



EUROPEAN COMMISSION

Brussels, 22. 10. 2013
C(2013) 7039 final

Dear President,

The Commission would like to thank the Bundesrat for its Reasoned Opinion on the proposal for a Regulation of the European Parliament and of the Council on protective measures against pests of plants {COM(2013) 267 final}, and welcomes the detailed observations and suggestions made by the Bundesrat.

The Commission takes particular note of the Bundesrat's conclusions that the above mentioned proposal is not in compliance with the principle of subsidiarity and would like to provide the following clarifications in this respect:

Legal form of a Regulation

The evaluation of the existing EU plant health legislation in 2010 highlighted the need to move from a Member State based approach to an EU approach, so as to ensure joint action to tackle risks of EU significance.

Based on the evaluation, the Commission carried out an intensive consultation of the Member States and the stakeholders of the EU plant health regime on the desired legislative changes. Options for change were also formally presented for consultation during the preparation of the impact assessment for the proposal. Altogether, strong support was received for strengthening and modernising the regime, so as to offer better protection against the entry and spread of pests of plants and at the same time reduce burden and introduce incentives for compliance. The choice for the legal form of a Regulation reflects the desire of the Member States and stakeholders to reinforce protection and ensure joint action at EU level.

The Bundesrat takes the position that the local biodiversity of pests, in conjunction with local plant varieties and conditions, precludes an EU approach to risk assessment and risk management for pests of plants. This is however not in line with scientific evidence. Many severely harmful pests do not occur in the Union so far, and require immediate and harmonised action in case of outbreaks. Inaction in one Member State will endanger the others, the more because of the open internal EU market for plants and plant products. Indeed, an international framework for measures against the entry, establishment and spread of pests of plants has been developed under the International Plant Protection Convention, to which Austria is a contracting party. The current proposal implements that Convention.

The Commission would like to emphasize that the proposed Regulation does in principle not concern common pests which naturally belong in the EU or have become established widely

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in the EU. The responsibility for measures against such non-regulated pests fully relies with the Member States.

Empowerments for delegated acts

The Commission takes note of the concerns of the Bundesrat as regards the number of empowerments in the proposal for delegated acts. It would like to point out that the proposal concerns a framework Regulation, to be supplemented in due course with secondary legislation. It would be disproportionate and administratively burdensome to regulate in full all technical topics covered by the provisions of that proposal. Inevitably, this brings along the need for such empowerments.

The proposal sets out the principles of an EU approach to plant health legislation, while allowing for the stipulation of more specific provisions through delegated and implementing acts. This ensures a flexible and proportionate approach taking into account different situations across Member States.

The Treaty on the Functioning of the European Union¹ (TFEU) does not set a formal limit on the number of delegated or implementing powers which may be conferred on the Commission. Instead, Articles 290 and 291 TFEU set out the conditions under which such powers are granted and used. In particular, regarding delegated acts, the delegation of power can only address non-essential elements of the legislation (i.e. issues of either technical or detailed nature) and is limited by the Union legislator in terms of objective, content and scope.

Moreover, the TFEU sets rigid control mechanisms for the exercise of the Commission's delegated and implementing empowerments: delegated acts are subject to scrutiny by the Union legislator before they are published, and implementing acts are subject to an opinion of the Member States in the Standing Committee prior to adoption.

In the current EU plant health legislation, empowerments granted by the European Parliament or the Council on technical issues are already current practice. Indeed, this has proven an indispensable element of regulating on non-essential elements of a basic act while respecting the principles of subsidiarity and proportionality.

In developing delegated and implementing acts, the Commission intends to carry over the parts of existing legislation on plant health that function successfully now. In this process, it intends to consult widely in order to ensure that the rules laid down are as appropriate and as flexible as possible. The Commission's intention is to reduce the related administrative burden as far as possible and to facilitate enforcement for Member States.

Obligations concerning surveys and eradication measures

The Commission takes note of the concerns expressed by the Bundesrat concerning the inclusion of survey and eradication obligations in the proposal. It would like to recall that survey and eradication obligations already exist in the present EU plant health regime, however scattered over the legislative acts. Moreover, robust measures in this area were widely supported by the Member States and stakeholders during the review, as evidenced by the replies received to the formal consultation during the preparation of the impact assessment for the current proposal. It has been assessed that the Union territory can enjoy better phytosanitary protection only if all Member States apply the same standards with regards to early detection and immediate eradication of pests. According to the proposal, Member States are free to adopt more stringent eradication measures, as long as this would

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:DE:PDF>

be justified by the objective of phytosanitary protection and does not impose additional restrictions to free movement of regulated plants, plant products and other objects.

Finally, the Commission would like to underline that its proposal for a Regulation on Union expenditures {COM(2013) 327 final} includes rules on Union financial support for Member States for the costs of surveys and for stakeholders in the case of mandatory destruction of plant material.

Obligations for registration of operators

The Bundesrat considers that the scope of operators subject to registration obligations should be technically justified. The Commission believes that the obligation to be registered should apply to all operators whose professional activities create plant health risks. This indeed includes importers, exporters and traders in general, all of which are subject in the proposal to specific obligations. Such an approach is important to facilitate effective controls by the competent authorities, ensure transparency and enhance the overall effort for higher phytosanitary protection. Where appropriate, certain categories of operators can be exempted from the registration obligation, pursuant to Article 61, paragraph 3 of the proposal.

Taking into account all the above points, the Commission believes that its proposal for a Regulation on protective measures against pests of plants fully meets the requirements under the Treaty on European Union as regards the subsidiarity principle and hopes that the above comments address the concerns raised in the Bundesrat's Reasoned Opinion.

The Commission looks forward to continuing the political dialogue in the future.

Yours faithfully,

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Vice-President*