantes peuvent être envisagées. Elles remercient par conséquent la Commission de bien vouloir expertiser, comme elle l'a proposé en réaction aux commentaires des EM exprimés lors de la réunion des COPHS du 7 novembre 2023, les conséquences respectives du maintien ou du retrait de la référence à l'article 66, paragraphe 3, du RCO dans l'article 37, nouveau paragraphe 10, du RSV.

Nouvel article 42bis : Dérogations temporaires aux interdictions prévues aux articles 40 et 42 et aux exigences visées à l'article 41

Les autorités françaises souhaitent faire part de deux commentaires rédactionnels dans cet article :

- au paragraphe 2, point b), par souci de clarté et pour assurer la cohérence avec le point a), elles suggèrent de remplacer « d'une ou de plusieurs de ces mesures » par « des mesures nécessaires », et
- au paragraphe 4, par souci de clarté et pour assurer la cohérence avec le paragraphe 2, elles suggèrent de remplacer dans la version anglaise « *if both of the following is fulfilled* » par « *if both of the following conditions are fulfilled* ».

COURTESY TRANSLATION

Objet : Note of the French authorities on the Commission's proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/2031 on plant health

The French authorities thank the European Commission for the presentation at the COPHS meeting of 7 November 2023 of Commission's « Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending the Plant Health Regulation (EU) 2016/2031 of the European Parliament and of the Council as regards multiannual survey programmes, notifications concerning the presence of regulated non-quarantine pests, temporary derogations from import prohibitions and special import requirements and establishment of procedures for granting them, temporary import requirements for high risk plants, plant products and other objects, the establishment of procedures for the listing of high risk plants, the content of phytosanitary certificates, the use of plant passports and as regards certain reporting requirements for demarcated areas and surveys of pests », document ST 14398/23 of 19 October 2023.

This presentation was followed by discussions between the Commission and the Member States (MS), which were invited to submit their comments by 15 November 2023. In this context, the French authorities have the honour of sending the Commission and the Presidency of the Council of the European Union (EU) their comments on the proposed amendments to the Plant Health Regulation (PHR).

In general, the French authorities welcome the Commission's proposal, which takes account of the proposals for legislative amendments identified at the three COPHS meetings held during the first half of 2022 under the French Presidency of the EU Council, as part of the discussion on the Commission's reports to the European Parliament and the Council on the enforcement and effectiveness of the import measures, and the experience gained by operators from the extension of the plant passport (PP) to all plants for planting, published on 13 December 2021.

However, the French authorities wish to comment on three of the fifteen amendments proposed by the Commission.

Article 23, paragraph 1, third subparagraph: Reduction of the frequency from 5-7 years to 10 years for the multiannual survey programmes

The French authorities understand the difficulties faced by the MS that are unable to meet their obligations with regards to surveys on Union quarantine pests (QPs) and pests provisionally qualifying as QPs (Article 22 of the PHR). However, they fear the multiannual programming of surveys (Article 23 of PHR) will be even more complicated to implement over 10 years than over 5 to 7 years, if only because of the constantly changing international situation and EU legislation.

On the other hand, the French authorities consider that in order to reduce the burden on MS of surveys carried out on QPs, it is not conceivable to deregulate QPs that still fulfil the conditions for being listed as QPs, as it is essential to maintain the EU's level of protection. However, at the meetings of the Commission's Working Groups on the revision of the Annexes of Implementing Regulation (EU) 2019/2072 and of the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF), we need to be very vigilant collectively not to regulate, or not to keep regulated as QPs, pests that, based on our assessment of risk as managers, would not or do not have an unacceptable economic, social and/or environmental impact (criterion of Annex I, Section 1, point 4 of the PHR). Indeed, EFSA's pest categorizations often do not seem sufficiently informative as regards the impact of pests, unlike EFSA's pest risk assessments that are however too cumbersome to be conducted on all pests. Better consideration of the criterion of the potential or actual impact of pests should make it possible to avoid indefinitely extending the list of QPs, or even to reduce it.

As regards surveys, in order to decrease the workload of MS, the French authorities suggest lowering the sampling intensity of surveys carried out under the multiannual programmes of an MS for QPs which, at the same time, are not present on the Union territory, are not subject to interceptions and are not likely to spread naturally from a third country neighbouring the MS. Indeed, for such QPs the risks of introduction into the Union territory are low thanks to the EU phytosanitary import measures that can be considered effective (no interceptions). Therefore, it appears that lighter surveys for these QPs would allow the MS to carry out surveillance of the Union territory that is more risk-based, and therefore more efficient and streamlined. This would make it possible to maintain the EU free status at a lower cost and therefore be able to continue to justify maintaining our phytosanitary import measures.

The French authorities suggest that this proposal be discussed at the COPHS meeting and, if welcomed by the Commission and the MS, consider mandating EFSA to review the list of QPs in order to determine those for which light surveys are possible in light of the three criteria listed above. It would suffice for each QP with a simple yes/no answer (pest may or may not benefit from light surveys, in the same way that some product/country pairs benefit from a reduced frequency of import controls), and not to rank the list of QPs by quantifying their risk of introduction which would be far too heavy and difficult. Of course, if the situation changes for a pest, this list would be subject to change.

In conclusion, the French authorities consider that non-light surveys, and a fortiori surveys based on statistics, are justified only for QPs presenting high risks of introduction or outbreaks, and that, on the other hand, light surveys should be provided for QPs for which the risks of introduction are low.

Article 37, new paragraph 10: New measures in the event of the introduction into, or movement within, the Union territory of regulated non-quarantine pests on plants suitable for their spread

The new provisions provide that where plants for planting introduced into, or moved within, the Union territory do not comply with the tolerance threshold for regulated non-quarantine pests (RNQPs), MS shall adopt the necessary measures, as referred to in Article 66(3) of Regulation (EU) 2017/625 on official controls (OCR).

However, the French authorities point out that Article 66 of the RCO deals with "measures to be taken in cases of non-compliant consignments entering the Union" and therefore theoretically only with imports, even though the French authorities clearly understand that mirror measures must apply for movement within the Union.

They further note that the measures provided for in Article 66(3) of the OCR are as follows:

- a) destruction of the consignment or lot, measure which may be considered disproportionate if the tolerance threshold for an RNQP is exceeded,
- (b) re-dispatching of the consignment or lot outside the Union, measure which is not applicable for a consignment or lot in movement within the EU,
- (c) submission of the consignment or lot to special treatment or to any other measure necessary to ensure compliance with the rules on measures to protect plants against pests, and, where appropriate, allocation of the consignment or lot for purposes other than those for which it was originally intended.

With regard to the measures referred to in point c), the French authorities would like to ensure that they can cover the measures frequently used for RNQPs, in particular:

- sorting plants to eliminate from the consignment or lot only plants for which the tolerance threshold for the RNQP is exceeded;
- the change in intended use of the plants, which may constitute a sufficient measure, whereas in point (c) it is introduced by a “and” following another measure, and not by a “or” which would allow it to be considered as a possible standalone measure, sufficient on its own.

In conclusion, the French authorities fear that the measures in Article 66(3) of the RCO only concern the protection of the Union territory on importation against QPs and are therefore disproportionate for RNQPs for which less restrictive measures may be envisaged. They therefore thank the Commission for kindly appraising, as it proposed in response to the comments from MS expressed at the COPHS meeting of 7 November 2023, the respective consequences of maintaining or removing the reference to Article 66(3) of the RCO in Article 37, new paragraph 10, of the PHR.

