Commission Implementing Decision (EU) 2020/758 of 4 June 2020 on measures to be taken by the United Kingdom concerning Xylella fastidiosa and Ceratocystis platani (notified under document C(2020) 3604) (Only the English text is authentic)

COMMISSION IMPLEMENTING DECISION (EU) 2020/758

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on measures to be taken by the United Kingdom concerning *Xylella fastidiosa* and *Ceratocystis platani*

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Article 52(4) thereof, in conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[(2)],

Whereas:

(1) In accordance with Article 127(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Union law shall be applicable to and in the United Kingdom during the transition period provided for in that Agreement. That transition period will end on 31 December 2020.

(2) In accordance with Article 52(1) of Regulation (EU) 2016/2031, the United Kingdom ('UK') notified the Commission on 10 March 2020 of a Union measure it would have liked to be taken by the Union against, amongst others, *Xylella fastidiosa* and *Ceratocystis platani* ('the specified pests'). In accordance with Article 52(2) of that Regulation, the UK has also notified the temporary national measures which it planned to introduce in the absence of such measures.

(3) With regard to *Xylella fastidiosa*, the UK stated that the interception in 2018 of infected olive trees by Belgium and the recent case of Vinca in Italy in 2019, demonstrate that there is a risk of infected plants being moved in the UK territory without that they have any visible symptoms. The UK further claimed that the current Union measures on that pest do not address the risks highlighted in its pest risk assessment[(3)] in regard to *Xylella fastidiosa* and that there is no evidence that the current review of the Union

measures would include the requirements previously proposed by the UK. It also stated that the current Union measures against *Xylella fastidiosa* laid down under Commission Implementing Decision (EU) 2015/789[(4)] and the draft act, presented to Member States for exchange of views, aimed at repealing that Decision, do not address the need for enhanced requirements regarding those host species. As such, the UK claimed that there remained an unacceptable level of pest risk and that it therefore planned to introduce national measures under Article 52 of Regulation (EU) 2016/2031, in the absence of the respective requirements it would have liked to be taken by the Union.

(4) The UK further indicated that its proposed measure, among others, prohibited the introduction from third countries, including the Union, into the UK of plants, other than fruit or seeds, of *Coffea* and *Polygala myrtifolia* L. It further set out the requirement that the introduction or movement into the UK of plants, other than fruit and seeds, of *Olea europaea* L., *Lavandula*, *Nerium oleander* L., *Prunus dulcis* L. and *Rosmarinus officinalis* L., which have been grown in areas of the Union where the pest is not known to occur, is allowed only if they have been grown for a period of at least one year prior to their export in a registered and supervised place of production, and whose place of production is surrounded by a 200 m zone known to be free from the pest, annual inspections being based on intensive sampling and testing and further inspection being made immediately prior to their movement. In case of introduction or movement of unrooted cuttings of *Lavandula*, *Nerium oleander* L. and *Rosmarinus officinalis* L. into the UK, those cuttings would need to derive from mother plants, which meet the conditions above. In case of areas where the pest is known to occur, the import of *Olea europaea* L. and *Prunus dulcis* L. from the Union into the UK is only allowed if they are grown in a physically protected site for a period of four years prior to their export or, in case of younger plants, throughout their life.

(5) With regard to *Ceratocystis platani*, the UK indicated that following the reclassification of that pest as a Union quarantine pest pursuant to Commission Implementing Regulation (EU) 2019/2072[(5)], protected zone designations have been revoked, and it is now possible to move *Platanus* trees from production sites within infected areas subject to specific requirements. According to the UK, the new requirements of point 17 of Annex XIII to Implementing Regulation (EU) 2019/2072, which provide for the additional option that the plants may be produced in a place of production which is free from that pest, do not give the same level of phytosanitary protection as gives the requirement that the plants are produced in an area free from the pest, bearing in mind as well that new findings of the pest have been confirmed in France.

(6) The UK, on the basis of those considerations, proposed in its measures that plants of *Platanus* L., intended for planting, other than seeds, would need to have been grown throughout their life in a pest free area or in a Union protected zone.

(7) The proposed UK measures also specified that those plants subject to its measures on *Xylella fastidiosa* and *Ceratocystis platani*, would only be able to move into the UK together with an official statement confirming compliance with the above requirements.

(8) The notification of the UK also included proposals for measures against the pests *Agrilus planipennis* and *Candidatus Phytoplasma* ulmi, which are more stringent than

the existing Union rules. The Commission will consider those measures and discuss them at the Standing Committee on Plants, Animal, Food and Feed while reviewing those measures.

(9) On 1 April 2020, the UK informed the Commission that the national measures for the specified pests would come into force on 21 April 2020, apply initially in England and be extended shortly to other parts of the UK.

