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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 forest reproductive material, amending Regulations (EU) 2016/2031 and 2017/625 of the European Parliament and of the Council and repealing Council Directive 1999/105/EC (Regulation on forest reproductive material) <i>- State of play</i>

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.

State of play of the discussions on the proposal for a Regulation on forest reproductive material (FRM)

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 applicable legislation is Council Directive 1999/105/EC, which sets out rules on the production and marketing of forest reproductive material ('FRM Directive'). FRM is marketed across Member States but the conditions for operators diverge. Moreover, the legislation has not kept in place with recent developments in science and technology, and is not sufficiently aligned with the objectives of the European Green Deal and related strategies. The supply of high-quality FRM has not developed in line with the increasing demand that is needed to reach the EU target of planting 3 billion additional trees by 2030. With this target, the EU is aiming to double the number of trees planted per year in view of purposes such as production of wood, biomass, biomaterials and other forest products, biodiversity conservation and restoration of forest ecosystems.

The increasing occurrence of extreme weather events and disasters, in combination with an insufficient assessment of sustainability characteristics for the lower FRM categories, has put pressure on the supply of suitable FRM and thus on the resilience of forest ecosystems.

3. The FRM proposal¹ introduces a new legislative approach replacing Directive 1999/105/EC with a regulation. In particular, it aims to:
- set a new legal framework with clarified and more harmonised rules,
 - facilitate technical progress in order to foster digital and novel technologies, such as the use of bio-molecular techniques,
 - ensure the availability of high-quality FRM adapted to changing climatic and environmental conditions with the aim of contributing to the objectives of the New EU 2030 Forest Strategy for adapting forests to climate change and restoring forests affected by climate-related damage, and
 - support the conservation of forest genetic resources ('FGR').
4. The new proposal covers seeds, plants and parts of plants from tree species that are used for the enrichment or renewal of existing forests, for the creation of new forests or for other types of tree planting. It does not cover plant reproductive material, propagating material of ornamental plants, FRM intended for export to third countries, FRM subject to service contracts, such as for the purpose of cleaning, transport, disinfection and treatment, or FRM used solely for scientific purposes.
5. Like the current directive, the proposed Regulation is based on two pillars:
- i) the registration of parent trees (i.e. basic material) and the authorisation for harvesting FRM from these parents;
 - ii) the control of FRM to ensure traceability and high quality. The assessment of the sustainability characteristics of parent trees has been strengthened.

¹ 11503/23 + ADD 1

6. The proposal aims to guarantee the quality of FRM available on the EU market. At the same time, it includes exemptions from the approval of basic material from which FRM is derived for the specific cases of conservation and sustainable use of forest genetic resources. In addition, the proposal specifies the rules concerning the requirements for FRM identity and quality, labelling, packaging, imports, professional operators, and the registration of basic material.
7. The proposal is based on Article 43(2) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).
8. The European Parliament adopted its position at first reading on 24 April 2024².
9. The European Economic and Social Committee adopted its opinion on 13 December 2023³.

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

10. The Commission presented the proposal and its impact assessment⁴ 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.
11. The examination of the proposal began under the Spanish Presidency, which presented a progress report to the AGRIFISH Council in December 2023⁵.

² [Texts adopted - Production and marketing of forest reproductive material - 24 April 2024](#)

³ 5402/24

⁴ 11694/23 (the examination of the impact assessment was carried out on the basis of the checklist)

⁵ 16142/23 + COR 1.

12. Building on the progress made during the Spanish Presidency, the Belgian Presidency was able to complete the examination of the entire proposal. The working party held two physical meetings (15-16 February 2024, 7-8 May 2024). In addition, two meetings of the members of the Working Party were organised by informal videoconference (27 May 2024 and 14 June 2024).

MAIN ISSUES AND PROGRESS ACHIEVED

13. A large number of technical comments have been made by delegations, both orally during the working party meetings and in writing during the follow-up written consultations. The Presidency has tried to accommodate these comments, with the aim of developing and clarifying the content of the proposal.
14. Delegations generally support the main objectives of the proposal. The fact that it has been possible to maintain the two pillars of the current system, namely the registration of basic material and the control of FRM, has been well received. Hereafter follows a description of the main concerns and the solutions found, which have been integrated into the Presidency compromise text:

– **Administrative burden**

The increased administrative burden for operators and competent authorities was a concern for the delegations, and it was necessary to find solutions to ensure proportionality.

