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From:	General Secretariat of the Council
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on protective measures against pests of plants - <i>Delegations's comments</i>

Delegations will find in Annex comments received from the German delegation on the Presidency compromise text for the above proposal.

Comments by the German Delegation to the Presidency Compromise Proposal for a Regulation of the European Parliament and of the Council on protective measures against pests of plants (DOK 9739/15) in particular regarding RNQP and article 37 taking into account the comments from Slovenia (doc 7683/15, ADD 15, dated. 4. June 2015)

The intention and arguments in the Slovenian comment are fully supported by Germany. To support the maintenance of Art.37 (5a) in the plant health regulations the following additional points should be taken into consideration:

- From the point of transparency phytosanitary requirements should be included in plant health legislation because RNQP's are a concept of the IPPC/SPS area.
- The criteria for Union-quarantine pests (QP's) (Annex II, Sec. 1 of the Proposal for a Regulation on protective measures against pests of plants require a reassessment of the legal status of a pest, when it is not any longer restricted to a limited part of the EU or if its presence is not any longer scarce, irregular, isolated and infrequent. In most cases these pests have an unacceptable impact on plants for planting and therefore require appropriate regulation in order to guarantee healthy planting material. A legal basis for effective phytosanitary measures is necessary to transfer pests from QP to RNQP status (e.g. *Erwinia amylovora*, Phytoplasma diseases of fruit plants etc.). As outlined by Slovenia, Art. 37 (5a) with its legal basis for phytosanitary requirements is essential and a pre-condition for the transfer from a QP to an RNQP status.
- Import requirements are needed for RNQP's as well and these can only be included in the plant health legislation, because the Marketing Directives apply a system of equivalency with third countries. Furthermore according to the Marketing Directive of ornamental plants it is the importer who has to ensure, that the imported material affords equivalent guarantees to material produced in the EU (Dir 98/56/EU, article. 11). This doesn't comply with the concept of official control (supplement I to ISPM 5).

In conclusion, RNQP's requiring complex phytosanitary requirements (e.g. former QP's) for achievement of the required tolerance level should be regulated in the plant health legislation.

Art. 37 (4)

The current text would make it possible to lay down requirements only for one category (e.g. pre-basic material). The concept of RNQP's is connected to official control. Supplement 1 to ISPM 5 explains the mandatory nature of official control and ISPM 16 (point 6.2) says, that pests in a certification program may be RNQPs only if the certification program is mandatory. In the case of fruit plants the production of certified categories is optional. Only the production of CAC-material (fulfils minimum requirements) is mandatory. Therefore the restriction of requirements to one (possibly optional) category should be prevented. If CAC/standard material is marketable at least this category must be free (if appropriate with tolerances) from relevant RNQP's. In general more than one category will be regulated. To prevent misunderstandings in the future the following amendment (grey shaded) is proposed to Art 37 (4):

"Where justified according to Article 36(e) [in connection with point 3 of Section 4 of Annex II] for **pre-basic, basic, or certified material, seed or seed potatoes, or standard or CAC material or seed, as respectively referred to in Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC and 2008/90/EC** ~~categories referred to in~~ Article 12(1) of Regulation (EU) No .../.... [Office of Publications, please insert number of ~~Regulation on plant reproductive material law~~], the list referred to in paragraph 1 shall set out those categories stating that the prohibition of introduction and movement provided for in paragraph 1 only applies to those categories."

Art. 37 (2) References to pests to be included in the list of Union-RNQP's from the marketing directives

b): point 3 of Annex I of Council Directive 66/402/EEC doesn't refer to pests

f): there is a reference to point B of Annex II: point B doesn't exist and should be deleted.
Furthermore additional references should be added to Annex II points 2 (dry and wet rots), 4 (common scab), 5 (black scurf) and 6 (powdery scab).