



EU-Seed Law: Introducing the biodiversity perspective

A first glance at the Commission Proposal for the EU regulation on the marketing of plant reproductive material

May 2013

In this paper, ARCHE NOAH gives a short summary on the most urgent remarks and concerns on the Proposal of the European Commission for a Regulation on plant reproductive material¹ (PRM) from a seed savers' point of view and with special regards to agricultural biodiversity.

ARCHE NOAH (Noah's Ark) is a seed savers association in Central Europe, founded in 1990, with today more than 10.000 members, who closely and actively follows the process of review of the PRM law. Arche Noah is politically active in Austria and in Brussels. www.arche-noah.at

GLOBAL 2000 (Friends of the Earth Austria) is an independent Austrian environmental organization. Since 1982, GLOBAL 2000 has been working on controversial social themes to uncover potential hazards for humans and the environment. www.global2000.at

The PRM regulation's hitches at a glance

The scope of the legislation goes beyond the commercial sector

⊗ **Problem:** In the present legislation, the scope of the directives is limited to the dissemination of seeds and other propagation material for the purpose of **commercial exploitation**. The new text applies to any form of transfer of plant reproductive material, broadening the scope of the legislation.

☺ **Solution:** The words "aiming at commercial exploitation", which have been deleted from the present legislation, must be reintroduced in the definitions (article 3). Limiting the scope of the PRM law to commercial activities would solve some problems mentioned in this paper.

Basically there is no founded justification to have a PRM regulation at all. Abolishing the existing rules and simply include the sector within the existing logic of controls of the food chain would suffice.

Private exchanges of seeds, grafts and other PRM restricted

⊗ **Problem:** Article 2 restricts private activities to seed swap *in kind*. As soon as individuals would like to swap PRM against money, they enter into the category of "Niche Market", having to fulfil all the obligations of article 36, comprising many pages of small print legalese.

☺ **Solution:** The exchange of seeds and other plant reproductive material between individuals must be excluded totally from the scope of the regulation.

Diversity farmers face administrative penalties – the "operator"

⊗ **Problem:** Any farmer who wants to make available PRM must register as an "operator" (Article 3.6), must fulfil requirements for quality management and traceability (Articles 5-8) and must pay yearly fees of unknown amount. No adequate exceptions are foreseen for farmers who want to pass on PRM from their own harvest. The exception in article 36 ("niche markets") is insufficient.

☺ **Solution:** Since the very beginning of agriculture, farmers have selected and re-used seeds for the following season. It is absolutely disproportional to marginalise and threaten these activities with administrative burdens and penalties. The exchange of PRM between farmers and between farmers and individuals must be excluded totally from the scope of the regulation.

¹ Proposal of the European Commission's Directorate General for Health and Consumers (DG SANCO) for a Regulation on the production and making available on the market of plant reproductive material (plant reproductive material law) published on May 6th 2013. COM(2013) 262 final – 2013/0137 (COD)

Disproportionate and inapplicable

⊗ **Problem:** As a consequence, thousands of infractions to this legislation would happen each year. This regulation would criminalise a large, innocent and not sufficiently informed part of our society. Such rules which are not proportionate would unduly create a black market.

☺ **Solution:** All small farmers and individuals producing PRM have to be exempted from the scope.

ALL species and genera are affected now

⊗ **Problem:** Even for very rare crops with little or no economic importance, so-called "basic requirements" on quality and labelling have to be fulfilled (Articles 47-50). Further hurdle: If a species is not listed in Annex 1, it is forbidden to make it available under a name – unless an official (ly recognised) description of the variety is registered (Article 50)!

☺ **Solution:** No obligatory registration and certification for seeds and other PRM that is open pollinating and not protected by a private intellectual property right (IPR).

Deficiencies with regards to Democracy and the principle of subsidiarity

⊗ **Problem:** 39 important legal issues – e.g. amending Annex 1 – shall be decided by the commission arbitrarily by delegated acts.

☺ **Solution:** Delete all delegated acts foreseen. Keep space for national derogations which allow adaptations to regional situations.

The notion of a variety: A constraint to biodiversity

⊗ **Problem:** The variety is a technical and juridical concept closely linked with the notions of distinctiveness, uniformity and stability (Articles 60-62). It is not a natural condition of any wild or cultivated plant, because it is essential for evolution that living organisms are not uniform and able to develop (not stable).

☺ **Solution:** Don't stick to juridical concepts, accept nature.