New Article 42a: Temporary derogations from the prohibitions provided for in Articles 40 and 42, and from the requirements referred to in Article 41

The French authorities wish to make two editorial comments in this article:

- in paragraph 2, point (b), for clarity and to ensure consistency with point (a), they suggest replacing “one or more of these measures” with “necessary measures”, and
 - in paragraph 4, for clarity and to ensure consistency with paragraph 2, they suggest replacing in the English version "if both of the following is fulfilled" with "if both of the following conditions are fulfilled".
-

GERMANY

Kommentare Deutschlands zu dem Kommissionsentwurf für eine Verordnung des Europäischen Parlaments und des Rates zur Änderung der Pflanzengesundheitsverordnung (EU) 2016/2031

Nachfolgend erhalten Sie in Ergänzung zu den mündlichen Ausführungen im Rahmen der Sitzung der Working Party on Plants and Plant Health (Chief Plant Health Officers) am 7. November 2023 Kommentare Deutschlands zu den vorgeschlagenen Änderungen der Artikel, zu den angekündigten weiteren Vorschlägen Portugals und Spanien sowie zu weiteren Vorschlägen Deutschlands, die sich aus der Evaluierung gemäß Artikel 79(6) sowie eine jüngsten Auditbericht ergeben haben.

Je nach Umsetzung der Änderungswünsche in den Artikel bedarf es auch einer Anpassung der Erwägungsgründe auf deren Vorschlag hier verzichtet wurde.

I Generelle Anmerkung

Aufgrund der laufenden internen Abstimmung innerhalb Deutschlands hält Deutschland seinen Prüfvorbehalt weiterhin aufrecht und behält sich vor nach Abschluss der internen Konsultationen weitere Kommentare abzugeben. Grundsätzlich steht Deutschland den Vorschlägen der EU-Kommission positiv gegenüber.

II Kommentare zu den Vorschlägen der EU-Kommission zur Änderung/Ergänzung der Artikel der Verordnung (EU) 2016/2031

1. Zustimmung
2. Zustimmung

3. Artikel 23: Deutschland unterstützt im Grundsatz die Ausweitung des Zeitraumes für Mehrjahresprogramme auf 10 Jahre. Es ist zu bevorzugen, dass sich der Berichtszeitraum auf ein volles Kalenderjahr bezieht (wie z.B. bei Kartoffelerhebungen), um eine generelle Harmonisierung zu erreichen. Zudem ist sicherzustellen, dass die Änderung auf den Zehnjahreszeitraum keine Änderung der bereits erarbeiteten 5- bzw. 7-Jahrespläne bedingt.

Darüber hinaus steht weiterhin im Raum, dass die Zahl der zu erhebenden Schadorganismen seit Anwendung der Verordnung (EU) 2016/2031 stetig steigt und weiter steigen wird. Der zeitliche Vorteil, den die Ausweitung auf 10 Jahre bringt dürfte relativ gesehen sehr schnell aufgebraucht sein. Deutschland bittet unabhängig von der aktuellen Änderung der Verordnung (EU) 2016/2031 die Diskussion weiter zu führen ob und wie die Anzahl der Schadorganismen in den Erhebungen reduziert werden kann bzw. wie die Erhebungen rationaler gestaltet werden können.

4. Zustimmung

5. Zustimmung

6. Zustimmung

7. Zustimmung

8. Zustimmung

9. Artikel 42a: Es wird davon ausgegangen, dass die Berichte der Drittländer an die EU-Kommission gehen und durch diese ausgewertet werden. Es ist unklar nach welchen Bewertungskriterien das „betreffende Risiko“ bewertet wird. Wird die Analyse durch EFSA erfolgen, gefolgt von einer Diskussion im SCoPAFF Sektion Pflanzengesundheit? Die Auswertung und Diskussion der Berichte führt zu höherem bürokratischen Aufwand, der an anderer Stelle reduziert werden soll.

10. Zustimmung

11. Artikel 71(2): Im ISPM 12 ist festgelegt, dass bei Vorlage mehrerer Optionen in den phytosanitären Einfuhrvorschriften, diejenige in den zusätzlichen Erklärungen aufzuführen ist, von der Gebrauch gemacht wurde. Im Kapitel II des ISPM 12 steht allerdings auch, dass „Additional declarations should be kept to a minimum [...]“. Der aktuelle Vorschlag, die Angabe im Feld zusätzliche Erklärungen im vollständigen Wortlaut auch für RNQPs durch das Drittland im Pflanzengesundheitszeugnis angeben zu müssen, führt bei der Importkontrolle ebenfalls zu Mehraufwand, da die Richtigkeit der Angaben geprüft werden muss. Zudem werden die Pflanzengesundheitszeugnisse dadurch immer umfangreichen und letztendlich unübersichtlicher. Deutschland schlägt daher vor, dass die Aufnahme weiterer zusätzlicher Erklärungen erst dann vorgenommen wird, wenn eine vollautomatische Dokumentenprüfung in TRACES möglich ist, damit der Aufwand der Dokumentenprüfung reduziert werden kann.

12. Artikel 88: Deutschland schlägt vor, anstatt einer Delegierten Verordnung eine Durchführungsverordnung vorzusehen. Das Kriterium „Geschwindigkeit des Handels“ als Bewertung ob ein Pflanzenpass physisch an der Ware angebracht werden soll, wird von Deutschland kritisch gesehen, solange es keine objektive Bewertung zu diesem Kriterium gibt. Da die Warenströme immer schneller werden, wird befürchtet, dass die Wirtschaft in erheblichem Umfang von dieser Ausnahme Gebrauch machen möchte. Ohne objektive Kriterien besteht die Gefahr, dass es zu nicht harmonisierten Ausnahmen in den Mitgliedstaaten kommen wird.

13. Zustimmung

14. Zustimmung

15. Zustimmung

III Kommentare zu den zusätzlichen Vorschlägen Portugals und Spaniens

Portugal: Ausnahme vom Vergaberecht

Deutschland unterstützt die Diskussion aus fachlicher Sicht in Zusammenhang mit Ausnahmen von Regelungen der Vergabeanforderungen in Notfallsituationen, um zügig Ausrottungsmaßnahmen einleiten zu können. Ohne Vorlage des konkreten Vorschlags und in Ermangelung detaillierter Kenntnisse des Vergaberechts kann Deutschland zum gegenwärtigen Zeitpunkt jedoch keine weitere Stellung nehmen.

Spanien; Notfallteam

Deutschland unterstützt den Ansatz ein Notfallteam bzw. ein Konzept zur Einrichtung eines Notfallteams zu erarbeiten abhängig von der endgültigen Formulierung des Vorschlags. Deutschland unterstützt den Kommentar Belgiens zu klären, wie sich ein derart zusätzlich von der EU-Kommission zu finanzierendes Notfallteam auf den Gesamtrahmen der Ko-Finanzierung auswirkt.

IV Vorschläge Deutschlands, die zwar Bestandteil der unter französischer Ratspräsidentschaft zusammengefassten Ergebnisse der Analyse gemäß 79(6) (WK 9433/2022 INIT) der Verordnung (EU) 2016/2031 waren, aber in dem aktuellen Kommissionsvorschlag keine Berücksichtigung gefunden haben.

a) Deutschland bittet um Ergänzung des Art. 81 (1) a), so dass analog zur physischen Abgabe der Pflanzen und Pflanzenprodukte auch im Fernabsatz kein Pflanzenpass bis zum Endverbraucher nötig ist. Deutschland unterstützt den Vorschlag der Niederlande, eine Ermächtigung zum Erlass einer entsprechenden Durchführungsverordnung zu erlassen, sollte eine unmittelbare Änderung des zitierten Artikels nicht möglich sein.

