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NOTE

From:	Presidency
To:	Council
Subject:	Proposal for a Regulation of the Parliament and of the Council on the production and marketing of plant reproductive material in the Union, amending Regulations (EU) 2016/2031, 2017/625 and 2018/848 of the European Parliament and of the Council, and repealing Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/53/EC, 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC, 2008/72/EC and 2008/90/EC (Regulation on plant reproductive material) *- State of play*

Delegations will find in Annex a note from the Presidency on the state of play of the discussions on the above-mentioned proposal, which will be dealt with under "Any other business" at the Council meeting ("Agriculture and Fisheries") on 24 June 2024.

ANNEX

State of play of the discussions on the proposal for a Regulation on plant reproductive material

Information from the Belgian Presidency

I. INTRODUCTION

1. On 5 July 2023, the Commission adopted two closely related legislative proposals to revise and update the rules on the production and marketing of plant reproductive material (PRM) and forest reproductive material (FRM) in the EU. The proposals were submitted to the Council on 6 July 2023.

2. At present, the legislation applicable to the area comprises a directive on the common catalogue of varieties of agricultural plant species and 11 marketing directives covering seeds, plant reproductive material, propagating material of ornamental plants and forest reproductive material. Some of the directives date back to the 1960s. This fragmentation in the rules results in different implementation practices in Member States and a high administrative burden for the competent authorities and the operators. Moreover, the current legislation is not coherent with other legislation on plant health, official controls and GMOs, is outdated from a scientific point of view, and needs innovation to promote improved varieties and to adapt to the new climate challenges.

3. The PRM proposal[1] introduces a new legislative approach, replacing the 10 PRM marketing directives with a single regulation. In particular, it aims to:

   – simplify the legal framework through clarified and harmonised rules,

   – facilitate technical progress in order to foster digital and novel technologies such as the use of bio-molecular techniques,

   – reduce the administrative burden,

   – ensure the availability of high-quality PRM adapted to the changing agricultural and environmental conditions,

   – ensure food security, the conservation of plant genetic resources and the protection of biodiversity, and

   – improve coherence with the official controls and plant health legislation.

   The new proposal covers seeds as well as all other forms of material intended for the vegetative propagation of entire plants. It does not cover forest reproductive material, ornamental plants, PRM exported to third countries or PRM intended for other non-marketing purposes.

4. The proposal is based on Article 43(2) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

5. In the European Parliament, the Committee on Agriculture and Rural Development has the lead responsibility and Mr Herbert Dorfmann (EPP, Italy) has been appointed as rapporteur. The Parliament adopted its position at first reading on 24 April 2024[2].

[1] 11502/23 + ADD 1

[2] Texts adopted - Production and marketing of plant reproductive material - 24 April 2024

6. Both the European Economic and Social Committee (EESC) and the European Committee of the Regions (COR) were consulted. The EESC adopted its opinion on 13 December 2023[3].The COR adopted its opinion on 17 April 2024[4].

II. STATE OF PLAY OF WORK WITHIN THE COUNCIL AND ITS PREPARATORY BODIES

7. The Commission presented the proposal and its impact assessment[5] at an informal videoconference of the members of the Working Party on Genetic Resources and Innovation in Agriculture (hereinafter 'the Working Party') on 6 July 2023, which was followed by a presentation at the meeting of the Agriculture and Fisheries Council on 25 July 2023.

8. The examination of the proposal began under the Spanish Presidency, which presented a progress report to the AGRIFISH Council in December 2023[6].

9. Building on the progress made during the Spanish Presidency, the Belgian Presidency continued the examination of the proposal.

10. Between January and June 2024, the Working Party held five meetings in person (17-18 January, 27 February, 12-13 March, 19 April and 20-21 June). In addition, two meetings of the members of the Working Party were held by informal videoconference (17 April and 17 May).

