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1. INTRODUCTION

Regulation (EU) 2016/2031 on protective measures against plant pests ('Plant Health Law')[1] was adopted in 2016. This Regulation entered into force on 15 November 2016 and applies from 14 December 2019.

This Regulation replaces five Directives of plant health law and provides for a risk-based and more proactive approach to the phytosanitary protection of Union territory. It provides for surveys for the presence of pests, timely detection and notification of outbreaks and interceptions, detailed rules for eradication and containment, prioritisation of pests, contingency planning, simulation exercises, more stringent import rules, harmonised certification and a more flexible approach for professional operators to carry out certification under official supervision of the competent authorities. This new regime is complemented and supported by the rules on official controls introduced by Regulation (EU) 2017/625[2].

According to the provisions of Regulation (EU) 2016/2031, the Commission is empowered to adopt a large number of implementing and delegated acts. The Regulation also imposes on the Commission the obligation to report to the co-legislators in respect of the delegation of power confered on it.

2. LEGAL BASIS

This report is required under Article 105(2) of Regulation (EU) 2016/2031. Pursuant to this provision, the power to adopt delegated acts concerning the matters listed therein is conferred on the Commission for a period of five years from 13 December 2016, and the Commission is required to prepare a report in respect of the delegation of power at the latest nine months before the end of the five-year period.

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[1] Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ L 317, 23.11.2016, p. 4, ELI: http://data.europa.eu/eli/reg/2016/2031/oj).

[2] Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ L 95, 7.4.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/625/oj).

The Commission submitted the first relevant report on 27 July 2021[3]. This report concerns the second reporting period, namely the one between 13 March 2021 and 13 March 2026.

According to that Article, the Commission is empowered to adopt delegated acts referred to in Article 6(2), Article 7, Article 8(5), Article 19(7), Article 21, Article 32(5), Article 34(1), Article 38, Article 43(2), Article 46(2), Article 48(5), Article 51, Article 65(4), Article 71(4), Article 76(4), Article 81(2), Article 83(6), Article 87(4), Article 89(2), Article 96(2), Article 98(1), Article 99(1), Article 100(4), Article 101(5) and Article 102(6) of that Regulation.

Article 105(2) of that Regulation lays down that the delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period, while Article 105(3) states that the delegation of power may be revoked at any time by the European Parliament or by the Council.

3. EXERCISE OF THE DELEGATION

During the reporting period, namely the one between 13 March 2021 and 13 March 2026, the Commission exercised its delegated powers, by adopting the following delegated acts:

- Commission Delegated Regulation (EU) 2022/1456 of 10 June 2022 establishing a derogation from Article 43(1) of Regulation (EU) 2016/2031 of the European Parliament and the Council as regards the import conditions for introduction into the Union of wood packaging material in the form of ammunition boxes, originating in the United States of America, under the control of the United States Department of Defence, and manufactured before 1 September 2007[4].

- Commission Delegated Regulation (EU) 2022/2404 of 14 September 2022 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by laying down detailed rules for the surveys on protected zone quarantine pests and repealing Commission Directive 92/70/EEC[5].

By now the Commission has used 7 of the 27 empowerments to adopt delegated acts as provided in Regulation (EU) 2016/2031. Some of these delegated powers were bundled in a single delegated act where the rules are substantively linked. In certain cases, the bundling in a single act rather than a number of cross-referenced separate acts was considered necessary in the interest of simplicity, transparency, to facilitate the effective application of the rules and to avoid duplication.

Moreover, the Commission has carried out a review of all empowerments for the adoption of delegated and implementing acts under Regulation (EU) 2016/2031, as part of its overall objective to simplify the EU policies and legislation.

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[3] Report from the Commission to the European Parliament and the Council on the delegation of power to adopt delegated acts conferred on the Commission, pursuant to Regulation (EU) 2016/2031 on protective measures against plant pests ('Plant Health Law'), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0425 .

[4] OJ L 229, 5.9.2022, ELI: http://data.europa.eu/eli/reg_del/2022/1456/oj.

[5] OJ L 317, 9.12.2022; ELI: http://data.europa.eu/eli/reg_del/2022/2404/oj.

The below table shows which acts contain the specific measures adopted under the relevant empowerments in Regulation (EU) 2016/2031.