b) Im Rahmen des Importaudits im Jahre 2021 wurde Deutschland u.a. folgende Empfehlung gegeben (Ares(2023)2246856 - 28/03/2023): „Ensure that interceptions made by Postal Services and those related to passengers’ luggage are notified through TRACES in accordance with Article 40(4) and 41(4) of Regulation (EU) 2016/2031.“ Deutschland hat dazu folgende Rückmeldung gegeben: “In Germany, parcels and passengers’ luggage are regularly extensively checked in accordance with the provisions of EU law. This leads to a very large number of interceptions. For example, in 2020, 117,070 parcels were rejected in Hessen alone by Customs and/or the Postal Services due to missing phytosanitary certificates. So far, no technical solution involving an acceptable administrative effort has been found for reporting such a number of interceptions, especially as the data of the passengers and parcel addressees cannot be recorded for data protection reasons and no entry can be made in TRACES without such data. The plan is to report the interceptions of parcels and passengers’ luggage in future in summarised format in a table and thus provide the required information. A corresponding report format is currently being agreed with the competent authorities and the Customs authorities involved. The plan is to start the summarised reporting in 2022. Establishing an EU-wide coordinated procedure for such summarised interception reports is also deemed necessary. Germany has raised this issue with the Commission on several occasions (communication from the JKI dated 8 May 2018, meeting in the Standing Committee on Plants, Animals, Food and Feed (PAFF) most recently in February and May 2021). We also propose taking up the issue as part of the discussion of the report from the Commission in accordance with Article 50 of Regulation (EU) 2016/2031 in order to exempt reports of such interceptions from the provisions of Article 40(4) based on an appropriate cost-benefit analysis.“ Diese Empfehlung wurde mit folgendem Kommentar der EU-Kommission zeitlich befristet ausgesetzt: “The initiatives by Germany to establish an EU wide co-ordinated procedure are acknowledged. In the meantime, the recommendation is left open, pending the outcome of Commission/MS efforts to propose a workable solution.“

Deutschland regt daher an, die aktuelle Änderung der Verordnung (EU) 2016/2031 zu nutzen, diesen Punkt, wie auch die Meldung von Beanstandungen bei Passagierkontrollen zu klären. In diesem Zusammenhang unterstützt Deutschland den polnischen Kommentar, auch wenn die dort aufgeführten Formulierungen und die Ausweitung auf Verpackungsholzkontrollen außerhalb der Grenzkontrollstellen noch geprüft werden müssen.

Courtesy Translation

Comments by Germany on the Commission's draft Regulation of the European Parliament and of the Council amending Plant Health Regulation (EU) 2016/2031

In addition to the oral presentations at the meeting of the Working Party on Plants and Plant Health (Chief Plant Health Officers) on 7 November 2023, you will receive comments from Germany on the proposed amendments to the articles, the announced further proposals from Portugal and Spain and further proposals by Germany resulting from the evaluation under Article 79(6) and a recent audit report.

Depending on the transposition of the requests for amendments to the articles, it is also necessary to adapt the recitals to which the proposal was waived here.

I General note

Due to the ongoing internal coordination within Germany, Germany continues to maintain its scrutiny reservation and reserves the right to make further comments after the completion of the internal consultations. In principle, Germany is positively opposed to the European Commission's proposals.

II Comments on the Commission's proposals to amend/supplement the articles of Regulation (EU) 2016/2031

1. Assent
2. Assent

3. Article 23: In principle, Germany supports the extension of the period for multiannual programmes to 10 years. It is preferable that the reporting period refers to a full calendar year (such as potato surveys) in order to achieve general harmonisation. It should also be ensured that the change over the ten-year period does not entail any change in the 5 and 7 annual plans already drawn up.

Furthermore, the number of harmful organisms to be surveyed continues to increase and will continue to increase since the application of Regulation (EU) 2016/2031. The temporal advantage that the extension to 10 years brings is likely to be used up very quickly in relative terms. Irrespective of the current amendment to Regulation (EU) 2016/2031, Germany asks for further discussion whether and how the number of harmful organisms in the surveys can be reduced or how the surveys can be made more rational.

4. Assent

5. Assent

6. Assent

7. Assent

8. Assent

9. Article 42a: It is assumed that the reports of the third countries go to the EU Commission and will be evaluated by them. It is unclear by which evaluation criteria the 'risk concerned' is assessed. Will the analysis be carried out by EFSA, followed by a discussion in the SCoPAFF section Plant Health? The evaluation and discussion of the reports leads to higher bureaucratic effort.

10. Assent

11. Article 71(2): ISPM 12 stipulates that, when several options are presented in the phytosanitary import rules, the one to be mentioned in the additional declarations has been used. Chapter II of ISPM 12 states, however, that “additional declarations should be kept to a minimum.” The current proposal to include in the field “additional declarations” the full text also for RNQPs by the third country in the phytosanitary certificate also adds work to the competent authority at import control, as the accuracy of the information needs to be checked. In addition, the phytosanitary certificates become increasingly extensive and ultimately confusing. Germany therefore proposes that further additional declarations be included only when a fully automated document verification in TRACES is possible, so that the effort of document verification can be reduced.

12. Article 88: Germany proposes to provide for an implementing regulation instead of a delegated regulation. The criterion ‘speed of trade’ as an assessment of whether a plant passport should be physically affixed to the product is considered critical by Germany as long as there is no objective assessment of this criterion. As the flow of goods is accelerating, it is feared that the operators want to break away from this exception to a considerable extent. Without objective criteria, there is a risk that non-harmonised exceptions will occur in the Member States.

13. Assent

14. Assent

15. Assent

III Comments on the additional proposals of Portugal and Spain

Portugal: Exception to procurement law

Germany supports the discussion from a technical point of view in connection with exemptions from procurement requirements regulations in emergency situations in order to be able to initiate eradication measures swiftly. However, without presenting the specific proposal and in the absence of detailed knowledge of public procurement law, Germany cannot comment further at this stage.

Spain; Emergency team

Germany supports the approach to develop an emergency team or concept for setting up an emergency team depending on the final formulation of the proposal. Germany supports Belgium's comment on the impact of such an additional emergency team on the overall framework of co-financing.

IV German proposals, which were part of the results of the analysis under Article 50 and 79(6) (WK 9433/2022 INIT) of Regulation (EU) 2016/2031 summarised under the French Presidency, but have not been taken into account in the current Commission proposal.

a) Germany requests that Article 81(1)(a) be supplemented, so that, by analogy to the physical supply of plants and plant products, there is no need for a plant passport up to the final consumer, at distance sale. Germany supports the Netherlands' proposal to authorise the adoption of a corresponding implementing regulation should it not be possible to directly amend the article cited.

B) As part of the 2021 import audit, Germany was given the following recommendation (Ares(2023)2246856 - 28/03/2023): *'Ensure that interceptions made by Postal Services and those related to passengers' luggage are notified through TRACES in accordance with Article 40(4) and 41(4) of Regulation (EU) 2016/2031.*

Germany commented this recommendation as follows: *“In Germany, parcels and passengers’ luggage are regularly extensively checked in accordance with the provisions of EU law. This leads to a very large number of interceptions. For example, in 2020, 117,070 parcels were rejected in Hesse alone by Customs and/or the Postal Services due to missing phytosanitary certificates. So far, no technical solution involving an acceptable administrative effort has been found for reporting such a number of interceptions, especially as the data of the passengers and parcel addressees cannot be recorded for data protection reasons and no entry can be made in TRACES without such data. The plan is to report the interceptions of parcels and passengers’ luggage in future in summarised format in a table and thus provide the required information. A corresponding report format is currently being agreed with the competent authorities and the Customs authorities involved. The plan is to start the summarised reporting in 2022. Establishing an EU-wide coordinated procedure for such summarised interception reports is also deemed necessary. Germany has raised this issue with the Commission on several occasions (communication from the JKI dated 8 May 2018, meeting in the Standing Committee on Plants, Animals, Food and Feed (PAFF) most recently in February and May 2021). We also propose taking up the issue as part of the discussion of the report from the Commission in accordance with Article 50 of Regulation (EU) 2016/2031 in order to exempt reports of such interceptions from the provisions of Article 40(4) based on an appropriate cost-benefit analysis.”*

The EU-Commission answered: *“The initiatives by Germany to establish an EU wide co-ordinated procedure are acknowledged. In the meantime, the recommendation is left open, pending the outcome of Commission/MS efforts to propose a workable solution.”*

Germany therefore suggests using the current amendment of Regulation (EU) 2016/2031 to establish a workable solution to report interceptions made by Postal Services and those related to passengers’ luggage through TRACES. In this context, Germany supports the Polish comment, even if the wording and the extension to packaging wood controls outside the border inspection posts still need to be examined.

