

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

CHAPTER III

Union regulated non-quarantine pests

Article 36

Definition of Union regulated non-quarantine pests

A pest is a ‘Union regulated non-quarantine pest’ if it fulfils all of the following conditions and it is included in the list referred to in Article 37:

- (a) its identity is established in accordance with point (1) of Section 4 of Annex I;
- (b) it is present in the Union territory;
- (c) it is not a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1);
- (d) it is transmitted mainly through specific plants for planting, in accordance with point (2) of Section 4 of Annex I;
- (e) its presence on those plants for planting has an unacceptable economic impact, as regards the intended use of those plants for planting, in accordance with point (3) of Section 4 of Annex I;
- (f) feasible and effective measures are available to prevent its presence on the plants for planting concerned.

Article 37

Prohibition of the introduction and movement of Union regulated non-quarantine pests on plants for planting

1 Professional operators shall not introduce a Union regulated non-quarantine pest into, or move that pest within, the Union territory on the plants for planting through which it is transmitted, as specified in the list referred to in paragraph 2.

The prohibition laid down in the first subparagraph shall not apply in the following cases:

- a movement of plants for planting within, or between, the premises of the professional operator concerned;
- b movement of plants for planting necessary for their disinfection.

2 The Commission shall, by means of an implementing act, establish a list setting out the Union regulated non-quarantine pests and the specific plants for planting, as referred to in

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point (d) of Article 36, where appropriate with the categories referred to in paragraph 7 of this Article and thresholds referred to in paragraph 8 of this Article.

3 The list referred to in paragraph 2 shall include the pests and the respective plants for planting set out in the following provisions:

- a Section II of Part A of Annex II to Directive 2000/29/EC;
- b points (3) and (6) of Annex I and point (3) of Annex II to Directive 66/402/EEC;
- c Annex I to Directive 68/193/EEC;
- d the acts adopted pursuant to Article 5(5) of Council Directive 98/56/EC⁽¹⁾;
- e Annex II to Directive 2002/55/EC;
- f Annex I and point B of Annex II to Directive 2002/56/EC, and the acts adopted pursuant to point (c) of Article 18 of that Directive;
- g point (4) of Annex I and point (5) of Annex II to Directive 2002/57/EC;
- h the acts adopted pursuant to Article 4 of Directive 2008/72/EC; and
- i the acts adopted pursuant to Article 4 of Directive 2008/90/EC.

Pests listed in Annex I and in Section I of Part A and in Part B of Annex II of Directive 2000/29/EC and listed as a Union quarantine pest pursuant to Article 5(2) of this Regulation, as well as pests subject to measures adopted pursuant to Article 30(1) of this Regulation, shall not be included in that list.

4 The Commission shall, by means of an implementing act, where appropriate, set out measures to prevent the presence of Union regulated non-quarantine pests on the plants for planting concerned, as referred to in point (f) of Article 36 of this Regulation. Those measures shall, where appropriate, concern the introduction into, and the movement within, the Union of those plants. Those measures shall be adopted in accordance with the principles set out in Section 2 of Annex II to this Regulation. Those measures shall apply without prejudice to the measures adopted pursuant to Directives 66/401/EEC, 66/402/EEC, 68/193/EEC and 98/56/EC, Council Directive 1999/105/EC⁽²⁾, and Directives 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC, 2008/72/EC and 2008/90/EC.

5 The Commission shall, by means of implementing acts, amend the implementing acts referred to in paragraphs 2 and 4 of this Article where the results of an assessment show that:

- a a pest not listed in the implementing act referred to in paragraph 2 of this Article fulfils the conditions referred to in Article 36;
- b a pest listed in the implementing act referred to in paragraph 2 of this Article no longer fulfils one or more of the conditions referred to in Article 36;
- c amendments to that list are necessary as regards categories referred to in paragraph 7 of this Article or thresholds referred to in paragraph 8 of this Article; or
- d amendments to measures adopted pursuant to paragraph 4 of this Article are necessary.

The Commission shall make that assessment available to the Member States without delay.

The Commission may, by means of implementing acts, replace the implementing acts referred to in paragraphs 2 and 4 of this Article for the purpose of consolidating amendments.

6 The implementing acts referred to in paragraphs 2, 4 and 5 shall be adopted in accordance with the examination procedure referred to in Article 107(2).

7 Where point (e) of Article 36 is only fulfilled for one or more of the pre-basic, basic, or certified material, seed or seed potatoes, or standard or CAC material or seed, as referred to

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in Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC, 2008/72/EC and 2008/90/EC, the list referred to in paragraph 2 of this Article shall set out those categories stating that the prohibition of introduction and movement provided for in paragraph 1 of this Article only applies to those categories.

8 Where point (e) of Article 36 is only fulfilled if the pest concerned is present at an incidence above a certain threshold higher than zero, the list referred to in paragraph 2 of this Article shall set out that threshold stating that the prohibition of introduction and movement provided for in paragraph 1 of this Article only applies above that threshold.

Such a threshold shall only be set if both of the following points are fulfilled:

- a it is possible for professional operators to ensure that the incidence of that Union regulated non-quarantine pest on those plants for planting does not exceed that threshold;
- b it is possible to verify whether that threshold is not exceeded in lots of those plants for planting.

The principles for the management of the risk of pests set out in Section 2 of Annex II shall apply.

9 Article 31 shall apply *mutatis mutandis* to the measures to be taken by the Member States concerning regulated non-quarantine pests and the respective plants for planting.

Article 38

Amendment of Section 4 of Annex I

The Commission is empowered to adopt delegated acts in accordance with Article 105 amending Section 4 of Annex I in order to adapt it to the development of scientific and technical knowledge and of relevant international standards.

Article 39

Union regulated non-quarantine pests used for scientific or educational purposes, trials, varietal selection, breeding or exhibitions

The prohibition provided for in Article 37 shall not apply to Union regulated non-quarantine pests which are present on plants for planting used for scientific or educational purposes, trials, varietal selection, breeding or exhibitions.

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- (1) Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants (OJ L 226, 13.8.1998, p. 16).
- (2) Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material (OJ L 11, 15.1.2000, p. 17).

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