Delegated Act	Empowerments in Regulation (EU) 2016/2031
Commission Delegated Regulation (EU) 2019/827 of 13 March 2019 on criteria to be fulfilled by the professional operators in order to comply with the conditions set out in Article 89(1) point (a) of Regulation (EU) 2016/2031 of the European Parliament and of the Council and procedures to ensure that those criteria are met.	Article 89(2)
Commission Delegated Regulation (EU) 2019/829 of 14 March 2019 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding.	Articles 8(5) and 48(5)
Commission Delegated Regulation (EU) 2019/1702 of 1 August 2019 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by establishing the list of priority pests.	Article 6(2)
Commission Delegated Regulation (EU)2022/1456 of 10 June 2022 establishing a derogation from Article 43(1) of Regulation (EU) 2016/2031 of the European Parliament and the Council as regards the import conditions for introduction into the Union of wood packaging material in the form of ammunition boxes, originating in the United States of America, under the control of the United States Department of Defence, and manufactured before 1 September 2007. (no longer in force)	Article 43(2)
Commission Delegated Regulation (EU) 2022/2404 of 14 September 2022 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council by laying down detailed rules for the surveys on protected zone quarantine pests and repealing Commission Directive 92/70/EEC.	Article 32(5) and Article 34(1)

Certain empowerments of Regulation (EU) 2016/2031 have not been used during the reporting period for the reasons explained below:

- The empowerments of Articles 7, 21, 38, 51, 71(4), 83(6), 100(4), 101(5), and 102(6) concerning the amendments of Sections 1 and 4 of Annex I, Annex II, Annex III, Annex IV, Parts A and B of Annex V, Annex VII and Parts A, B and C of Annex VIII, in order to adapt them to the development of scientific and technical knowledge and of relevant international standards, were not used so far. However the Commission will assess the need to use them, once any updates of scientific and technical knowledge, or of the respective international standards, take place.

- The empowerment of Article 19(7) concerning the specification of the pests referred to in point (a) of paragraph 6 of that Article and in point (b) of Article 16 and the conditions for the application of the derogations set out therein, was not used so far. However the Commission will assess the need to act in this respect in the light of experience on the practical application of the rules of the Plant Health Law, with a view to reducing administrative burden for business operators.

- The empowerments of Article 46(2) concerning the maximum width of third country frontier zones and Member State frontier zones, as appropriate for the specific plants, plant products and other objects, the maximum distance of the movement of the plants, plant products and other objects concerned within the third country frontier zones and Member State frontier zones; and the procedures for the authorisation of the introduction into, and movement within, the Member State frontier zones of plants, plant products and other objects, were not used. The Commission will assess the need to act in this respect in the light of experience on the practical application of the rules of the Plant Health Law.

- The empowerments of Article 65(4) concerning i) addition of further categories of professional operators to be exempted from the application of paragraph 1 of that Article, where registration would constitute an administrative burden for them disproportionate to the low pest risk related to their professional activities; ii) particular requirements for the registration of certain categories of professional operators, taking into account the nature of the activity or of the plant, plant product or other object concerned, and iii) setting out the maximum figures for small quantities of particular plants, plant products or other objects as referred to in point (a) of the first subparagraph of paragraph 3, were not used. The Commission will assess the need to act in this respect in the light of experience on the practical application of the rules of the Plant Health Law with a view to reducing adminstrative burden for business operators.

- The empowerment of Article 76(4) concerning the conditions for acceptance referred to in the first subparagraph of that paragraph to ensure the reliability of phytosanitary certificates, was not used. The Commission will assess the need to act in this respect in the light of experience on the practical application of the rules of the Plant Health Law.

- The empowerment of Article 81(2) concerning setting out the cases where, for particular plants, plant products or other objects, the exception of paragraph 1 of that Article shall only apply to small quantities, was not used. The Commission will assess the need to act in this respect in the light of experience on the practical application of the rules of the Plant Health Law.

- The empowerment of Article 87(4) concerning detailed measures concerning visual examination, sampling and testing, and the frequency and timing of the examinations, referred to in paragraphs 1, 2 and 3 of that Article, with regard to specific plants, plant products and other objects, on the basis of the particular pest risks they may present, was

not used. The Commission will assess the need to act in this respect in the light of experience on the practical application of the rules of the Plant Health Law.

- The empowerment of Article 96(2) concerning the requirements set out in paragraph 1 of that Article in order to adapt them to the development of international standards and in particular to ISPM15, was not used. However the Commission will assess the need to act in this respect, once any updates of scientific and technical knowledge, or of the respective international standards, take place.

- The empowerment of Article 98(1) concerning the specification of the requirements for authorisation of the registered operators applying the mark of wood packaging material, where appropriate in view of the development of scientific and technical knowledge and international standard, was not used. However the Commission should remain in position to use it, once any update of scientific and technical knowledge, or of the respective international standards, takes place.

- The empowerments of Article 99(1) concerning requirements for i) the authorisation of professional operators as regards the issuance of the official attestations referred to in Article 99(1); ii) the supervision by the competent authority of the professional operators referred to in point (a) of Article 99(2), and iii) the withdrawal of that authorisation referred to in point (a) of Article 99(2), were not used. The Commission will assess the need to act in this respect in the light of experience on the practical application of the rules of the Plant Health Law.

4. CONCLUSION

The Commission sees the need for extension of all empowerments of Regulation (EU) 2016/2031 to adopt delegated acts as provided for in that Regulation beyond the current five-year period. The need to develop rules based on the empowerments will remain in the future. This will be appropriate to regularly adjust those rules to the latest scientific standards and to give possibility to the Commission to act in the areas where it did not yet act, but where it may need to do so in the future.