DUS and VCU tests – an obstacle for organic breeders

⊗ **Problem:** The DUS tests ("distinctiveness, uniformity and stability") and – for agricultural crops – VCU test ("value for cultivation and use") are biological and technical obstacles to the access on the market for varieties aimed at production in agro-ecological systems. The proposed "sustainable VCU" (article 59) and "heterogeneous material" (article 14.3) are very vague. Important details are left to delegated acts.

☺ **Solution:** Concrete solutions that allow working with genetically diverse and adaptable varieties were delivered by the European Consortium of Organic Plant Breeders (EcoPB)² and IFOAM-EU.

Regarding transparency...

⊗ **Problem:** The compulsory registration of varieties is reasoned with the goal of transparency on the market. However, the register does not guarantee that a listed variety is really available and cannot inform the consumer about the performance to be expected under local conditions.

² http://www.eco-pb.org/fileadmin/ecopb/documents/ECOPB_Position_EUSeedLawRevision_120530.pdf

³ The stories in the box on the right side are real, however we use symbolic pictures. The names were changed.

Back to Stone Age!



Franziska has heard about a **seed and plant swap** in her neighbourhood. She is curious to get some seeds for her balcony. She has no own seeds to give, and offers **EUR 3.-** to a lady in exchange for two handmade seed packages. But she has to learn that this would be **illegal**. The seeds – if sold – would have to meet specific requirements and distinct labelling. That's just too complicated, the lady with the seeds says. Franziska feels ashamed to ask for the seeds for free. She leaves without seeds and very disappointed.

Pay the penalty!



Jack is a passionate **diversity farmer**. He cultivates a large number of rare varieties of tomatoes on his farm. He markets the fruits on a farmers market. Many of the rare seeds he cannot buy, and he has to save his own seeds. In springtime on the farmers market, many of his customers ask for seeds and seedlings. They know Jack and trust the quality of his products. However, Jack may not pass on - otherwise he might face an administrative penalty. That is because he operates his labour-intensive farm with 11 employees = annual work units. Thus, the exception for niche markets (Art. 36) does not apply to him.

Concerning the genealogy of a variety, confidentiality will be granted to breeders on their demand (Article 75).

☺ **Solution:** Transparency can more easily be achieved by labelling similar to an operator's label without registration and Official catalogue.

“Officially Recognised Description” - a very limited niche

⊗ **Problem:** The simplified registration (Article 57) is open only for varieties that were available on the market before the entry into force of the regulation (“historical limitation”). There are many plant types that were only used locally and were never available on the market. Also, one or more "region(s) of origin" must be defined (“geographic limitation”). This is nonsense: hardly any major crop originated from Europe, neither wheat nor apple nor tomato. Plants have always moved and must continue (climate change, increased biodiversity).

☺ **Solution:** Delete the historical and geographic limitations. The simplified registration must be re-opened to all open pollinating plants which are not protected by IPRs.

Article 36 “Niche markets”

⊗ **Problem:** Article 36 provides exceptions for seeds and other PRM from registration. These exceptions only apply to small quantities of PRM. Professional operators can only make use of this exception if they have less than 10 employees and a turnover of less than EUR 2 million. The seeds/ other PRM must fulfil labelling requirements and comply with requirements on quality, which has a financial and technical cost.

☺ **Solution:** All small farmers (as defined in art. 8 (2) of Reg. 1765/92) and any private person have to be exempted from the scope of the regulation.

Summary: Our main demands to the decision makers

Concerning promoting agro-biodiversity:

- No obligatory registration and certification for seeds and other plant reproductive material (PRM) that is open pollinating and not protected by a private intellectual property right (IPR).
- Re-Open registration based on officially recognized description to all varieties; delete all geographic, historical and quantitative restrictions

Concerning promoting democracy and farmers' rights:

- The scope of the regulation must be limited to the marketing of PRM with a view to commercial exploitation
- All small farmers producing PRM have to be exempted from the scope
- The exchange of seeds and other plant reproductive material between farmers and between farmers and individuals must be excluded from the scope of the regulation;
- Delegated acts: No delegated acts at all. Everything has to be inside a single legal act.

Concerning promoting consumers' choice and transparency:

- Ensure that open pollinating varieties and seeds bred for organic farming or specific local conditions are not discriminated by norms of (even voluntary) registration, certification and plant health requirements.
- Micro and small enterprises shall only comply with basic rules concerning the operators as long as they are not dealing with GMO or with PRM protected by IPRs (Plant Variety Rights or patents).
- Ensure transparency on breeding methods and Intellectual Property Rights (IPRs) associated with registered varieties and plants.

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