Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC

REGULATION (EU) 2016/2031 OF THE EUROPEAN PARLIAMENT OF THE COUNCIL

of 26 October 2016

on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Directive 2000/29/EC[(3)] sets out a plant health regime.

(2) On 21 November 2008, the Council invited the Commission to proceed to an evaluation of that plant health regime.

(3) In the light of the outcome of that evaluation and the experience gained from the application of Directive 2000/29/EC, that Directive should be replaced. In order to ensure uniform application of the new rules, the act replacing that Directive should take the form of a Regulation.

(4) Plant health is very important for plant production, forests, natural and planted areas, natural ecosystems, ecosystem services and biodiversity in the Union. Plant health is threatened by species injurious to plants and plant products which now present a greater risk of being introduced into the Union territory owing to globalisation of trade and climate change. In order to fight that threat, it is necessary to adopt measures concerning the determination of the phytosanitary risks posed by those pests and the reduction of those risks to an acceptable level.

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(5) The need for such measures has long been recognised. They have formed the subject of international agreements and international conventions, including the International Plant Protection Convention (IPPC) of 6 December 1951 concluded at the United Nations Food and Agricultural Organisation (FAO) and its new, revised text approved by the FAO Conference in November 1997 at its 29th session. The Union and all its Member States are contracting parties to the IPPC.

(6) It has become apparent that for the determination of the scope of this Regulation it is important to take into account bio-geographical factors to avoid the introduction into and spread within the territory of the European Union of pests not present in that territory. Consequently, Ceuta, Melilla and, with the exception of Madeira and the Azores, the outermost regions of Member States referred to in Article 355(1) of the Treaty on the Functioning of the European Union (TFEU) should be excluded from the territorial scope of this Regulation. References to third countries should be read as references also to those excluded territories.

(7) Directive 2000/29/EC sets out rules concerning official controls to be carried out by the competent authorities as regards protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. It requires the Member States to carry out adequate and efficient control measures. Such adequate and efficient official controls measures should also be continued in the future. As part of the 'Smarter Rules for Safer Food' package, this Regulation should only provide for a limited number of provisions on official controls since those rules should be provided for in the framework of the horizontal legislation on official controls.

(8) Criteria should be set out for the identification of pests for which the adoption of measures is necessary to prevent their introduction into and spread within the entire Union territory. Such pests are referred to as 'Union quarantine pests'. Criteria should also be set out for the identification of pests for which it is necessary to adopt measures of control only as regards one or more parts of that territory. Such pests are referred to as 'protected zone quarantine pests'. Where those pests are plants, the implementation of this Regulation should focus in particular on plants which are parasitic to other plants, when they are most injurious to plant health.

(9) In order to allow efforts for the control of Union quarantine pests to concentrate on those pests whose potential economic, environmental or social impact is the most severe for the Union territory a restricted list of such pests ('priority pests') should be established.

(10) In order to ensure that effective and timely action is taken where a Union quarantine pest is found to be present or suspected of being present, notification obligations should apply to the Member States, professional operators and the public.

(11) Where those notification obligations imply that personal data of natural or legal persons should be disclosed to the competent authorities, this may constitute a limitation of Article 8 (Protection of Personal Data) of the Charter on Fundamental Rights of the European Union ('the Charter'). However such a limitation would be necessary and proportionate to the achievement of the public interest objective of this Regulation.

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(12) A professional operator or other person suspecting or becoming aware of the presence of a Union quarantine pest in a plant, plant product or other object which is or was under its control should be under an obligation to notify the competent authority of that suspicion or awareness, to take all measures that may be appropriate as regards the elimination of the pest and the withdrawal or recall of the plants, plant products or other objects concerned, and to provide to the competent authority, other persons in the trade chain and the public with information.

(13) Member States should take all necessary phytosanitary measures to eradicate Union quarantine pests, when found to be present in their territories. It is appropriate to set out measures which may be taken by Member States in such a case. It is also appropriate to set out the principles which the Member States should follow when deciding which measures should be taken. Those measures should include the establishment of demarcated areas, consisting of an infested zone and a buffer zone and, when applicable, the determination of actions which should be taken by a professional operator or other person in order to eliminate the quarantine pest or in order to prevent the spread of that pest.

(14) In certain cases, Member States should impose measures for the eradication of quarantine pests on plants in private premises, because eradication of pests can only be successful if all sources of infestation are removed. For that purpose, the competent authorities of Member States should have legal access to those premises. This may constitute a limitation of Article 7 (Respect for Private and Family Life) and Article 17 (Right to Property) of the Charter. That limitation should be necessary and proportionate to the achievement of the public interest objective of this Regulation.

(15) Prevention and early detection of the presence of pests is extremely important for timely and effective eradication. Member States should therefore carry out surveys for the presence of Union quarantine pests in the areas where those pests were not known to be present. In view of the number of Union quarantine pests and the time and resources required to carry out those surveys, Member States should establish multiannual survey programmes.

(16) The Commission should be empowered to adopt measures where there is a suspected or confirmed presence of specific Union quarantine pests, in particular concerning their eradication and containment and the establishment of demarcated areas, surveys, contingency plans, simulation exercises and action plans.