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3 5402/24
4 9226/24
5 11694/23 (the examination of the impact assessment was caried out on the basis of the checklist)
6 16040/23

11. Under the Belgian Presidency, Articles 23-43, 75-83 and Annexes I-VI of the proposal were discussed at technical level. The Presidency prepared a revised text on Articles 23-43 and 81, and on Annexes I-VI. In addition, the Presidency redrafted Articles 1-22, which had been previously revised by the Spanish Presidency.

12. At the meeting of the Environment Council on 25 March 2024, the Austrian delegation provided information on the importance of small farmers and farmers' networks for a sustainable EU seed regulation[7].

MAIN ISSUES AND PROGRESS ACHIEVED

13. A large number of technical comments have been made by delegations both orally at the Working Party meetings and in writing during the written consultations. The Presidency has tried to accommodate these comments when preparing a revised text, aiming to clarify and develop the content of the proposal.

    The comments provided by delegations identify several areas where the provisions need to be further developed or clarified. Out of these, the Presidency wishes to highlight the following ones.

    – **The link to the Official Controls Regulation[8] (Article 80)**

    A new element in the Commission proposal is that in the future PRM would fall under the scope of the Official Controls Regulation (OCR). To explain the consequences of this change on the PRM sector, the Commission services prepared a working document[9] and gave a detailed presentation at the Working Party meeting in March explaining the key principles and advantages of the OCR.

[7] 7784/24
[8] Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017
[9] WK 3501/2024 INIT

A minority of delegations have explicitly rejected extending the scope of the OCR to PRM, as they fear that an additional administrative and financial burden would be created for both the competent authorities and the operators. In addition, they prefer that Member States are given more discretion in this area. Other delegations are divided between putting the entire PRM proposal under the scope of the OCR or bringing only the marketing and the import controls of PRM under its scope. Harmonisation and legal certainty for operators are the main reasons why delegations have argued in favour of the full coupling of the OCR and PRM. The argument in favour of partial coupling, on the other hand, is that it could enable a balance between the advantages offered by harmonisation and the potential disadvantages such as the administrative burden and rigidity. Many delegations have expressed the need for additional discussion and clarification once the entire proposal has been examined.

– **Provisions on imports of PRM from third countries (Articles 39 and 40)**

A detailed discussion on this subject took place at the Working Party meeting in March (on the basis of the Commission proposal) and in May (on the basis of a Presidency redrafted text). Most of the delegations generally supported the Commission proposal aiming to provide clear rules on imports on the basis of Union equivalence and on the labelling of imported PRM. Some delegations, however, expressed concerns about the provisions concerning equivalence. Another issue raised by several delegations was that, according to the Commission proposal, the existing possibility of importing ‘seed as grown’ to be processed in the Union would disappear in the future. The Presidency has therefore presented a second redrafted version at the May meeting based on the comments from delegations, receiving a large support.

– **Requirements for professional operators and the link to the Plant Health Regulation (Articles 41-43)**

This subject was discussed at the Working Party meeting in February (on the basis of the Commission proposal) and in April (on the basis of a Presidency redrafted text). Delegations expressed a general need to harmonise the rules on PRM with the Plant Health Regulation (PHR). The merging of the PHR register with the PRM register is especially relevant in this regard and requires careful analysis and clarification to ensure that all the relevant information is provided by the professional operators to the competent authorities without requiring the same information twice. Furthermore, adjustments are needed to clarify which professional operators are to be registered in the common PRM/PHR register.

– **Conservation varieties (Article 26)**

The first discussion took place in December 2023 (on the basis of the Commission proposal) and a more detailed discussion took place in April (based on a Presidency revised text). The discussion centred around the addition of the definition of 'newly bred conservation variety' under the definition of 'conservation variety' in Article 3(29). During the discussions, the Presidency suggested a modified version of the definition of 'newly bred conservation variety' to emphasise the development of these varieties by farmer communities next to the traditional (old) conservation varieties. However, the new definition was not supported by the majority of delegations because they fear it would open a backdoor for commercial varieties that had not passed the DUS (distinctiveness, uniformity and stability) requirement. Deleting 'newly bred conservation variety' from the definition would, however, mean that local new varieties developed by farmer communities would be subject to all provisions on commercial crop varieties (ie. DUS and VSCU (value for sustainable cultivation and use) provisions).

