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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Presidency paper on non-regulated quarantine pests

Delegations will find in Annex a Presidency paper on non-regulated quarantine pests.

Background

On 6 May 2013 the Commission adopted two proposals (COM 2013(267)final concerning protective measures against pests of plants (hereinafter: “plant health proposal”) and COM 2013(262)final on the production and marketing of plant reproductive material (hereinafter “PRM proposal”). Those proposals aimed at creating a complementary scheme for the listing of, and measures against, the regulated non-quarantine pests (RNQPs). According to that scheme, the following actions would take place:

- Listing of RNQPs (including thresholds) under an implementing act adopted pursuant to the plant health proposal (Article 37 of plant health proposal, together with the listing of quarantine pests under Article 5); the purpose will be to have all pests listed together within the same act;
- Measures against RNQPs would be adopted pursuant to Articles 16 and 20 of PRM proposal with the purpose of maintaining the detailed control regime for all aspects of plant reproductive material. Those measures would address the marketing categories of pre-basic, basic and certified material under a joint certification scheme (requirements for production and lots, field inspection of each field, and sampling and testing of each marketing lot, see Annex II of PRM proposal) with the plant health proposal (see Article 82 of plant health proposal). Moreover they would also cover measures against the presence of RNQPs on standard material.

In March 2014 the European Parliament rejected the PRM proposal, and the Commission formally withdrew that proposal on 7 March 2015. Consequently the provisions of the existing 12 Directives concerning marketing of seed and other propagating material (S&PM Directives) will remain in force also after the adoption of the plant health proposal.

After the discussions at the Council Working Party on Plant Health: Protection and Inspection and based on concerns expressed by the several Member States, the Council Presidency has introduced the following paragraph (5a) in Article 37 of the plant health proposal:

[5a. The implementing act referred to in paragraph 2 may specify the measures referred to in point (f) of Article 36 that are necessary to prevent the presence of specific Union regulated non-quarantine pests on the plants for planting concerned.

Those measures may include:

- (a) Restrictions on the identity, nature, origin, provenance, ancestry, production method, production history and traceability of the plants for planting concerned;*
- (b) Requirements as regards the absence of symptoms of the Union regulated non-quarantine pest concerned on the plants for planting concerned at the place of production and its immediate vicinity in a given time period or production period, and the roguing out and destruction of symptomatic and infested plants;*
- (c) Requirements as regards surveillance, visual examination, sampling and laboratory testing of the plants for planting concerned, the growing medium and the production site for the presence of the Union regulated non-quarantine pests concerned, including through the certification schemes referred to in Article 82(4) and through subjection to quarantine procedures;*
- (d) Requirements as regards physical, chemical and biological treatment of the plants for planting concerned.*

For the purposes of points (a) to (d), those measures may include requirements with regard to the issuance of an official statement or other attestation to attest compliance with the provisions referred to in point (a) to (d).

The Commission shall amend that implementing act as necessary to ensure that those measures are justified.]

Interplay of Article 37(5a) with S&PM legislation

The provisions of Article 37(5a) overlap with certain provisions of S&PM Directives, or implementing acts adopted on the basis of those Directives.

With regards to the proposed regulatory framework, two options are technically possible concerning the measures against RNQPs:

1. Keeping Article 37(5a) in the plant health proposal. That option would create an overlap and could also risk adding a double control system and thus administrative burdens and costs for both operators and competent authorities.

In order to avoid that overlap, a number of legal changes would have to be introduced. The majority of S&PM Directives should be amended to remove all references to measures concerning RNQPs, either in the main provisions of the basic acts or in their Annexes¹.

Such an option, although legally possible, is expected to complicate the legislative procedure. It would require the Council to introduce amendments to the S&PM legislation.

However, it has been expressed by several delegations at the Council Working Parties that Article 37(5a) is necessary to ensure a high level of protection against RNQPs, and especially the ones which are currently listed under Annex II Part A Section II of Directive 2000/29/EC.

2. Removal of Article 37(5a) from the proposal. In such a case, the above overlap would be avoided. All measures concerning the inspection, sampling, testing, etc. of RNQPs would continue being taken pursuant to the S&PM Directives.

However, a further update of the S&PM legislation with regards to RNQPs and their thresholds would still be required. This would be necessary to adapt to the recent technical and scientific developments, and to avoid overlaps with the future listing of RNQPs under Article 37 of the plant health proposal.

¹ Some provisions of basic acts that should be amended by the European Parliament and the Council to avoid overlaps would be Article 4 of Directive 2008/90/EC on fruit plants, Article 5 of Directive 98/56/EC on ornamental plants, and Articles 2(b), 17(2), 18 and 26 of Directive 2002/56/EC on seed potatoes. Moreover, the Annexes of Directives 66/401/EEC, 66/402/EEC, 68/193, 2002/55/EC, 2002/56/EC and 2002/57/EC, as well as any implementing acts referring to measures against RNQPs, would need to be updated through a new implementing act.

That update could take place through the adoption of one or more joint implementing acts, on the basis of the new plant health Regulation (Articles 5, 37, 27, 32, 41, etc.) and on the basis of the existing S&PM Directives covering the different sectors. That implementing act would update all existing Annexes and implementing acts of S&PM Directives, as well as Annexes I to IV of Directive 2000/29/EC. As an example: the single implementing act would list all pests and measures against pests of fruit plants (currently those lists and measures are split between Annexes I to IV of Directive 2000/29/EC and Implementing Directive 2014/98/EU).
