EUROPEAN
COMMISSION

Brussels, 27.7.2021
COM(2021) 425 final

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')

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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.

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.

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1 *OJ L 317, 23.11.2016, p. 4.*

2 OJ L 95, 7.4.2017, p. 1.

3. EXERCISE OF THE DELEGATION

During the reporting period, the Commission exercised its delegated powers, by adopting the following delegated acts:

- 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[3].

- 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[4].

- 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[5].

By now the Commission has used 4 of the 25 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. 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.

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	Articles 8(5) and 48(5)

[3] OJ L 137, 23.5.2019
[4] OJ L 137, 23.5.2019.
[5] OJ L 260, 11.10.2019.

selections, or breeding.	
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)

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 conditions for the application of those derogations, 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 new rule.

- The empowerments of Article 32(5) and Article 34(1), concerning the surveys on protected zones, will be used within 2021. The draft Commission Delegated Regulation is currently examined by the respective Expert Group.

- The empowerment of Article 43(2) concerning the requirements set out in paragraph 1 of that Article concerning wood packaging material and the ISPM15 mark, was not used so far. However the Commission will assess the need to use it, once any updates of scientific and technical knowledge, or of the respective international standards, take place.

- 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 new rules.

- 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 new rules.

- 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 new rules.

- 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 new rules.

- 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 new 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 new rules.

4. CONCLUSION

Given the limited time of application of Regulation (EU) 2016/2031 up to date, the Commission sees the need for extension of all empowerments 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 particularly important to provide the necessary flexibility in the implementation of the new rules, to adjust them regularly to the latest scientific standards and to give possibility to the Commission to act in the areas where it did not to this moment, but it may need to do so in the future.