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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council at first reading on the adoption of a Regulation of the European Parliament and of the Council on protective measures against pests of plants

Delegations will find attached document COM(2016) 544 final.

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2013/0141 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council at first reading on the adoption of a Regulation of the European
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position of the Council at first reading on the adoption of a Regulation of the European Parliament and of the Council on protective measures against pests of plants

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council: 6 May 2013.
(document COM (2013) 267 final – 2013/0141 COD):

Date of the opinion of the European Economic and Social Committee: 10 December 2013

Date of the position of the European Parliament, first reading: 15 April 2014

Date of transmission of the amended proposal: *

Date of adoption of the position of the Council: 18 July 2016

* Taking into account the developments in the informal discussions between the Council and the European Parliament following the European Parliament first reading, the Commission did not prepare an amended proposal but expressed its views on the Parliament amendments in the "*Communication de la Commission sur les suites données aux avis et résolutions adoptés par le Parlement européen lors de la session d'avril 2014*" (document SP (2014)471) sent to the European Parliament on 7 July 2014.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The proposal repeals and replaces the Union legislation on protection from pests of plants, which consists of Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, and six more Directives concerning plant health measures and pests. The current legislative framework has been in place since 1977 and needed to be adapted in view of the new challenges of increased trade and climate change. The proposal was part of a package of reviews relating to the health of plants, health of animals, official controls concerning plants, animals, food and feed, and Union expenditures for those policies.

The proposal covers the assessment and management of risks of pests of plants. Those pests are classified as quarantine pests and regulated non-quarantine pests in accordance with criteria of international standards. Quarantine pests are themselves classified between Union quarantine pests (applicable to the entire Union territory) and protected zone quarantine pests (applicable to particular protected zones only). All those pests shall only be listed on the basis of a risk assessment in accordance with international standards. It was also proposed that 10 percent of Union quarantine pests with the most severe impacts on economy, society and environment will be classified as priority pests, on which more stringent requirements will apply with regards to surveys and eradication action plans.

The proposal introduces new and more specific obligations with regards to the notification of pests by all sides (competent authorities, professional operators as well as private persons). It further sets out new and more specific rules concerning eradication of pests; surveys; multi-annual surveillance plans; contingency plans and simulation exercises concerning priority pests; provisional measures to be taken on pests not yet listed as Union quarantine pests; national more stringent measures for the purpose of eradication; and exceptions for the purposes of science, trials, varietal selections, and breeding or exhibitions.

The proposal further sets out a more proactive system concerning the introduction into, and movement within, the Union of plants, plant products and other objects which may host such pests and pose an unacceptable phytosanitary risk. It simplifies the rules on certification by requiring a uniform plant passport for all plants for planting. Moreover, it establishes the pre-export certificate that ensures a better coordination between Member States in case a plant, plant product or other objects moves between them before being exported to a non-EU country.

The proposal pursues the objectives of better regulation, since it simplifies the rules on listing of all pests (quarantine and regulated non-quarantine) under a single legal framework, it sets out clearer and more detailed rules on how to react to outbreaks of pests and harmonises and clarifies the requirements for certification of regulated commodities for their introduction into, and movement within, the Union territory. Moreover, it establishes more transparent rules concerning assessment and management of phytosanitary risk.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1 General comments

The Commission's proposal was transmitted to the European Parliament and to the Council on 6 May 2013. The European Parliament adopted its position at first reading on 15 April 2014 and supported the main goals of the Commission's proposal.

In particular, the European Parliament agreed on the classification of pests, the measures on notifications, eradication, surveys, contingency plans, simulation exercises, the need for a more proactive import system, and the new approach concerning certification of plants, plant products or other objects. The European Parliament proposed to abolish the top-10 percent threshold for priority pests, introduced several amendments for more stringent requirements on imports and transit of plants, plant products or other objects, and also initiated reporting obligations concerning the expansion of the scope of plant passports and the effect of import measures. The European Parliament also proposed the inclusion of all regulated pests in the Annexes of the Regulation.

The position of the European Parliament included 136 amendments to the original Commission's proposal.

No modified Commission's proposal was issued. In the "*Communication de la Commission sur les suites données aux avis et résolutions adoptés par le Parlement européen lors de la session d'avril 2014*" (document SP (2014)471) sent to the European Parliament on 7 July 2016, the Commission indicated that it could accept in full, in part, in principle or subject to rewriting 50 of the 136 amendments, as it considered that these amendments could clarify or improve the Commission's proposal and were consistent with its general aims.

Following adoption of the European Parliament's first reading position, informal discussions continued between the delegations of the European Parliament, the Council Presidency and the Commission, with a view to concluding an agreement at the common position stage ('early second reading agreement').

These discussions proved successful and are reflected in the common position of the Council, which was adopted with qualified majority. The Commission considers that the common position of the Council reflects the original goals of the Commission's proposal and takes into account many concerns of the European Parliament. Although on certain elements, the common position differs from the Commission's original proposal, the Commission considers that it represents a carefully balanced compromise and is satisfied that it covers all issues considered essential by the Commission when adopting its proposal.