IRELAND

An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine



Spanish Presidency

15 November 2023

Re: Proposal for a Regulation amending Regulation (EU) 2016/2031 as regards multiannual survey programmes, notifications on regulated non-quarantine pests, import requirements, the listing of high risk plants, the content of phytosanitary certificates, the use of plant passports and certain reporting requirements - request for comments in follow up to the Working Party on Plants and Plant Health Questions (Chief Plant Health Officers) on 7 November 2023.

Dear Colleagues,

Ireland would like to thank the EU Commission for the work to date on this proposal for a Regulation amending Regulation (EU) 2016/2031 and for this opportunity to provide written comments. Overall Ireland is supportive of the amendments brought forward in this proposal, however the following specific points are submitted for consideration:

In relation to Article 23 and the extension of the Multiannual Survey Programme period to 10 years, clarification is sought on how MS will transition from the current approach to the proposed ten year approach and the indicative timeframe for same. Also, Ireland seeks clarity on whether there is scope to increase the frequency of surveys if risk analysis indicates that a particular plant health vulnerability exists.

In relation to Article 88, Ireland welcomes the practical proposal that plant passports could be associated with a consignment rather than physically attached, taking into account the size and shape of the consignment. However, Ireland considers that there is merit in including in the proposed amendment specific reference to the plant passport accompanying the consignment in the commercial documentation associated with the consignment. In addition, Ireland has concerns regarding the inclusion of the phrase '*speed of trade*' as it is considered that this wording is open to significant interpretation, which could confer undue pressure on a Competent Authority to provide a derogation. Finally further clarification is sought in relation to what exactly is meant by '*special mark, chip and/or database*' and how it is envisaged that this provision would work in practice. Ireland also notes that there appears to be a lack of consistency in relation to the wording of the proposed amendment with regard to '*special mark, chip and/or database*' and the text in Article 93 paragraph 5 and Annex VII part A paragraph 2 in Regulation (EU) 2016/2031 which references '*unique traceability barcode, hologram, chip or other data carrier*', and seeks clarity in relation to same.

I look forward to further engagement and discussion at the COPHs meeting in Brussels in December.

Regards

ITALY

Article 42 (a) para 3) - Temporary derogations from the prohibitions provided for in Articles 40 and 42, and from the requirements referred to in Article 41.

3) The Commission is empowered to adopt **a delegated act**, in accordance with Article 105, supplementing this Regulation as regards the procedure to be followed in order to grant the temporary derogations referred to in paragraph 1. That delegated act shall provide for the following elements of the procedure:

- (a) the preparation, content and submission of the respective request and dossiers by the third countries concerned;
- (b) the actions to be taken following the reception of those requests and dossiers;
- (c) handling of the requests and dossiers concerning confidentiality and data protection.

Comment: Italy considers essential that the procedures and the criteria to grant the temporary derogations referred in para 1 are submitted to the evaluation and vote of the SCOPAFF group, therefore we support an implementing act

Article 88. – plant passport attachment

A fast moving trade of plant and plant product goods generates different situations and can not be a reason for a derogation. What criteria will be taken into consideration when deciding whether the trade is fast that deserve the derogation? It would be better that the Commission, by means of an implementing act, set out technical arrangements for the issuance of electronic plant passports, according to the second subparagraph of paragraph 8 in Article 83 of Regulation (EU) 2016/2031 and approach the fast trade in this way. This derogation will influence on already established way of attachment of plant passport in trade.

In addition, we propose that the Commission should be empowered to adopt an implementing act and not delegated act.

LITHUANIA

LT do agree with Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/2031 of the European Parliament and of the Council as regards multiannual survey programmes, notifications concerning the presence of regulated non-quarantine pests, temporary derogations from import prohibitions and special import requirements and establishment of procedures for granting them, temporary import requirements for high risk plants, plant products and other objects, the establishment of procedures for the listing of high risk plants, the content of phytosanitary certificates, the use of plant passports and as regards certain reporting requirements for demarcated areas and surveys of pest. However, we would like to consider changes of article 42a point 11 „The phytosanitary certificate shall specify under the heading ‘Additional Declaration’ which specific requirement is fulfilled, whenever the respective implementing act, adopted pursuant to Article 28(1) and (2), Article 30(1) and (3), Article 37(4), Article 41(2) and (3) and Article 54(2) and (3), allows for several different options for such requirements. That specification shall include the full wording of the relevant requirement.“. We believe that this point should be subject to examination and revision of Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 Annex V, to provide conditions for RNQP based on this regulation.

LATVIA

Latvia generally supports the proposals for amending Regulation 2016/2031 presented by the Commission at the Working Party on Plants and Plant Health Questions (Chief Plan Health Officers) of 07 November 2023.

Further to the request for written comments, Latvia submits the comment on suggested amendments of articles and new proposals.

Article 23, paragraph 1, third subparagraph

Latvia agrees with the Commission's proposal to prolong the period of multiannual survey programmes up to 10 years, but we would prefer to keep this in more flexible manner and not to declare the exact date.

We propose such wording "The multiannual survey programmes shall be established for a period of seven to ten years, from the moment of the inclusion of the pest in the list of the Union quarantine pests".

New proposals for amendments:

1. Latvia considers that the requirements included in Directives 93/51/EEC, 93/50/EEC and 92/90/EEC are already covered by the Plant Health Regulation and it would be necessary to cancel these directives so that parallel legislation does not exist.
2. It would be necessary to clarify the requirements regarding the withdrawal of plants and plant products from the market, if a quarantine pest is detected in any of the trade stages, more clearly defining the responsibility of the operators involved. This relates to *Meloidogyne enterolobii* findings / outbreaks and the trade of infested plants in the EU.

THE NETHERLANDS

NL written comments 15-11-2023

Technical amendments of the Plant Health regulation 2016/2031.

COM(2023) 661 final; 2023/0378 (COD)

ST 14398/23 INIT

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/2031 of the European Parliament and of the Council as regards multiannual survey programmes, notifications concerning the presence of regulated non-quarantine pests, temporary derogations from import prohibitions and special import requirements and establishment of procedures for granting them, temporary import requirements for high risk plants, plant products and other objects, the establishment of procedures for the listing of high risk plants, the content of phytosanitary certificates, the use of plant passports and as regards certain reporting requirements for demarcated areas and surveys of pests.

The Netherlands have the following comments:

(i) measures against pests qualifying as quarantine pests but not yet fully assessed (art 30(1))

- Should this addition for the possibility of measures for import or movement apply retroactively?
- Wouldn't it also be useful if something was also determined (somewhere) in this regulation about criteria/process/end term with regard to the deregulation of art 30 organisms? There seems currently not to be any provision in Article 30 for discontinuing measures.

(ii) requirements regarding the declarations on the phytosanitary certificate for regulated non-quarantine pests (RNQPs) (art 71)

- There is currently inconsistency of multiple RNQP requirements for fruit propagation/ fruit ornamental material (marketing directive vs. 2019/2072). These should be streamlined first before enacting these requirements. Possible solution could be specification of the type of material as part of the product description on the phytosanitary certificate to differentiate between fruit propagation material and ornamental p4p, to allow checks of the correct requirements. This could be indicated in art 71.2.
- [CRUCIAL POINT] Fruit propagation material should be exempted from the AD requirements included in the current marketing directives until the fruit propagation RNQPs have been evaluated. At the present time different options for requirements for many fruit RNQPs are often hidden in the text for instance art 21.1 vs. 21.5 of 2014/98 (consolidated 2022).