These solutions include the limitation of reporting requirements by Member States to the Commission set out in Article 28 and the authorisation for operators to carry out activities under official supervision, such as the issuing and printing of labels (Article 16).

– **Contingency plan and national register (Article 9)**

The proposal provided that each Member State would be required to draw up contingency plans to ensure a sufficient supply of FRM to reforest areas affected by extreme weather events, wildfires, disease and pest outbreaks, or other disasters. These contingency plans would give information on the availability of FRM in other and similar regions in order to be able to quickly obtain the right material when needed and also have an overview of material availability throughout the Union.

A large majority of delegations rejected the mandatory nature of Article 9, mainly because of the costs involved (time, personnel, financial) and the lack of knowledge about the further distribution of the trees in the context of climate change. The compromise text now determines that these plans are to be voluntary and contains simplified provisions.

– **Conserving of forest genetic resources (FGR) (Article 18)**

Concerns were expressed about the derogation for basic material intended for conservation and also sustainable use of FGR. This is a derogation from the rule that basic material should be approved by the competent authorities prior to its registration on the national list. Approval by authorised persons, and the subsequent notification of the basic material to the competent authority would suffice.

The three main concerns were:

- i) the circulation of FRM derived from basic material that has been approved by authorised persons instead of competent authorities and which therefore creates greater uncertainty about its quality. A balance needs to be struck between addressing this concern while guaranteeing a flexible regime for this kind of material that is intended for conservation, rather than other purposes;
- ii) the requirements for the basic material intended for the conservation of FGR, which are different for basic material intended for other purposes;
- iii) the term sustainable use, as it is too vague to be defined.

A middle ground was found in the compromise text by maintaining the possibility of approval by the authorised persons but under official supervision of the competent authorities and by setting out provisions with requirements for the persons to fulfil in order to be authorised by the competent authorities to approve basic material themselves, as well as requirements for the FRM derived from that basic material. The requirements for the basic material will be decided upon through a delegated act at a later stage. In order to solve the problem on sustainable use, this term has been left out from the text. In addition, FRM for conservation of FGR that is derived from basic material approved by the authorised persons will bear a label stating that fact.

– **Inclusion in the scope of the Regulation on official controls ('OCR')⁶**

The proposal envisaged that the FRM rules would be included in the scope of Regulation (EU) 2017/625 concerning official controls. Delegations opposed this almost unanimously, stating mainly that:

- the OCR provisions cannot be applied to the various processes in the FRM regulations without further thought;
- the current national control systems are sufficient; there is no added value in applying the OCR and that it is disproportionate compared to the risks of non-compliance as per today;
- the OCR application would increase administrative burden, amongst others because of, for example, the audits Member States would have to undergo and the reporting obligations that would be imposed on them.

During the working party meeting on 27 May 2024, the Belgian Presidency went more into detail on the topic of OCR, providing an overview of all the OCR articles and how these could be linked to the FRM proposal. At the informal videoconference of 14 June 2024, the presidency presented a possible solution whereby the FRM rules would be brought within the scope of the OCR, with a number of provisions being carved out. The corresponding draft compromise text identified the main points (mandatory fees, official laboratories, ISTA accreditation and multi-annual control plans) that should not be subject to the OCR. The proposed draft compromise text on the OCR was considered by the delegations as heading into the right direction with some further adjustments required.

⁶ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017

– **Modification of Annex I**

Some delegations were in favour of adding as many new species of trees and bushes in Annex I as possible, while other delegations wanted to limit the addition of new species to a strict minimum. The reason for this is that each new addition of a species means an increase in administrative work for both nurseries and competent authorities as well as increased controls. The proposed compromise was to include all species other than bushes, that were supported by at least two Member States.

III. CONCLUSION

15. The Presidency has prepared a revised text⁷ for the entire proposal and the annexes, and considers that only the proposed draft compromise text on the OCR needs further consideration.
16. 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.
17. In the light of the above, the Council is invited to take note of the progress made in the examination of the proposal.

⁷ 11304/24