– **PRM of heterogeneous material (Article 27)**

Initial discussions on this subject took place in December 2023 (on the basis of the Commission proposal) and more detailed discussions took place in April 2024 (based on a Presidency revised text). The main discussion points were:

a) excluding the possibility of producing heterogeneous material from certain species that are characterised by a certain level of heterogeneity, as heterogeneous material from these species would be indistinguishable from varieties of these species; and

b) limiting the production and marketing of heterogeneous material only to organic production and, if that was the case, replicating the rules on the production and marketing of organic heterogeneous material under Regulation (EU) 2018/848 in the PRM rules.

The Presidency has prepared a revised text introducing an exclusion of the production and marketing of heterogenous materials from certain species, but only for heterogeneous material other than organic heterogeneous material. Considering that currently no such exclusion exists for organic heterogeneous material, introducing one for this material would jeopardise certain activities already undertaken by producers of organic heterogeneous material. The Presidency has therefore not proposed to limit the production and marketing of heterogeneous material only to organic production, as this could not find support from the majority of delegations.

– **Final users (Article 28)**

This discussion took place in January (on the basis of the Commission proposal) and in April (on the basis of a Presidency revised text). The definition of 'final user' in Article 3(28) has been changed by the Presidency to 'non-professional user' in order to avoid confusion with the terminology used in other legislation such as the PHR, to clarify that farmers are not final users, and to align the terminology with Directive 98/56/EC on the marketing of propagating material of ornamental plants. The majority of delegations agreed with including non-professional users within the scope of the regulation. The delegations' views on the terminology differed, however, with some supporting the reference to 'final user', as this term is also used in the PHR, while others preferred the reference to 'non-professional user'.

Furthermore, in order to reduce the risk of spreading diseases, delegations suggested excluding vulnerable species such as seed potatoes from the derogation under Article 28.

– **Seed exchange in kind between farmers (Article 30)**

This topic was discussed at expert level in January (on the basis of the Commission proposal) and in April (on the basis of a Presidency revised text). Several delegations proposed deleting Article 30 as they see it as opening a backdoor for the black market. Other delegations want to keep it, but with more clearly defined rules on what 'local level' and 'farmer' mean.

– **Derogations allowing the marketing of PRM which is not certified or not yet certified PRM (Articles 31-32 and 35) and complying with less stringent requirements in cases of specific needs (Article 33-34)**

These topics were discussed first in January (on the basis of the Commission proposal) and then in April and May (on the basis of a Presidency revised text). To ensure the smooth functioning of the market in specific cases and situations, a number of derogations were provided for in the proposal. The Presidency has supplemented and clarified these derogations and added new ones. At the request of some delegations, and to increase agricultural diversity, the Presidency added a new derogation providing competent authorities with the possibility of allowing trials to assess the commercial value and cultivation potential of varieties that are not registered. The Presidency also added the possibility of marketing PRM during the registration process specifically for species with a long production cycle (e.g. fruit plants, vine).

– **The derogation allowing Member States to impose more stringent requirements (Article 36)**

A discussion took place in January (on the basis of the Commission proposal) and in April (on the basis of a Presidency revised text). There is general agreement among the delegations that the Commission proposal is too rigid as it requires a very complicated procedure for allowing Member States to impose more stringent requirements on their territories. Nevertheless, the majority of the delegations supported the Presidency revised text according to which Member States may impose more stringent production and marketing requirements as laid down in Annexes II and III without authorisation from the Commission, under the condition that these more stringent requirements do not distort the EU market.

III. CONCLUSION

14. The Presidency has prepared a revised text[10] on Articles 1-43, 81 and Annexes I-VI of the proposal.

15. On the basis of the progress made under the Belgian Presidency, the incoming Hungarian Presidency plans to continue the work on this file at technical level with view to finishing the examination of the proposal.

16. In light of the above, the Council is invited to take note of the progress made in the examination of the proposal.

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[10] 11303/24