(iii) reporting the non-compliances with the RNQP rules in the electronic notification system (Information Management System for Official Controls – IMSOC)

- Art 37(10): Why is this formulation different as compared to art 41.4 for Q pests? For instance reference to art 66(3) of the OCR is not included in current art 41.4?
Art 66.3 concerns measures for import but is not relevant for internal movement. For measures in relation to internal movement of consignments reference to art. 92.2 of 2016/2031 should be included.
- Amend second para of proposal 37(10):
Member States shall also notify **that violation** and those measures....

(vi) The introduction of an empowerment for a Delegated act to adopt procedures for identifying and listing of high-risk plants. (art 42(1))

- NL notes the risk that this procedure might lead to listing of more and more High Risk Plants. Therefor there should also be a procedure to allow for possible delisting of the currently listed HRP's.
 - Is this already possible? If yes, by which procedure: 2018/2018, or 2018/2019? Or by another procedure?
- And due to the fact that this article has led to intense political debates and negotiations in the past, it is essential for the Netherlands to work here through an implementing act and not through a delegated act.
 - ➔ NL has a very strong preference for an **implementing act** to allow for an interactive procedure with all relevant actors in Member States.

(viii) The introduction of an empowerment for a Commission act, to rationalize the obligation to attach a plant passport to certain plants. (art 88)

- This amendment is actually not necessary for the Netherlands because we have found solutions to this problem that are workable in practice.
- In case an empowerment is introduced, then it is to our opinion essential to fully use the Member States' experiences for this very technical issue. For that reason the Netherlands strongly prefers an implementing act (instead of the proposed delegated act).
 - ➔ NL has a strong preference for an **implementing act** in order to fully use the Member States knowledge and experience.
- We wonder why different wording is used in this article than in article 93 par 5, article 95-3 and annex VII part A art. 2. Text proposal:
“providing for rules to ensure that the plant passport concerned, although not attached, still refers to the respective plants, plant products and other objects by means of a special mark, traceability barcode, hologram, chip, other data carrier and/or database;

(x) Rationalisation of reporting obligations

Art 23 Multiannual surveys

- On the one hand, this means less burden for authorities, but on the other hand, it is less well known whether quarantine pests already occur on EU territory. This could form a major barrier to deregulation of existing quarantine pests. As there are approximately 400 Q species and Q groups of species, it would be better to focus more on a limited number of species than a little bit of everything. A more targeted approach for a limited number of Q pests would be more appropriate. It is desirable for surveys of certain pests that these are carried out within the same time period (year) to allow for comparison between Member Status and uniform pest status of the EU. This is important for the regulatory status.

How does the Commission intend to ensure that the above points are also taken into account if the period is extended from 5-7 years to 10 years?

Emergency teams

- The Netherlands is in principle positive about this initiative. Naturally, we can only determine our position once a concrete text proposal has been drawn up.

Additional proposal

NL proposal: The introduction of an empowerment for an Implementing act to create exceptions for distant sales (art 81)

- The Netherlands is of the opinion that Plant passport requirement for distance sale to final consumer WITHIN the MS should be exempted. We feel that it is unnecessary cumbersome for (small) local webshops who only trade locally (within MS) to final consumers. Therefore an amendment of article 81 would be needed.

NL request: introduce in article 81 an empowerment for an Implementing act to allow for the creation of exceptions for distant sales (art 81), comparable to applying PP (art 88), in accordance with WG plant passport recommendations Nov 2022.

POLAND

Comments and proposals of Poland

After analysing the proposal for the Regulation of the European Parliament and of the council amending Regulation (EU) 2016/2031 [...] Poland would like present following comments and suggestions.

1) Amendments to proposed wording of the draft provisions

Art. 30 (1)

*“Those measures shall, where appropriate, implement, specifically for each of the pests concerned, one or more of the provisions referred to in points (a) to (g) of the first subparagraph of Article 28(1). They may include the prohibition of ~~the presence the~~ **introduction into, movement within, or holding, multiplication or releasing in,** of the pest in the Union territory and/or requirements concerning the introduction into, and the movement within, the Union territory of plants, plant products and other objects.”*

The PL proposal is intended to align with the form of the provisions already used in the current Reg. 2016/2031 (Article 5). It is not understood how and by whom the ban on the pest presence in the Union territory would be implemented.

Art 37 (10)

“10. In the event of entering the Union territory of plants for planting ~~introduced into, or moved within, the Union territory~~ in violation of paragraph 1, Member States shall adopt the necessary measures, as referred to in Article 66(3) of Regulation (EU) 2017/625 and shall notify that violation and those measures to the Commission and other Member States through the electronic notification and reporting system referred to in Article 103. Member States shall also notify those measures to the third country from which the plants for planting were introduced into the Union territory.”

In opinion of Poland, the Article 66(3) of Regulation (EU) 2017/625 does not apply to the movement within the UE territory; these provisions are applied in case of non-compliant consignments entering the Union. In addition Poland has reservations about the proposed wording of the provision in the context of a possible weakening of the EU's import regime - irregularities should be eliminated at the stage of border phytosanitary inspection, and not at the stage of movement of such goods into the EU (when the goods have been allowed to enter the EU (have been released by customs authorities) and can be moved in the EU. Furthermore, such a solution may also disadvantage EU operators (instead of being passed on to third-country exporters), as at this stage, after goods being allowed to enter the EU, they will be the ones who will bear the costs of eradication and will have a problem to claim compensation/reimbursement for these costs from exporters.

Art 42a

“1. By way of derogation from Article 40(1) and Article 41(1), the Commission may, by means of implementing acts, adopt temporary derogations from the prohibition provided for in Article 40(1), and from the special and equivalent requirements referred to in Article 41(2), concerning the introduction into the Union territory of specific plants, plant products and other objects originating from one or more third countries, ~~which present a phytosanitary risk which is not yet fully assessed~~. Those implementing acts shall:

(a) set out temporary measures concerning the introduction of those plants, plant products and other objects into the Union territory, in accordance with the principles set out in Section 2 of Annex II; and

(b) amend the respective parts of the implementing act referred to in Article 40(2) and Article 41(2), by inserting a reference to the derogation concerning the respective plant, plant product or other object concerned.

2. The temporary derogations referred to in paragraph 1 may be adopted only if the following conditions have been fulfilled:

(a) the third country concerned has submitted to the Commission a request, containing official written guarantees for the application in its territory, prior to and at the moment of making the request, of the measures which are necessary for addressing the respective phytosanitary risk; and

(b) ~~an provisional~~ assessment has shown that those plants, plant products or other objects pose a risk that can be reduced to an acceptable level by applying one or more of the measures in respect of the phytosanitary risk concerned; **and**

(c) **the Commission has conducted an audit in third country concerned and confirmed that measures proposed by that country have been adopted and eliminate phytosanitary risk connected with import.**

3. The Commission is empowered to adopt a delegated act, in accordance with Article 105, supplementing this Regulation as regards the procedure to be followed in order to grant the temporary derogations referred to in paragraph 1. That delegated act shall provide for the following elements of the procedure:

(a) the preparation, content and submission of the respective request and dossiers by the third countries concerned;

(b) the actions to be taken following the reception of those requests and dossiers;

(c) handling of the requests and dossiers concerning confidentiality and data protection.

~~4. By way of derogation from Article 42(2), the Commission may, by means of implementing acts, adopt temporary derogations from the acts referred to in Article 42(3), if both of the following is fulfilled:~~

~~(a) the respective phytosanitary risk of the high-risk plants, plant products or other objects is not yet fully assessed;~~

~~(b) no implementing act pursuant to Article 42(4) has yet been adopted as regards the plants, plant products or other objects concerned. Those implementing acts shall set out temporary measures, which are necessary to reduce the respective phytosanitary risk to an acceptable level, concerning the introduction of those plants, plant products and other objects into the Union,~~

5. The implementing acts referred to in paragraphs 1 and 2 ~~and 4~~ shall provide for yearly reporting from the third country concerned about the application of the respective temporary measures. In case the report concerned leads to the conclusion that the risk concerned is not appropriately addressed by the measures reported on, the act providing for those measures shall be immediately repealed or amended as necessary.

