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NOTE

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

I. INTRODUCTION

1. On 5 July 2023 the Commission adopted two closely related legislative proposals to revise and update the rules on the production and marketing of plant reproductive material (PRM) and forest reproductive material (FRM) in the EU. They were submitted to the Council on 6 July 2023 as part of the Commission food and biodiversity package, a set of legislative proposals covering also soil health, new genomic techniques and the partial revision of the Waste Framework Directive.

2. The proposed Regulation on FRM¹ replaces Council Directive 1999/105/EC. It takes into account recent developments in the forestry field, including the New EU Forest Strategy for 2030 and the new OECD standards on the Forest Seed and Plant Scheme. It has the following objectives:
- To clarify and modernise the current rules,
 - To ensure a level playing field for operators,
 - To support innovation and the competitiveness of the EU industry,
 - To contribute to addressing sustainability, biodiversity and climate-related challenges,
 - To adapt to new scientific and technical developments,
 - To ensure the conservation and sustainable use of forest genetic resources, and
 - To improve the consistency with the legislation on official controls and plant health.

The new Regulation covers seeds, parts of plants and plants used for afforestation, reforestation and other types of tree planting.

3. In the European Parliament, the Committee on Agriculture and Rural Development has the lead responsibility and Mr Herbert Dorfmann (EPP, Italy) has been appointed rapporteur. His draft report was published on 10 November 2023. The Committee on the Environment, Public Health and Food Safety will provide an opinion.

¹ 11503/23 + ADD 1

II. STATE OF PLAY OF WORK WITHIN THE COUNCIL PREPARATORY BODIES

1. The Commission presented the proposal and its impact assessment² at an informal videoconference of the members of the Working Party on Genetic Resources and Innovation in Agriculture (hereinafter ‘the Working Party’) on 6 July 2023. Subsequently, on 25 July 2023, the proposal was presented in the AGRIFISH Council.
2. The examination and detailed discussions of the articles of the proposal continued between September and December 2023. During the Spanish Presidency a total of four Working Party meetings focussed on the discussion of Articles 1-19, 30, 31 and Annexes II-VII of the proposal.

3. MAIN ISSUES AND PROGRESS ACHIEVED

A large number of technical comments have been made by delegations both orally and in writing. A large number of technical comments have been made by delegations both orally and in writing on the entire text of the proposal. As indicated above, the Spanish Presidency has worked on a revised text for Articles 1-19, 30, 31 and Annexes II-VII and has tried to accommodate most of these comments aiming to develop and clarify the content of these Articles.

a) General comments

Delegations have submitted general comments on the entire proposal. They largely support the main objectives of the proposal, as recalled above, and welcome the fact that FRM is the subject of an independent piece of legislation.

They also value the fact that the six basic types of material (seed source, stand, seed orchard, family parent(s), clone or clonal mixtures) and the four categories of FRM (identified, selected, qualified, tested) have been retained.

² 11694/23

A large number of delegations have noted the importance of Member States keeping a certain amount of leeway to adopt national decisions, in particular regarding the list of species to be included in the scope of the Regulation, the quality of FRM placed on the market and the organisation of control operations.

Moreover, the general comments identify several areas where the proposed provisions require further analysis, in particular:

– **Legal instrument/Empowerment of the Commission**

Some delegations are of the opinion that changing the legal instrument from a Directive to a Regulation does not seem to be sufficiently justified. Those delegations would like to maintain the current system which provides for European wide uniform minimum standards and gives Member States sufficient flexibility to take into account the different local conditions.

Some delegations are of the opinion that the large number of delegated and implementing acts make it difficult to fully assess the new legislation and might contravene the principle of subsidiarity. A balance between reaching greater harmonisation and taking into account national requirements will need to be sought.

– **Application**

The proposed Regulation would apply three years after entering into force. However, this timeline seems to be too short for some delegations given that the Regulation contains a large number of implementing acts and Member States will have to adopt a large number of national rules. They also consider that the content of the Regulation can only be assessed provisionally.

– **Administrative burden**

Some delegations are of the opinion that the proposal contains overly complex procedural aspects and excessive additional information requirements and authorisations to be given by competent authorities. The implementation would mean significant additional financial and staff resources.

b) Comments on the articles examined

Delegations have made the following remarks in particular:

– **Harmonisation**

The advantages and disadvantages of inserting the FRM legislation into the scope of Regulation (EU) 2017/625 on official controls and Regulation (EU) 2016/2031 on plant health need further justification as some Delegations fear that this might lead to undesirable consequences by creating new administrative burdens, in particular for small companies.

Most delegations welcome the harmonisation of the legislation on forest reproductive material with the OECD Forest Seed and Plant Scheme.

– **National Contingency Plans**

The proposal requires Member State to draw up a contingency plan to ensure a sufficient supply of FRM to reforest areas affected by extreme weather events, wildfires, pest outbreaks and other disasters. Most Delegations feel that those plans should be voluntary and ask for financial support to be able to draft and implement them.

– **Definitions**

Delegations underline that many definitions are too vague and need to be reformulated. They consider that other definitions, such as the definition of ‘professional operator’ need to be aligned with the same definition in the Plant Health Regulation. Other definitions should be aligned with the OECD ones. Definitions will be revisited a second time in light of the complete examination of the articles they relate to.

– **Forest Genetic Resources (FGR)**

Several delegations fear that the new articles regulating the production of FGR from units of notification may generate an open system for the registration of basic materials. The quality would then be unilaterally defined by the professional operators and without scientific validity.

– **Authorized professional operators and official labels**

Delegations would like to clarify these provisions, in particular the provisions on the audits to ensure that professional operators fulfil the requirements to be authorised to issue the official labels. Delegations would also like professional operators to continue issuing the supplier’s document which at the moment may replace the supplier’s label and which is very informative.

– **Non-forestry purposes**

Some delegations would prefer to maintain the current provisions allowing Member States to produce forest reproductive material for non-forestry purposes provided that it is properly labelled and supervised.

– **Clonal mixtures:**

The criteria laid down in Annex IV for clonal mixtures make it difficult to market clonal mixtures for biodiversity purposes. Some delegations want to include the possibility of producing those materials from source identified materials by vegetative propagation.

– **Natural hybrids**

Some delegations are in favour of considering natural hybrids or regulated species to be regulated as artificial hybrids.

– **Harvest and collection of FRM**

Some delegations call for the inclusion of minimum standards for harvesting and collecting FRM.

– **Uncertain information on current and projected future climatic and ecological conditions.**

Several delegations have underlined that the availability of information that supports a better adaptation and performance of the FRM to the field conditions is highly needed but that at present it is only possible to provide recommendations which should be made available by competent authorities.

4. The Presidency plans to continue these discussions in the coming weeks and will work on a Presidency text. The Presidency will hold a further informal videoconference of the members of the Working Party on 19 and 20 December 2023 with a view to presenting Presidency redrafting suggestions³ for the articles that have been examined so far, aiming to develop and clarify their content.

³ ST 16296/23 (to be published shortly)

5. On the basis of the progress made under the Spanish Presidency, the incoming Belgian Presidency plans to continue the work on this file at the technical level.
 6. In light of the above, the Council is invited to take note of the progress made on the examination of the proposal and to exchange views.
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