3.2 Amendments of the European Parliament accepted by the Commission and incorporated in full, in part or in principle in the position of the Council at first reading

Information of relevant professional operators concerning contingency plans.

The European Parliament introduced an amendment (56) setting out that Member States shall communicate their contingency plans to the Commission and to the other Member States on request, ‘and shall inform all relevant operators’. The information of all relevant operators is a useful addition that has been accepted by the Commission and the Council and has been included in the text of the Regulation.

Involvement of stakeholders in simulation exercises. The European Parliament introduced an amendment (57) setting out that those exercises shall take place with regards to all priority pests concerned within a reasonable period of time ‘and with the involvement of the stakeholders concerned’. The involvement of the stakeholders concerned is a useful addition that has been accepted by the Commission and the Council.

3.3 Amendments of the European Parliament rejected by the Commission and incorporated in full, in part or in principle in the position of the Council at first reading

Abolition of 10% threshold for priority pests. The European Parliament considered that upper limit of 10% out of the total number of Union quarantine pests as arbitrary, thus proposed its abolition (amendment 40). The Commission rejected that amendment to ensure that the principle of prioritisation is respected when adopting the list of priority pests. The Council accepted the amendment and the 10% threshold has been removed from the Regulation. The Commission can accept that position in the spirit of compromise and because it will still be possible to respect the spirit of prioritisation without establishing a specific limit through legislation.

Reporting on plant passports. The European Parliament introduced an amendment setting out an obligation for the Commission to report to the European Parliament and the Council the experience gained from the extension of the plant passport system to all movement of plants, plant products and other objects within the Union territory. That report must include a clear costs benefits analysis for the operators (amendments 108 and 109). The Commission rejected that amendment because it has been assessed by the impact assessment that the expansion of the scope of the plant passport to all plants for planting will have no significant impact on operators and the trade of plants. The Council accepted the amendment. The Commission can accept the Council’s position in the spirit of compromise.

Reporting on import measures. The European Parliament proposed an obligation for the Commission to report to the European Parliament and the Council, including a cost-benefit analysis, on the enforcement and effectiveness of measures relating to imports into the Union territory (amendment 98).

The Council accepted that amendment. While the Commission had originally rejected the amendment by the European Parliament because it was considered too burdensome, it can accept the text as taken over in the Council's position in the spirit of finding a compromise solution.

3.4 Amendments of the European Parliament accepted by the Commission in full, in part or in principle, but not incorporated in the position of the Council at first reading

Some small amendments were accepted by the Commission in part, but were not specifically included in the final Council position as in the course of the negotiations they had become redundant or were already explained elsewhere or implicitly included in the proposal (for example amendments 43, 44, 45, 46, 51, 52, 53).

3.5 Amendments of the European Parliament rejected by the Commission and not incorporated in the position of the Council at first reading

Inclusion of invasive alien species in the definition of pest. The European Parliament proposed the inclusion of invasive alien species in the definition of pests (amendment 19). The Commission rejected that amendment because such a widening of the scope would create overlaps with Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species and it would overstretch the available resources concerning assessment and management of pests. The Council also rejected such widening of the scope, however agreed to include in the scope of 'pests', and under certain conditions, the non-parasitic plants (see point 3.6).

Listing of pests in the Annex of the Regulation instead of under an Implementing Act. The European Parliament proposed an amendment to list all pests under the Annexes of the Regulation (for example amendments 14, 30 and 31). The Commission rejected that amendment. It considers that the criteria to decide on the listing of pests is an essential element of the scope of the Regulation, not the listing itself which is transient. The status of pests in the lists changes frequently and is entwined with measures against those pests and the specific third countries / Member States concerned. Pests should therefore be listed in implementing acts, not in Annexes to the Regulation. The Council also rejected that amendment for the same reasoning.

Competent authorities to have the right to apply containment instead of eradication. The European Parliament proposed in its amendment that competent authorities have the possibility to apply on their own decision, containment, instead of eradication, of Union quarantine pests, where they consider that eradication is not possible (amendment 47).

The Commission rejected that amendment because it is important for the phytosanitary protection of Union territory that eradication remains the only option for the competent authorities. Containment should only be allowed if decided so at Union level by a Commission Implementing Decision. The Council also rejected that amendment on the basis of the same reasoning.

Co-ordination of compensation of professional operators. The European Parliament introduced an amendment indicating that where Member States compensate professional operators for the value of plants, plant products or other objects destroyed as part of the eradication measures and implemented in a cross-border area, they should ensure that adequate compensation is coordinated between the concerned Member States to avoid market distortion (amendment 48). The Commission rejected that amendment because this addition does not concern the subject of this proposal but the financial regulation for Commission measures and given its declaratory nature, it goes against the rules on legislative technique. The Council also rejected that amendment on the basis of the same reasoning.