6. The application period of the implementing acts referred to in paragraphs 1 and 2 ~~and 4~~ shall be such as to reasonably allow a full assessment of all phytosanitary risks and the measures of the third countries concerned, and shall not be longer than 5 years.

7. The implementing acts referred to in paragraphs 1 and 2 ~~and 4~~ shall be adopted in accordance with the examination procedure referred to in Article 107(2).”

Derogations from the established ban on importing certain goods into the EU or the obligation for imported goods to meet specific requirements are intended to legitimize current practice and are therefore justified. Poland is not against this solution, however, in Poland's opinion, the conditions for issuing derogations should be more restrictive and, in particular, they cannot be based only on a preliminary risk assessment (it should be a full/completed risk assessment). Moreover, PL proposes that the issuance of a derogation should be preceded by an audit of the Commission, which will confirm that the third country fulfills the guarantees it has declared.

However, Poland does not support the proposal to introduce a derogation from the ban on introducing high-risk goods into the EU territory for which a full phytosanitary risk assessment has not been completed. In Poland's opinion, this solution increases the risk of introducing new dangerous pests into the EU territory. Moreover, the conditions for importing goods into the European Union would be disproportionately easier than the possibilities of exporting them to third countries applying the so-called "closed" import system (e.g. countries of Southeast Asia, countries of the American continents).

Art. 88

“The Commission is empowered to adopt a delegated act, in accordance with Article 105, supplementing this Regulation by:

- (a) determining the plants, plant products and other objects which, by way of derogation from the first paragraph, may be moved within the Union with a plant passport associated with them in a way other than that of a physical attachment, due to their size, shape or speed of their trade that make that attachment impossible or very difficult; and*
- (b) **where appropriate** - providing for rules to ensure that the plant passport concerned, although not attached, still refers to the respective plants, plant products and other objects by means of a special mark, chip and/or database **or other measures.**”*

In opinion of Poland, the provision should make it possible to include in the future delegated act a wide range of measures, taking into account those proposed by operators and necessary in practice for their activities.

2) Proposals of an extension of the scope of the draft regulation

- a) Article 81 of the Reg. 2016/2031 – adding of paragraph 3

“3. The Commission is empowered to adopt delegated acts in accordance with Article 105 supplementing this regulation by setting out the cases where, the exception of paragraph 1 of this Article shall apply to particular plants, plant products or other objects distributed by means of sales through distance contracts.”

Currently, the solution foreseen in the art. 88 of the reg. 2016/2031 causes, in Poland's opinion, unjustified administrative burden for the competent authorities of MS, and therefore the activities of the CA should be focused on areas and forms of trade of plant materials posing a significant phytosanitary risk for the EU.

b) Registration in TRACES NT of personal luggage checks and WPM checks -amendments to Regulations 2016/2032 and 2017/625,

According to the recommendations of the Final report of an audit of Poland from 18 to 29 march 2021 in order to evaluate the system of import controls for plant health (DG(SANTE) 2021-7273) Poland should:

- ensure that controls on WPM are recorded on TRACES (NT) in line with the requirements provided for in Article 5(1)(a) of Regulation (EU) 2019/2125,
- ensure that interceptions on non-compliant passenger luggage, postal and courier consignments are reported in line with the requirements provided for in Articles 40(4) and 41(4) of Regulation (EU) 2016/2031,
- ensure that all non-compliant WPM is recorded on TRACES Interceptions in line with the requirements provided for in Articles 28(7), 30(8), 40(4) and 41(4) of Regulation (EU) 2016/2031.

Similar or the same recommendations were made also for some other Member States.

Nevertheless, it should be noted that the implementation of the above recommendation is not possible due to the functionalities of the TRACES NT system, what was explained in detail during the audit. First of all, the TRACES NT system only allows data to be entered at a designated border control point. However, checks of WPM and of personal baggage of travellers are carried out outside such points. This fact leads to the conclusion that the recommendations in question cannot be implemented at Member State level and that they require an amendment of existing legislation.

In this context, it should also be emphasised that a balance must be struck between the administrative burden of the reporting requirements and the benefits of such reporting. Our priority should be to ensure efficient and effective physical control of goods entering the EU, preventing the spread of new pests, not collecting a statistical data. This means that human resources should be focused on control activities rather than on the creation of numerous records which would be of very limited practical value.

According to the National Tax Administration, 65 158.15 kg of plants, plant products and other objects were seized in 2022 as a result of personal luggage checks. In 2023, 67 366.3 kg of such goods were intercepted between 1 January and 30 September. However, it should be noted that the above quantities consist of small amounts of plant material entering the EU in private luggage, such as individual fruits. The obligation to report all individual irregularities to TRACES NT would be a disproportionate burden undermining (due to limited human resources) the capacity to physically inspect the luggage.

Number of WPM inspections carried out by National Tax Administration out of phytosanitary border inspection points reached 839 in 2022 and 438 between 1 January and 30 September 2023. Four and one irregularity were identified, respectively.

In both cases - personal luggage checks and WPM checks - the checks and their results were recorded in dedicated IT systems. The possibility for the Polish services to use the inspection data and report them to the Commission is therefore ensured.

With these clarifications in mind, we propose the following amendments to Regulations 2016/2032 and 2017/625, which we expect to be inserted into the draft.

i. Amendments to the Regulation 2016/2031:

Art. 28 paragraph 7 is amended as follows:

“7. Member States shall notify, through the electronic notification system referred to in Article 103, the Commission and other Member States of any cases of non-compliance with the measures adopted pursuant to this Article which create a risk of spread of Union quarantine pests.

This notification obligation referred to in first subparagraph shall not apply to cases of non-compliance related to:

- a) goods which form part of passengers’ personal luggage and are intended for personal consumption or use,***
- b) wood packaging material controlled beyond the border control point.***

Member States shall report to the Commission and other Member States by 30 April of each year information concerning non-compliances referred to in the second subparagraph, identified in the preceding calendar year.”

Art. 30 paragraph 8 is amended as follows:

“8. Member States shall notify, through the electronic notification system referred to in Article 103, the Commission and other Member States of any cases of non-compliance with the measures adopted pursuant to this Article which create a risk of spread of the pests referred to in paragraph 1 of this Article.

This notification obligation referred to in first subparagraph shall not apply to cases of non-compliance related to:

- a) goods which form part of passengers’ personal luggage and are intended for personal consumption or use,***
- b) wood packaging material controlled beyond the border control point.***

Member States shall report to the Commission and other Member States by 30 April of each year information concerning non-compliances referred to in the second subparagraph, identified in the preceding calendar year.”

Art. 40 paragraph 4 is amended as follows:

“4. Member States shall notify, through the electronic notification system referred to in Article 103, the Commission and other Member States where plants, plant products or other objects have been introduced into the Union territory in violation of paragraph 1.

That notification shall also be made to the third country from which the plants, plant products or other objects were introduced into the Union territory.

This notification obligation referred to in first subparagraph shall not apply to:

- a) goods which form part of passengers’ personal luggage and are intended for personal consumption or use,***
- b) wood packaging material controlled beyond the border control point***

introduced into the Union territory in violation of paragraph 1.

Member States shall report to the Commission and other Member States by 30 April of each year information concerning goods and wood packaging material, referred to in third subparagraph, that have been introduced into the Union territory in violation of paragraph 1, identified in the preceding calendar year.”

Art. 41 paragraph 4 is amended as follows:

“4. In the event that plants, plant products or other objects have been introduced into, or moved within, the Union territory in violation of paragraph 1 of this Article, Member States shall adopt the necessary measures, as referred to in Article 66(3) of Regulation, and shall notify the Commission and other Member States through the electronic notification system referred to in Article 103.

This notification obligation referred to in first subparagraph shall not apply to:

- a) goods which form part of passengers’ personal luggage and are intended for personal consumption or use,***
- b) wood packaging material controlled beyond the border control point***

introduced into, or moved within, the Union territory in violation of paragraph 1 of this Article.

