



## Minutes

### Meeting of the Expert Group on Plant Health Legislation (E00925) Discussion of the Delegated Act on Plant Passports 24 January 2018, 09H00 - 13H00

**Chair:** European Commission (COM), DG SANTE (Unit G1 - Plant Health)

**Present:** Experts of the Member States

	Topic	Documents
1	<p><b>Welcome and introduction - Objective of the discussion</b></p> <p>The Chair opened this first meeting of the Expert Group, welcomed the participants and presented the agenda. The Commission noted that the Council and the Parliament were not present.</p> <p>The objective of the Expert Group meeting was to start discussion on the scope, content and structure of the Commission Delegated Regulation to be adopted under Articles 81(2) and 89(2) of Regulation (EU) No 2016/2031 (hereinafter: the Plant Health Regulation) and seek the initial views of its members.</p> <p>The Commission also informed that prior comments had been received from Finland and Slovenia.</p> <p>The discussion of the Expert Group followed the structure of the Annotated Agenda prepared for the meeting by the Commission.</p>	
2	<p><b>Background - the situation today and the empowerments of the new Plant Health Regulation</b></p> <ul style="list-style-type: none"><li>• <b>Article 81(2)</b></li></ul> <p>Pursuant to the third subparagraph of Article 10(2) of Directive 2000/29/EC, the obligation for plant passport, as set out in the first two subparagraphs, shall not apply to the movement of small quantities of plants, plant products, foodstuffs or animal feeding stuffs where they are intended for use by the owner or recipient for non-industrial and non-commercial purposes or for consumption during transport, provided that there is no risk of harmful organisms spreading. This provision is to be implemented by the Member States. There are currently no Union rules, nor empowerments<sup>1</sup> for such rules, to specify the content of those 'small quantities' for movement of goods within the Union.</p> <p>The new Plant Health Regulation has introduced, as a novelty, the empowerment for the Commission in Article 81(2) to set out the cases where, for particular plants, plant products or other objects, the exception of Article 81(1) shall only apply to small</p>	Annotated Agenda

<sup>1</sup> An empowerment is however set out in Article 13b(3) concerning imports

<p>quantities. Those delegated acts shall define those quantities per period of time as appropriate to the plant, plant product or other object concerned and the respective pest risks.</p> <ul style="list-style-type: none"> <li>• <b>Article 89(2)</b></li> </ul> <p>Under the current legislation, Article 6 of Directive 2000/29/EC and Directive 92/90/EEC outline certain obligations the registered producers should be subject to.</p> <p>Article 89(2) of the Plant Health Regulation empowers the Commission to adopt delegated acts setting out criteria to be fulfilled by the professional operators in order for them to comply with the conditions of Article 89(1) – '<i>authorization to issue plant passports</i>' – and procedures to ensure that those criteria are met.</p> <p><b>Content of the act to be adopted</b></p> <p>In certain cases, final users within the meaning of the Plant Health Regulation, purchase big quantities of plants for their own use. Final users might be natural persons or legal persons such as hotels, or other business premises of operators not qualifying as professional operators within the meaning of the Regulation.</p> <p>Those purchases may be carried out at once or within a certain period of time. In some cases, the quantities of those plants could justify the issuance of a plant passport to ensure the absence of any phytosanitary risk that might be linked to those quantities.</p> <p>That risk is likely to be larger in the case of plants for planting purchased by final users for their private gardens, forests or parks.</p> <p>Against this background, the Delegated Regulation should list the specific species, quantities and period of time.</p> <p>In addition, the Delegated Regulation should set out criteria to be fulfilled in the process of the '<i>authorization to issue plant passports</i>' and procedures to ensure that those criteria are met. The criteria should complement those already established under the Plant Health Regulation (Chapters V and VI), with the aim of providing for a transparent and sound framework for professional operators to take over their obligations and play their proper role in the Union's plant health regime. The Annex of the Annotated Agenda contained certain ideas for a draft text for discussion.</p>	
<p><b>3 Discussion on Article 81(2)</b></p> <p>The Commission invited the Expert Group to consider applying the exception of Article 81(1) only to small quantities of:</p> <ul style="list-style-type: none"> <li>• Plants and plant products currently listed in Annex V.A.I(1) of Council Directive 2000/29/EC;</li> <li>• Plants and plant products that are currently subject to measures approved pursuant to Article 16(3) of the said Directive;</li> <li>• Plants that are currently subject to the four Council "Control Directives" on potato pests.</li> </ul> <p>In a longer term view, the Commission proposed considering the alignment of the relevant list of plants, plant products and other objects with the most relevant hosts of priority pests, once the list of priority pests is agreed.</p> <p>And, in terms of a limit to specify a small quantity over a period of time, as a starting point, 5 specimen of a particular species per consignment, the Commission proposed to be considered by the Expert Group. In addition, the Expert Group was invited to discuss</p>	<p>Annotated Agenda</p>

possible limitation(s) over a period of time.