(10) On the basis of the elements notified by the UK, the Commission, in accordance with Article 52(3) assessed that the risk indicated therein was adequately mitigated by Article 9 of Implementing Decision (EU) 2015/789 with regard to *Xylella fastidiosa* and by point 17 of Annex VIII to Implementing Regulation (EU) 2019/2072 with regard to *Ceratocystis platani*. In particular, the Commission considered that there was no new scientific or technical evidence available that would justify the amendment of those measures. The Commission also informed the Member States about the UK notification and invited them to submit their views by 24 April 2020.

(11) On 3 April 2020, the Commission asked the UK to immediately postpone the adoption of such measures. The Commission also informed the UK that the requirement for an additional statement accompanying the relevant commodities is not in accordance with the provisions of Regulation (EU) 2016/2031 for the movement of regulated plants within the Union, The Commission also reserved the possibility to adopt an act pursuant to Article 52(4) of that Regulation.

(12) On 20 April 2020, the UK answered by stating further its reasons why it considered that the draft national measures were to be adopted.

(13) With regard to *Xylella fastidiosa*, it indicated findings on Union plant material that has been traded or has been destined for trade (e.g. interception of that pest in Belgium) and conclusions of the European Food Safety Authority ('the Authority') about periods during which the symptoms of the pest are not expressed ('asymptomatic periods'), which have not been reflected in Union legislation. According to the UK, both factors indicate that there is an ongoing risk from infected material (including asymptomatic material) being exported from the Union.

(14) With regard to *Ceratocystis platani*, the UK further indicated that its measures are in response to the situation, which has arisen since the additional information was presented by it to the Standing Committee on Plants, Animals, Food and Feed in November 2019. This additional information concerned new findings for the presence of the pest in France, with infestations much further north than the ones from previous findings and in which cases there is no confirmed evidence about the source of the infection. According to the UK, the spread of the pest north, together with the uncertainty about its pathway, highlights an increased risk from this pest and is the reason why these measures had to be introduced.

(15) On 21 April 2020, the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (Statutory Instrument 2019/1517) were amended by those national measures, in particular Regulations 2(6)(b)(iii), 2(7) and 2(8) of the Official Controls (Plant Health and Genetically Modified Organisms) (England)

(Amendment) Regulations 2020[6] ('the UK Regulations'). Those measures entered into force, before any discussion having taken place at the Standing Committee on Plants, Animals, Food and Feed.

(16) As regards *Xylella fastidiosa*, the UK Regulations set out the measures that the UK had notified to the Commission on 10 March 2020.

(17) Implementing Decision (EU) 2015/789 lays down measures against the establishment and spread of *Xylella fastidiosa* in the Union. On the basis of the scientific and technical developments, the requirements for the movement within the Union territory of the host plants of that pest have been amended by several acts, the last one being Commission Implementing Decision (EU) 2018/1511[7]. Those measures have been based on a series of recent scientific opinions of the Authority[8]. Requirements have been set out for the movement within the Union of susceptible plants both from demarcated areas, as well as from other parts of the Union. Those measures have been further discussed in the Standing Committee on Plants, Animals, Food and Feed, with a view to adopt a new Commission Implementing Regulation that would repeal and replace Implementing Decision (EU) 2015/789.

(18) In this respect, the measures of the UK Regulations are not proportionate to the identified risk. Despite the fact that some provisions apply to plants that originate from areas other than demarcated areas, where *Xylella fastidiosa* is not known to be present, the UK Regulations require that they have been grown for a period of at least one year prior to the export in a registered and supervised place of production, and that their place of production is surrounded by a 200 m zone known to be free from the pest, and they have been subjected to annual inspections, based on intensive sampling and testing, and further inspection immediately prior to their movement. This measure introduces additional restrictions to Article 9 of Implementing Decision (EU) 2015/789, whose provisions already set out enhanced conditions for movement of those plants if they originate from areas other than demarcated areas. This measure is disproportionate to the identified risk, because it severely and *ex-post* disrupts the trade of the plants concerned in a stricter manner than justified by the most recent Scientific Opinion of the Authority[9] published in May 2019. What is more, since the last amendment of Implementing Decision (EU) 2015/789 in 2018, only an insignificant number of interceptions – and certainly none in 2020, in relation to the volume of the respective trade – have been detected on movement of host plants of *Xylella fastidiosa* within the Union. Furthermore, as regards the asymptomatic period of infected plants referred to by UK, the Authority has stated in its most recent Opinion of May 2019, that inspections based on visible symptoms can be problematic for early detection of the pest for some hosts also due to multiple factors contributing to the appearance of those symptoms (e.g. type of plant species, level of bacterial inoculum, the subspecies of *Xylella fastidiosa* involved, as well as climatic conditions). This is why, for the plants concerned by the UK Regulations, Implementing Decision (EU) 2015/789 sets out that intensive inspections shall take place based on sampling and testing, irrespective of the presence of symptoms. The discussions at the Standing Committee for Plants, Animals, Food and Feed on the draft act that is to repeal and replace that Decision, have confirmed that approach, based on the available scientific and technical assessment.