Member States shall report to the Commission and other Member States by 30 April of each year information concerning goods and wood packaging material, referred to in second subparagraph, that have been introduced into, or moved within, the Union territory in violation of paragraph 1 of this Article, identified in the preceding calendar year.”

ii. Amendments to the Regulation 2017/625:

Art. 56 paragraph 1 is amended as follows:

“1. For each consignment of the categories of animals and goods referred to in Article 47(1) the operator responsible for the consignment shall complete the relevant part of the CHED, providing the information necessary for the immediate and complete identification of the consignment and its destination.

The first subparagraph of this paragraph shall not apply to wood packaging material controlled beyond the border control point.”

PORTUGAL

Proposal for a Regulation amending Regulation (EU) 2016/2031 as regards multiannual survey programmes, notifications on regulated non-quarantine pests, import requirements, the listing of high risk plants, the content of phytosanitary certificates, the use of plant passports and certain reporting requirements

Portugal would like to thank the Presidency for its efforts in trying to get the green light to amend Regulation (EU) 2016/2031 before the end of the year, and in particular the Commission for all the work it has done, culminating in the presentation of the proposal to amend the Regulation as regards multiannual survey programmes, notifications on regulated non-quarantine pests, import requirements, the listing of high risk plants, the content of phytosanitary certificates, the use of plant passports and certain reporting requirements, which was presented to us during the meeting on 7 November.

We acknowledge the efforts to improve legal certainty and clarity, increase transparency, flexibility and consistency and contribute to the rationalisation of reporting obligations, decreasing administrative burden, reinforcing the implementation of harmonised measures for Member States, without jeopardising consistency with existing plant health policy of the Union.

With regard to each specific amendment:

Article 18(6) - PT welcomes the announced decrease in the administrative burden resulting from the cessation of the obligation to report the establishment of demarcated areas and the measures taken therein in April of each subsequent year. However, we fear that this decrease will not be as significant as the proposal seems to intend, given obligations, similar to those laid down in the current wording of Article 18(6), such as those resulting, as instance, from the provisions of Article 35 of Commission Implementing Regulation (EU) 2020/1201 of 14 August 2020 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa*. Will these Articles be also amended in search of consistency with the amendment of Article 18 (6) of Regulation (EU) 2016/2031?

Article 22(3) first subparagraph – No comments. We understand this amendment has the purpose of providing legal basis for something that already occurs through Europhyt Plant Health Surveys.

Article 23 (1) third subparagraph – PT is in favour of this amendment. The resources needed and the costs implicated by the survey programmes of a very relevant number of QP and pests subject to measures referred to in Article 29 or to measures adopted pursuant to Article 30(1), along with the very relevant decrease in the EU co-financing of the costs, make it very difficult to implement, in a period of five to seven years, survey programmes for such a high number of pests. These difficulties are especially felt in MS, such as PT, where climatic conditions are particularly favourable to the establishment of practically all QP, if not all, especially since we believe that it takes at least two consecutive years of surveying for each pest to obtain significant results. We appreciate this extension for 10 years of the multiannual survey programmes period, and the possibility of reorganizing our programme to fit in this new period (until 14 December 2029). Without prejudice to our opinion, we understand the concerns expressed by other delegations, and we realise that it might be appropriate to take advantage of the amendment of this point of the Regulation to reinforce in the text the notion of flexibility and adaptation to changes, whether in terms of environmental conditions, the list of pests, or any other relevant reason.

Article 23 (2) – Regarding the “electronic system”, no comments. We understand this amendment has the purpose of providing legal basis for something that already occurs through Europhyt Plant Health Surveys. A question remains, will the MS still have to submit their multiannual survey programmes until the end of 2023? An extension of this deadline, to allow for the necessary changes, would be much appreciated.

Article 24 (2) – No comments. We understand this amendment has the purpose of providing legal basis for something that already occurs through Europhyt Plant Health Surveys.

Article 30 (1) third subparagraph – No comments, PT agrees with the clarification provided by the Commission (in Detailed explanation of the specific provisions of the proposal (i)).

Article 34 (2) – No comments. We understand this amendment has the purpose of providing legal basis for something that already occurs through Europhyt Plant Health Surveys.

Article 37 (10) – PT would like to take this opportunity to express its wish for more clarity in the proposed addition to Article 37. We believe that the intention of the Commission was to provide clear legal basis for the measures that are supposed to be adopted when facing non-conformities related to RNQP in consignments presented at EU points of entry to be imported into the Union territory. We also believe that it is already possible to adopt measures as it is forbidden to introduce RNQPs into the EU territory on the plants for planting through which they are transmitted, meaning, in our understanding, that an infested consignment of those plants for planting can already be rejected at the borders following the existing rules and measures to be taken are already listed in Article 66(3) of Regulation (EU) 2017/625. The non-compliances related to RNQPs can currently be registered in the “Details on non-compliance” part of the CHED-PP. Our conviction that this amendment is aimed at consignments from third countries is reinforced by the fact that it mentions Article 66 of Regulation (EU) 2017/625, which concerns measures to be taken in cases of non-compliant consignments entering the Union, and foresees notifications of the adopted measures to the third countries from where the plants for planting originate. If we are right, we share the concerns already expressed by other MS, namely, on how to act with plants for planting carried by private persons (or non-professional operators), since Article 37 falls only on professional operators, and, also, some other concerns related to the fact that Article 37 falls on plants for planting to be introduced into, but also moved within the EU territory (which is also the case in the proposed amendment) creating some confusion as to whether we are in fact correct in our thinking that the proposal is aimed at consignments to be imported or whether, on the other hand, it is also aimed at plants for planting movements in internal circulation. If we have misunderstood, and the proposal concerns both import and internal movement, then we are confused by the mention of Article 66 of Regulation (EU) 2017/625 which, as we have written, only concerns consignments entering the Union, and the obligations of notifying third countries, that would only apply in certain cases. We would be thankful if the Commission could enlighten us in these matters.

Article 42 (1) – No comments.

Article 42 a) – We have taken good note of the Commission's explanations, according to which this new Article is in no way intended to facilitate the creation of derogations, far from it, it is intended to do exactly the opposite, by seeking to regulate precisely how derogations can be produced, all the requirements that underlie them, and by limiting their validity in time, obliging third countries to provide information on an annual basis. We agree that the principle is precisely to regulate, increasing the degree of demand and certainty. We also agree that simply regulating a possibility does not necessarily encourage the realisation of that possibility.

Article 44 (1)(a) – PT agrees with the important addition of the reference to measures equivalent to the special requirements in respect of the introduction of the plants, plant products and other objects into the Union territory.

Article 71 (2) – PT agrees with the extension of the principles of the Additional Declaration on PCs to the measures to prevent the presence of Union regulated non-quarantine pests on the plants for planting concerned. This amendment, if we heard well the Commission, will also require a relevant amendment of Annex V of Implementing Regulation (EU) 2019/2072. In relation to this, we are concerned with the measures to prevent the presence of Union regulated non-quarantine pests on fruit plant propagating material and fruit plants intended for fruit production whose requirements are currently set out in Commission Implementing Directive 2014/98/EU instead of Annex V of Implementing Regulation (EU) 2019/2072 (with the exception of plants for planting of *Actinidia*). The same concern would apply to *Vitis* plants, were it not for the prohibition on their import into the EU.

Article 88 – Even if we not strongly oppose to this amendment, we have some concerns related to the wording used in the proposed amendment, some already raised by other MS during last week meeting. A great effort was made by the MS (competent authorities and professional operators) to comply with the current rules for the attachment of the plant passports, we believe the system functions, more secure now than before, and we would not like to see doors being opened for a regression, in our opinion dangerous, of the system implemented. A future delegated act should show a level of detail and precision that would prevent any possibility of abuse. We are thinking of IE comment on the possibility of the operators start using arguments related to the speed of their trade to make constant use of any derogation to be, but the same could apply to shape or size, very undefined terms, unless very precise indicators are chosen. We should be very careful with any derogation on the current rules, to avoid completely mischaracterising a system that works.