(17) Where a Union quarantine pest has become established in a demarcated area and cannot be eradicated, the Commission should adopt Union measures as regards the containment of that pest in that area.

(18) In order to ensure swift and effective action against pests which are not Union quarantine pests, but which Member States consider may fulfil the conditions for inclusion in the list of Union quarantine pests, provision should be made for measures to be taken by Member States in the event that they become aware of the presence of such a pest. Similar provisions should be set out for the Commission.

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(19) Under certain conditions Member States should be allowed to adopt more stringent measures than those required by Union legislation.

(20) Special provisions should apply to priority pests as regards, in particular, the provision of information to the public, surveys, contingency plans, simulation exercises, action plans for eradication and co-financing of measures by the Union.

(21) Quarantine pests which are present in the Union territory but which are absent from specific parts of that territory designated as 'protected zones', and whose presence would have an unacceptable economic, social or environmental impact only within those protected zones, should be specifically identified and listed as 'protected zone quarantine pests'. The introduction into, movement within, and release into the respective protected zones of protected zone quarantine pests should be prohibited.

(22) Rules should be established concerning the recognition, modification or revocation of recognition of protected zones, survey obligations for protected zones, action to be taken in the event that protected zone quarantine pests are found to be present in the respective protected zones, as well as the establishment of temporary protected zones. Strict rules should apply for the amendment of the extent, and for the revocation of recognition, of protected zones where a protected zone quarantine pest is found to be present within the respective protected zone.

(23) A pest, which is not a Union quarantine pest, should be referred to as a 'Union regulated non-quarantine pest' if that pest is mainly transmitted through specific plants for planting, its presence on those plants for planting has an unacceptable economic impact as regards the intended use of those plants and it is listed as a Union regulated non-quarantine pest. In order to limit the presence of such pests, their introduction into, or movement within, the Union territory on the plants for planting concerned should be prohibited where those pests are present at an incidence above a certain threshold.

(24) Certain plants, plant products and other objects pose an unacceptable risk due to their likelihood of hosting a Union quarantine pest. For some of those, acceptable risk-mitigation measures are available, while not for others. Depending on the availability of acceptable risk-mitigation measures, their introduction into, or movement within, the Union territory should be either prohibited or subject to special requirements. Those plants, plant products and other objects should be listed.

(25) In addition to the measures taken to manage the unacceptable risk of the plants, plant products and other objects thereof, this Regulation should provide risk-based and preventive measures to protect the Union territory from pests that a plant, plant product or other object originating from a third country might introduce, on the basis of a preliminary assessment of that high risk. That preliminary assessment should take into account specific criteria appropriate for the plant, plant product or other object concerned. For that purpose scientific opinions or studies of the IPPC, the European and Mediterranean Plant Protection Organisation (EPPO), the European Food Safety Authority (EFSA) or Member State authorities should be taken into account. On the basis of that preliminary assessment, a list of those high-risk plants, plant products or other objects should be established and their introduction into the Union territory

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should be prohibited, pending a risk assessment carried out in accordance with IPPC standards. Those plants, plant products or other objects should not include those whose introduction in the Union territory is prohibited or subject to special and equivalent requirements, on the basis of a pest risk analysis, or which are subject to the temporary prohibitions set out in this Regulation.

(26) Provision should be made for derogations from the prohibitions or special requirements as regards the introduction of plants, plant products and other objects into the Union territory. The Commission should be empowered to recognise certain measures of third countries as equivalent to the requirements for the movement within the Union territory of plants, plant products and other objects concerned.

(27) Those prohibitions or requirements should neither apply to small quantities of certain plants, plant products and other objects, other than plants for planting, for non-commercial and non-professional purposes, nor, in certain cases, to the introduction into, and movement within, frontier zones of plants, plant products and other objects.

(28) It is appropriate to provide for exemptions from the prohibition of introduction into, and movement within, the Union territory of pests, plants, plant products and other objects which are subject to those prohibitions and which are intended for certain purposes such as official testing, scientific or educational purposes, trials, varietal selection or breeding. Proper safeguards should be set and information should be provided to those concerned.

(29) Plants moving into the Union from third countries and moving through postal services are in many cases non-compliant with the phytosanitary requirements of the Union. In order to raise awareness, specific rules concerning the information to be provided to travellers and clients of postal services should be set out.

(30) A derogation from the Union rules for the introduction into, and movement within, the Union territory should be provided for plants, plant products and other objects in phytosanitary transit, subject to specific conditions.

(31) The international trade of plants, plant products and other objects with which there is limited phytosanitary experience can potentially involve unacceptable risks of the establishment of quarantine pests which are not yet listed as Union quarantine pests and for which no measures have been adopted pursuant to this Regulation. In order to ensure swift and effective action against those newly identified or suspected pest risks associated with plants, plant products and other objects which are not subject to permanent requirements or prohibitions, but may qualify for such permanent measures, the Commission should have the possibility to adopt temporary measures in accordance with the precautionary principle and identify those plants, plant products and other objects taking into account objective and established elements.

(32) It is necessary to set out prohibitions and special requirements, similar to those set out for the Union territory, in respect of the introduction into, and movement within, protected zones of plants, plant products and other objects that would pose a risk of an unacceptable level due to their likelihood of hosting the respective protected zone quarantine pest.