In reply to the Commission's invitations, the discussion covered the following main comments and/or suggestions:

- Some Experts expressed their doubts whether provisions on small quantities are needed, especially as there is no obligation in the empowerment. The Commission insisted that it has to stick to an agreement confirmed by the Chief Officers of Plant Health Services (COPHS), whereby all plant passport related rules should be adopted prior to 14 December 2019 (entry into force of Regulation 2016/2031), and that such provisions would enhance the harmonized approach by Member States in Plant Health.
- Some Experts requested that a discussion on more basic principles and their interplay takes place before the consideration of 'details' like '*small quantities*' – e.g. Article 65 of the basic Act, and namely its Articles 3a and 4c, and its links/impacts on the discussed exemption. The Commission noted those comments and will consider them.
- Several Experts requested that the term 'final user' is further clarified (beyond its definition in Article 2 of the Plant Health Regulation). Some others were of the view that the definition is sufficient. The Commission expressed its preference for the current definition, but remained open for a possible further discussion but preferably at another level than this Expert Group.
- There was also a view presented by some Experts that it is not a quantity, but rather the final destination and intended use, which determine the risk, and wondered how this might be reflected in the Delegated Act.
- Number of Experts stressed their preference for a legislation achieving a balance between risk mitigation effects and minimized administrative burden on both Competent Authorities and operators. They argued for a clear, transparent, easy to read& implement and feasible set of harmonized rules.
- In terms of the scope, number of Experts supported the focus on high risk plants and principal hosts of future priority pests (an updated analogy to current Annex V.A.I), but expressed diverse views on including also Article 16(3) (of Directive 2000/29/EC – emergency measures) plants and potatoes (linked to so called Control Directives). It was also suggested to provide rules at a commodity type level (e.g. plants for planting, fruits, cut flowers, wood, etc.).
- For quantitative restrictions, it was proposed to focus on trade practices for types of plants or plant products, instead of providing a fixed number (e.g.5) of items.

#### **Discussion on Article 89(2)**

- While some Experts considered the rules already provided for in the basic Act to be sufficient, not seeing a need for more detailed provisions, some others considered the proposals in the Annex to the Annotated Agenda to be very useful and good basis for further discussion.
- Opinion of Experts on the nature of verification by Competent Authorities of the compliance of operators with required criteria ranged from requirements for training and written exams, similar to some other sectors (e.g. pesticide use), and simple written declaration by an operator. Some agreed with the direct involvement of the Competent Authority in such exercise, some suggested outsourcing, etc. The Commission remains open to considering various possible scenarios.

	<ul style="list-style-type: none"> <li>• With regard to the guidance note, the Experts were split in their views as well. Some regarded the suggested provisions in the Annex to the Annotated Agenda useful, some expressed concerns over a possibly diminished responsibility of operators, which, in their view, went against the initial intentions of the new Plant Health Regime of the EU. The Experts also discussed some details of the guidance note and expressed various views and comments.</li> <li>• Some experts suggested some additional elements to be verified by the Competent Authority during the authorization process (plant passport format) and requested that the future Delegated Act allows for a continued recognition of existing authorizations.</li> </ul>	
	<p><b>Conclusion</b></p> <p>The Commission thanked the Experts for their assistance. It noted that there are diverse views for the time being on the various elements of the future Delegated Act.</p> <p>The following planning was agreed by the Expert Group:</p> <ol style="list-style-type: none"> <li>1. By 23 February: written comments from experts related to Article 81(2) of the Plant Health Regulation.</li> <li>2. By 9 March: written comments from experts related to Article 89(2) of the Plant Health Regulation and the Annex to the Annotated Agenda.</li> <li>3. After reviewing the written comments received, the Commission will reflect on a need for holding a follow-up meeting of the Expert Group and on a possible way forward with the draft proposal for the Delegated Act.</li> </ol>	