



EUROPEAN COMMISSION

Brussels, 23. 10. 2013
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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 the production and making available on the market of plant reproductive material {COM(2013) 262 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:

Requirements for registration of new varieties subject to testing.

It is in the interest of breeders, farmers and society in general that new varieties of particular species important for agricultural development (listed in Annex I of the proposal), satisfy particular conditions and are in line with international standards. Those varieties must therefore be proven to be distinct, uniform and stable (DUS) in order to ensure the confidence and interests of their users. Such a requirement is laid down in Article 56(2)(a) of the proposal. Articles 60, 61 and 62 set out more specific requirements concerning the distinctiveness, uniformity and stability of varieties. Article 56(2)(b) and (c) also sets out that several of those varieties must further prove as having a satisfactory or sustainable value for cultivation and/or use (VCU). Finally, Articles 71 to 74 set out rules concerning the technical examinations to conclude on DUS and VCU of the varieties.

These provisions are necessary to ensure that all users of those varieties in the Union, including farmers or final consumers, enjoy the same level of information and confidence in the products that they use, as well as a high level of quality of plant reproductive material. Therefore those provisions should be adopted through an EU Regulation, as the above objectives could be better achieved at EU level rather than through individual national or regional measures.

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Registration of traditional varieties.

The proposal takes into account the particular case of traditional varieties and their multi-functional role for local societies and for the promotion of biodiversity (for the purpose of the proposal those varieties are referred to as varieties with 'officially recognised description'). Therefore, the proposal introduces very light requirements for the registration of those varieties if made available on the market before the entry into force of a future Regulation. In particular, and as set out in Articles 10(3) and 57, any such variety must only fulfil the following conditions:

(a) it has a description which has been recognised by a competent authority, and makes that variety identifiable by indicating the specific characteristics of the variety;

(b) it is produced in the region(s) of its origin, which means it may be marketed outside this region(s);

(c) it is not registered in any EU register as variety with official description, namely as variety subject to official testing for DUS.

These conditions ensure that traditional varieties are not subject to any DUS or VCU testing. The proposal insists that those varieties are only produced in their regions of origin, thus keeping their local character. According to Article 88 of the proposal, their registration would be subject to reduced fees, while no annual fees for their inclusion in the register and maintenance would be imposed. Moreover, and according to Article 89 of the proposal, micro-enterprises, which are usually involved in the production and marketing of those varieties, would be exempted from any fee for that registration.

Traditional varieties already accepted in accordance with Article 3 of Directive 2008/62/EC¹ or Article 3(1) of Directive 2009/145/EC² shall be automatically registered in the national variety registers as varieties provided with an officially recognised description, without any further requirements.

Finally, it should be noted that the registration of traditional varieties, which is linked to an obligation to maintain those varieties, contributes to the prevention of their loss. This is an important development, taking into account the big number of varieties which have vanished over the last century.

¹ Commission Directive 2008/62/EC of 20 June 2008 providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties, OJ L 162, 21.6.2008, p. 13–19

² Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties, OJ L 312, 27.11.2009, p. 44–54

In conclusion, the requirement for the registration of traditional varieties is proportionate and appropriate for the purpose of offering informed choices to their users, while ensuring their recording and maintenance, through registration under very light requirements. Those objectives can be better achieved through an EU Regulation, as traditional varieties are equally important and sensitive throughout the Union. However, the amount of the registration fees should be determined by the Member States pursuant to the principle of subsidiarity.

Exemption of fees for micro-enterprises

The exemption of micro-enterprises from fees for official controls and registration of varieties is in line with the general Union policy to support those enterprises due to their particularly small size. It will be the obligation of the Member States to properly implement those rules, and also control their implementation by stakeholders, to prevent that some enterprises might engage into inappropriate practices. It should be further noted that, in the Commission's view, exemptions for micro-enterprises should better be established at Union level in order to guarantee the same benefits for all enterprises concerned and to ensure a level playing field throughout the internal market.

Legal bases for implementing and delegated acts.

The proposal replaces 12 Directives on the production and marketing of seeds and propagating material. Those Directives have already been used as legal bases for the adoption of approximately 90 implementing acts setting out technical requirements. This already constitutes an extensive acquis.

The new proposal covers a very extensive and divergent area of plant reproductive material, ranging from agricultural seeds to vegetables, vine, fruit plants, ornamental plants and forest reproductive material. Therefore, the text should only cover the basic rules and principles concerning those areas. More specific and technical matters concerning particular sectors, such as species, uses of species or categories of material, should only be adopted, as appropriate, through implementing or delegated acts.

The proposal sets out the principles of an EU approach to production and making available on the market of plant reproductive material while allowing for the stipulation of more specific provisions through delegated and implementing acts.

Those acts would be adopted after taking into account the scientific and technical developments at Union and international level. It should be further noted that the power conferred upon the Commission for the adoption of those acts is subject to control by Member States, in the case of implementing acts, and the Council and the European Parliament, in the case of delegated acts, as set out by Articles 290 and 291(2) of the Treaty on the Functioning of the European Union.

In developing delegated and implementing acts, the Commission intends to carry over the parts of existing legislation on seeds and propagating material 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.

Marketing for all uses.

Several of the current Directives regulating seeds and other propagating material include in the definition of marketing the purpose of "commercial exploitation", without laying down a definition of such a term. It should be, however, noted that those Directives do indeed regulate marketing to final consumers, for instance in the case of marketing of small packages of seeds³.

Given the developments of the sector over the last years, a significant part of plant reproductive material is sold directly to consumers for their own uses and not for further commercial exploitation. It is therefore necessary to ensure that some basic requirements apply throughout the entire marketing chain to ensure material corresponding to the expectations of consumers and operators.

Taking into account all the above points, the proposal aims at ensuring informed choices for all users of plant reproductive material and high quality of that material throughout the market chain. At the same time, the proposal offers flexible provisions to allow for exemptions or lighter requirements for traditional varieties and micro-enterprises. That approach serves the principle of proportionality and also the need to regulate matters that can be achieved better at EU level rather than national level, such as guaranteeing a level playing field for operators and assuring the protection of consumers' interests. Finally, it should be noted that the proposal is supported by the results of an impact assessment based on an extensive consultation with Member States and stakeholders {SWD (2013) 163 final}.

The Commission, therefore, believes that the proposal is compatible with the principle of subsidiarity and hopes that the above comments address the concerns raised in the Bundesrat's Reasoned Opinion.

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

Yours faithfully,

Maroš Šefčovič
Vice-President

³ See, for instance, Article 10c of Directive 66/401/EEC, or Article 26(3) of Directive 2002/55/EC