Stringent requirements for phytosanitary transit. In the case of plants, plant products or other objects moving through the Union in transit, the European Parliament proposed more stringent requirements, including the use of an officially-approved phytosanitary seal and close supervision of that movement (amendments 91, 92). The Commission rejected those amendments because they are burdensome and disproportionate to the potential phytosanitary risk of those commodities. The Council also rejected that amendment on the basis of the same reasoning, and also because provisions on transit will be covered in a horizontal manner under the new Regulation on Official Controls (COM (2013) 265 final – 2013/0140 COD).

Consultation of Advisory Group. The European Parliament introduced an amendment setting out that the Commission should consult the Advisory Group on the food chain and animal and plant health established under the Commission Decision 2004/613/EC and that the Group should provide inputs during the preparation of implementing and delegated acts (amendment 113). The Commission rejected that amendment because such practice should be left up to the discretion of the Commission instead of establishing it in a legislative act. The Commission consults the Advisory Group on a regular basis on plant health issues and a permanent Working Group on Plants was established under the Advisory Group in 2013 for this. The Council also rejected that amendment on the basis of the same reasoning.

3.6 New provisions introduced by the Council

The Council introduced many amendments in almost all Articles of the proposal. Most of those amendments constitute a further development of the provisions of the proposal and do not introduce a new or fundamentally amended approach. However, following provisions add to the scope or requirements of the proposal.

Inclusion of non-parasitic plants in the definition of pests. The proposal excluded non-parasitic plants from the definition of pest. The Council added a provision according to which whenever there is evidence that non-parasitic plants (with the exclusion of invasive alien species) pose phytosanitary risks which have a severe economic, social and environmental impact for the Union territory, those non-parasitic plants may be considered as plants injurious to plants or plant products (pests). The Commission accepted that amendment in the spirit of compromise.

Temporary protected zones. The Council added a provision that the Commission may recognise a temporary protected zone to which the conditions of ordinary protected zones shall apply. However for the establishment of a temporary zone only a one-year survey shall be required, instead of a three-years survey which is required for the ordinary protected zones. The recognition of a temporary protected zone shall last no longer than three years after recognition, and shall expire automatically after three years. The Commission accepted that provision because it could ensure a more flexible approach concerning the establishment of protected zones.

Import of high risk plants, plant products or other objects. The Council proposed that when a preliminary assessment reveals that a plant, plant product or other object originating in a third country and which is not subject to other requirements presents a pest risk of an unacceptable level for the Union territory, it shall be referred to as 'high risk plant', 'high risk plant product' or 'high risk other object' and its introduction into the Union shall be prohibited. That preliminary assessment shall take into account, as appropriate for the plant, plant product or other object concerned, certain prescribed criteria. The Commission shall adopt an implementing act, provisionally listing on the appropriate taxonomic level, the high risk plants, plant products or other objects and, where appropriate, the third countries, group of third countries or specific areas of third country concerned. That listing may be amended if a full risk assessment proves that those plants, plant products or other objects should be de-regulated or subject to prohibitions or special measures under this Regulation. The Commission accepted that amendment in the spirit of compromise, and because it can ensure a proactive import policy in compliance with the World Trade Organisation's Agreement on the Application of Sanitary and Phytosanitary Measures.

Rules on wood packaging material. The Council added more specific rules on the introduction into, movement within and movement out of the Union of wood packaging material. Such introduction and movement must be in explicit compliance with the respective international standard (standard ISPM 15 of the International Plant Protection Convention (IPPC)). The Commission accepted that amendment because it will provides for more clarity concerning the rules on wood packaging material.

Confinement facilities. To complement the proposal's provisions on quarantine stations, the Council also added a set of provisions for confinement facilities, as several Member States may not be in position to establish and manage quarantine stations. The Commission accepted that amendment because it offers more flexibility to certain Member States.

Phytosanitary certificates for the import of all plants. According to the Commission proposal, living plants (including entire plants, fruits, vegetables, cut flowers, etc) which are subject to specific import requirements may only be introduced into the Union if accompanied by a phytosanitary certificate. The Council expanded the scope of that obligation. It added the provision that the Commission shall, by means of an implementing act, set out that such an obligation will apply to all plants (and not only the plants for which import requirements have been set out). However that implementing act shall set out that a phytosanitary certificate is not required for those plants where an assessment, based on evidence about pest risks and experience with trade, demonstrates that such a certificate is not necessary. That assessment shall take into account certain prescribed criteria. The Commission accepted that expansion of the scope of the phytosanitary certificate because it will offer better overview of the imported plants and will also offer better phytosanitary guarantees.

4. CONCLUSION

The Commission considers that the common position adopted by the Council with qualified majority reflects the original goals of the Commission's proposal and takes into account many concerns of the European Parliament. Although on certain elements, the common position differs from the Commission's original proposal, the Commission considers that it represents a carefully balanced compromise and is satisfied that it covers all issues considered essential by the Commission when adopting its proposal.

For the reasons outlined above the Commission supports the common position adopted on 18 July 2016.