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NOTE

From: Presidency

To: Permanent Representatives Committee/Council

Subject: Study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material
- Exchange of views

Delegations will find in annex a Presidency background note for the exchange of views on the above-mentioned subject at the Council ("Agriculture and Fisheries") meeting on 26 and 27 May 2021.

BACKGROUND NOTE ON

Options to update the EU legislation on the production and marketing of plant reproductive material – Follow-up to the Commission's study

1. Plant reproductive material (PRM) plays a key role in achieving a more sustainable, productive and diversified EU agriculture. New and improved plant varieties are essential for farmers to ensure better productivity and improved food quality, for adaptation to climate change and for fighting plant pests with a reduced use of plant protection products.
2. Forest reproductive material (FRM) is the starting point for the creation of new forests and the reforestation of existing forests. Global warming already has a negative and increasing impact on Europe's forests by shifting biogeographical regions northwards and uphill.
3. Recent developments highlight the need for PRM and FRM to contribute to the objectives of the European Green Deal and its related Farm to Fork, EU Climate Adaptation, Biodiversity, European Digital, and New EU Forest Strategies.
4. The Council requested the Commission to submit a study on the options to update the EU legislation on the production and marketing of plant reproductive material ('PRM study'). The Commission submitted that study on 29 April 2021.
5. The PRM study, covering both PRM and FRM, is the most recent step of a process, which started more than a decade ago. The Commission adopted in May 2013 a proposal for a Regulation on the production and marketing of plant reproductive material. That proposal was rejected by the European Parliament in 2014 as it considered that one Regulation could not cover both PRM and FRM and due to some other concerns. The proposal was then withdrawn by the Commission in 2015. At the time, the Council invited the Commission to develop an amended proposal with substantive changes.

6. In recent years there have been new technical developments in the PRM and FRM production and breeding sector. This is coupled with an increasing demand for sustainability in agriculture and forests, adaptation to, and mitigation of the impact of climate change, an increasing need for conservation of traditional varieties and the development of varieties adapted to organic cultivation.
7. The PRM study confirms that the main findings of the preparatory work for the 2013 PRM proposal remain generally valid even today. It also identifies new challenges reflecting the developments in the sector that have occurred since then.
8. The PRM study identifies the following key problems with the existing legislation:
 - The fragmented legislation, developed over several decades, causes lack of coherence between the marketing Directives, leaves room for interpretation, and contributes to uneven implementation.
 - Complex and rigid procedures hinder technical amendments and create a cumbersome decision-making process.
 - The rigidity of the current legal framework complicates the creation of synergies with other policies, in particular the Green Deal and its related strategies.
 - There is no harmonised and risk-based framework for official controls.
 - The current legal framework does not allow taking account of all technical and scientific developments creating barriers for the market access of PRM and FRM obtained through scientific and technical progress.
9. The PRM study identifies the following options to address these problems:
 - **Option 0: Do nothing**
Focus on implementing the legislation in a way, which takes into account the objectives of the European Green Deal and the Farm to Fork Strategy.
 - **Option 1: Improve procedures and coherence of the legislation, and introduce *ad hoc* measures to increase sustainability**
This option would include amendments to the Directives to align their structure and decision-making procedures, as well as to introduce measures in support of sustainability.

- **Option 2: Flexibility to adapt to technological developments, to improve access to genetic resources and to address the sustainability objectives in a coherent way**

This option responds more comprehensively to the need for more sustainability, more biodiversity and climate change adaptation/mitigation. It would consider the particularities of exchange of seed between farmers, and allow for an easy adaptation of the legislation to scientific and technical developments. It includes two sub-options, 2A and 2B, which address different policy choices relating to the scope of application of the Directives, the extent of the flexibility afforded to operators and competent authorities, and official controls.

10. The Commission considers that action needs to be taken in the field of PRM and FRM to address the latest scientific developments and the concerns that were at the basis of the Council request, and which are further confirmed by the PRM study.
11. The Commission has concluded that there is sufficient evidence and scientific basis to take policy action, which will entail carrying out an impact assessment. Therefore it intends, following due consideration of the outcome of an impact assessment, to adopt a legislative proposal revising the current legal framework.
12. Ministers at the Agriculture and Fisheries Council meeting on 26/27 May 2021 are invited to take part in an exchange of views on the basis of the following questions:
 - a) *Have all the relevant problems been identified by the PRM study?*
 - b) *Do you consider that action is needed and, if yes, what should be the level of ambition of the proposal in addressing the problems identified?*
 - c) *Are there any additional options to be considered?*