Article 99 (1), Article 103, and Article 104 – No comments.

SLOVENIA

Written comments from Slovenia on the Proposal for amending Regulation 2016/2031

Further to the request for written comments on the Proposal for amending Regulation 2016/2031 (Doc. ST 14398/23) at the Working Party on Plants and Plant Health Questions (Chief Plant Health Officers) of 07 November 2023, please find below some comments from Slovenia.

In general we support the Proposal for amending Regulation 2016/2031.

We also support the idea of crisis teams of experts to be included in the proposal.

1. Article 18(6)

We propose to include also the obligation to inform MSs and the COM **on the withdrawal of demarcated areas**, since the proposed text refer only to notification **of the establishment of demarcated areas**.

2. Article 88. – plant passport attachment

A speed of trade allows different interpretations and can not be a reason for a derogation. What criteria will be taken into consideration when deciding whether the trade is fast that deserve the derogation? It would be better that the Commission, by means of an implementing act, set out technical arrangements for the issuance of electronic plant passports, according to the second subparagraph of paragraph 8 in Article 83 of Regulation (EU) 2016/2031 and approach the fast trade in this way. This derogation will influence on already established way of attachment of plant passport in trade.

In addition, we propose that the Commission should be empowered to adopt an implementing act and not delegated act.

SWEDEN

Proposal amending the plant health regulation (EU) 2016/2031 – Comments from Sweden

Sweden would like to thank the Spanish Presidency and the European Commission for the possibility to submit first written comments in relation to the proposal COM(2023) 661 amending Regulation (EU) 2016/2031 (PHR), presented and discussed for a first time at the Council Working Party with COPHS on 7 November 2023.

Generally, Sweden does not, at this stage, see any major outstanding issues for most of the proposed targeted amendments, while for some others, further discussion and deeper understanding is needed. We have no overall final position yet.

Preamble (8) – We welcome the suggestion from the Commission at the COPHS meeting that the text in the preamble is to be modified once the amendment of Article 23 itself has been reconsidered as a consequence of the various comments from MS, and after there would be a more clear view on the needs and benefits.

Preamble (13) – Reference to article 37(1) should be changed to the new proposed point Article 37(10) in case this new point would be retained in the proposal.

Preamble (34) and article 2 – We question whether 6 months is sufficient for implementation of the proposed amendment in Article 71(2). The Commission also clarified that time is also needed on our side to redraft Annex V to Regulation (EU) 2019/2072. In our opinion the new modified Annex V aiming to reflect a better structure presenting the different alternatives for RNQP measures, should be available to third countries in good time before the entry into application of this requirement in the Regulation amending the PHR.

Article 23, paragraph 1, third subparagraph. We have outstanding questions with the proposal. Even if an extended time period for the multiannual survey plans could be considered, it is not clear yet in what way this would reduce the administrative burdens for the member states. The added value of including a specific start-/end date for these periods is not clear either. As the survey plans will likely have to be updated anyhow on a more frequent basis than once every 5-7 year, we think there is even a risk that the inclusion of a specific date can rather lead to an increased administrative burden. Generally, we also need to consider better the possible effects of extending the time period on the overall quality we envisage with survey activities even if it should remain a possibility for MS to decide themselves about the frequencies of performing surveys.

Article 37, new paragraph 10, first subparagraph. Our preliminary starting point is that we can agree that non-compliances with the rules on RNQPs (imports as well as internal movements of plants for planting) are notified in a harmonized way within the Union, and in the case of imports to third countries. One related issue is that further clarification from Commission is needed on why the term '*violation*' is used, and not '*non-compliance*' in the text proposal.

We need more clarification from the Commission, with regard to the other element in the proposal on the need to specify requirements for the adoption by member states of appropriate measures to follow up cases of violations/non-compliances with the rules on RNQPs, especially what other already existing provisions are there in PHR and OCR? In relation to imports of plants for planting by professional operators, what would be the consequence if we only rely on the existence of article 66 in OCR that relates to consignments entering the Union, without including a reference to 66(3) in article 37 in PHR? In relation to movements within the Union a similar reflection and further discussion is needed on why new separate provisions on measures are needed. Measures are justified if EU rules on RNQPs are not complied with, but we believe that this may already be captured through the sequence of actions prescribed in article 92 in the PHR, especially the first subparagraph of 92.2 stating that the competent authority without delay shall take the measures necessary to ensure that non-compliances with the provisions does not continue. We also would like clarification on what the consequences are of article 138 in OCR on actions in the event of established non-compliance?

Finally, we agree with the clear explanation by the Commission at the COPHS meeting of 7 November that the implementation of the whole Article 37 and compliance with the rules on RNQPs is limited to the scope of professional operators only.

Article 42(1). We welcome the explanation from the Commission that the idea with the amendment is to provide transparency and more credibility about the procedure itself for listing high risk plants.

Article 42a. We thank the Commission for the explanations behind the proposal. We wonder if the new paragraphs 5 and 7 need to refer to paragraph 2?

Regarding new paragraph 6 stating that the application period of implementing acts providing derogations shall not be longer than 5 years to reasonably allow a full assessment of all phytosanitary risks, we need more clarification from the Commission on how this proposal relates to the time period already specified in Article 42, paragraph 5 stating that the risk assessment shall be carried out 'within an appropriate and reasonable period of time'. We also wonder why this time period is needed and if the proposal on the time period in paragraph 6 is partly the result of complaints or comments received by third countries on the validity of current existing decisions on derogations?

Proposal on plant health emergency team. In principle we support the idea that experts from both within the member states concerned, as well as, experts from other countries should be used to support the decision-making and risk management in plant pest outbreak situations. We believe this is already done to a certain extent in certain cases. Before we can determine a position on the idea to exchange such knowledge through means of travels financed by the Commission, Sweden would welcome first a text proposal as well as clarifications and a discussion on the scope for example which plant pests and which type of outbreak situations would qualify for such action?

Other issues

Plant passports in distant sales (article 81). We support the suggestion raised by several delegations that better clarity about the meaning and the scope of 'sales through distance contracts' is needed, and also question the benefit of the requirement for a plant passport for the movements to final users.

Scope of the empowerment in Article 89(2) in PHR. Sweden would like to remind the Commission, and still looks forward to an answer to our question, raised through an e-mail to DG Sante on 22 November 2021. This issue concerns the empowerment in article 89(2) and we are seeking for strengthened implementation of the PHR. We therefore take the opportunity to present our question again:

The legal service of the Swedish NPPO is of the opinion that the empowerment to the Commission in Article 89(2) is limited to provisions on criteria and procedures to be fulfilled by professional operators at the time of competent authorities granting an authorisation to issue plant passports. This limitation causes an implementation issue when it comes to the requirements on authorised operators, and also the official inspections for compliance by operators that are already authorised. It concerns especially the applicability of the requirement in Article 1(c) of Commission Delegated Regulation 2019/827. That requirement states that professional operators shall '*have an effective plan to be followed in case of any suspected occurrence or findings of the pests referred to in point (a) that affect or are likely to affect their plants, plant products or other objects*'. However, it does not clearly state that the plan needs to be updated after the competent authority has granted an authorisation to issue plant passports. In the view of our legal service, this requirement is applicable and compliance with this requirement is to be verified only at the time of granting the authorisation but not after. If this interpretation is valid then that **could mean that there is no clear legal basis to require from authorised plant passport operators** to present an updated effective plan as part of the at least yearly inspections required through article 92(1) in PHR.

We would be grateful to receive the view of the Commission on this issue and to know whether there may a need to broaden the Commission's mandate in article 89(2) so that the scope is enlarged to also apply to those operators who already have the right to issue plant passports.

