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SPROUTS FROM BRUSSELS

Seeds & Crop Biodiversity in European Policy

Welcome to *Sprouts from Brussels*! This newsletter wishes to inform the seeds and crop biodiversity movement across Europe on the policy developments which may have an impact on their activities. If you wish to be part of the conversation, and receive this briefing every month, subscribe [here](#)! If you wish to read previous issues, click [here](#)!

Responses to Public Consultation DA on Organic Heterogeneous Material

50 contributions received in the public consultation of the much-awaited draft Delegated Act on Organic Heterogeneous material

The draft Delegated Act (DA) on Organic Heterogeneous Material (OHM), regulates the rules to be followed for the production and marketing of diverse seed populations. It was last presented to the **Expert Group on Organics** during its virtual meeting on the 27th October 2020 and has been considerably revised during the “Inter-Service Consultation”, where *inter alia* the European Commission’s DG Environment and its Legal Service have gone through the text.

The restrictions that were put on the historical development of such populations (or heterogeneous material) have been taken out of the text, which allows the marketing of different types of diversity produced “for at least one generation, or, in the case of perennial crops, for at least one generation during two growing seasons”. The new draft also contains relaxed labelling and packaging requirements for the marketing of small packages of OHM, and the possibility to market seeds with

lower germination rates as long as the information is given to the purchaser. Maintenance obligations were also relaxed compared to previous versions. The draft text was open for [public consultation](#) until the 27th November 2020 and it received a total of **50 feedbacks from a wide range of actors active in the field.**

The largest group of responses came from organisations involved in **seed saving, as well as the dynamic conservation and management of crop diversity.** In a collection of 19 submissions from 9 different EU Member States, this group reviewed the new draft very positively, most of them referring to “the removal of arbitrary number of generations under organic conditions”, to the positive softening of packaging and labelling rules, more realistic traceability obligations, and “maintenance requirements adapted to the evolutionary nature of heterogeneous material”. Within this stakeholder group, some responses also emphasised the lack of clarity with regards to the relationship between landraces covered by the existing regime of conservation varieties, and heterogeneous farmers’ populations in practice.



Another stakeholder group identified in the responses are the 13 **organic associations**, which, although in principle welcome the new category of OHM “as it increases the availability of plant genetic resources for organic farming”, relate concerns over the integrity of the material with regards to its “organic” nature because of the deletion of the previously envisaged “six generations of cultivation and/or development under organic conditions”. These stakeholders also stress the need to add a qualifier to the breeding techniques that can be used in the development of OHM, remarking that they should follow organic principles.

The contribution from the European Coordination La Via Campesina (ECVC), which regroups **peasants’ organisations** around the European Union, stresses the laconic need to recognise the specificities of the farmers' seed systems, which do not equate to stringent phytosanitary and purity requirements, and to respect the “natural evolutionary biodiversity of seeds”. The association fears the “obstruction of the management of peasants seed systems”, in the absence of “legislation that legally recognises the autonomy of farming seed systems and the right of peasants/farmers to use them”.

Other responses to the public consultation disapprove of the existence of the OHM notification regime itself, claiming that the lack of variety registration obligation creates unfair competition and risks to undermine seed quality and health in the EU. Stemming from national **seed industry associations** and their individual members from 3 EU Member States (France, Poland & Sweden), the 4

contributions are also echoed in a joint statement submitted by the COPA-COGECA (regrouping industrial farmers & cooperatives) and EUROSEEDS (EU seed industry association). Both associations stress that “future breeding and production of OHM should necessarily be subject to mandatory control as part of the certification systems for seed material production”. It is interesting to note that the French industry association’s feedback suggests the inclusion of a minimum requirement to have at least 5 generations of selection before the commercialisation of OHM, to avoid fraud and the sale of the “mere product of the crossing of different protected varieties”. They also suggest that the identity of the notified material should be assessed by an “expert group”.



Publication of Seed Marketing Study foreseen in April 2021

Publication of the study on options to reform EU seed marketing laws foreseen in April 2021

The consultancy (ICF Consulting) chosen by the European Commission (DG SANTE, Plant Health Unit) to undertake the background work for the [study requested by Member States](#) on the options to reform European seeds marketing rules has conducted different

stakeholder interviews and public surveys (targeting maintainers and home gardeners), the results of which will feed their analysis of the options for a potential future reform.

It has been unofficially confirmed that the study would be provisionally submitted to the European Commission in February 2021 and be published in April 2021. It will be followed by an impact assessment to be carried out by the Commission services themselves. It is unknown how much of the 2012 impact assessment that accompanied the proposal withdrawn in 2014 will be used by DG SANTE officials.



EP INI Report on the Farm to Fork Strategy

First look at the draft INI Report of the European Parliament on the Farm to Fork Strategy

Presented by the European Commission in May 2020, the [Farm to Fork Strategy](#) is an overarching policy framework which is part of the European Green Deal, addressing changes needed throughout the entire food value chain, from production to transformation to consumption. Even though it is only a Strategy and not a concrete legislative proposal, all European institutions are intensely working on their responses to

this Strategy since it has wide-reaching implications on several EU policies.

The European Parliament has been working on its Initiative Report, where the competence is shared between the Agriculture and Environment Committees. The main rapporteur on the file for the AGRI Committee is the Italian Herbert DORFMANN, affiliated with the Christian Democrats of the European People's Party (largest group, of the European Parliament) while Anja HAZEKAMP, from the Dutch Animal Party, affiliated with the European United Left group, drafts the report for the ENVI Committee.

With regards to seeds, an unpublished version of the report *“underlines the importance of seed security and diversity notably promoting EU-grown plant proteins delivering locally sourced food and feed stuffs with high nutritional value while granting farmers access to quality seeds for plant varieties adapted to the pressures of climate change, including traditional and locally-adapted varieties while ensuring access to innovative plant breeding to contribute to healthy seeds and protect plants against harmful pests and disease; raises awareness of the potential negative effects of the concentration and monopolisation in the seed sector”*. While the wording contains positive aspects with regards to traditional and locally adapted varieties, as well as market concentration, it definitely falls short on ambition, and adapts quite a conservative stance on the topic, with a surprising reference to “innovative plant breeding”, which hints to genetic engineering without a direct reference to the issue, or to food safety (which was done in the Council conclusions cited below).

After translation, the draft report will be open to amendments until the 2nd February. There will be a public hearing on the report and the Strategy on the 4th February. The joint AGRI & ENVI vote is expected in April 2021, before being carried to the European Parliament Plenary, provisionally in May 2021.

It should be noted that, aside of the joint AGRI & ENVI competence on the file within the European Parliament, another Parliamentary Committee is also invited to submit its opinion on the report only for subjects where it has competence. The Committee on Internal Market & Consumer Protection (IMCO) has published its own [opinion](#) on the draft EP report on the Farm to Fork Strategy. The text directly tackles the issue of new genetic engineering, by calling, *“with a view to protecting consumers, for full enforcement of the judgment of the Court of Justice of the European Union of 25 July 2018 in Case C-528/16, Confédération paysanne, which stipulates that food crops modified by genome editing are subject to the requirements of GMO legislation, including risk assessment, traceability and labelling”*. The vote on the opinion (which nonetheless does not need to be followed by AGRI & ENVI Committees) is foreseen on 17th March 2021. Should the text be adopted in its draft format, it would nonetheless give arguments to other Members of the European Parliament to remove the controversial wording on new genetic engineering proposed by the AGRI Rapporteur.

The wording used by the European Council of Ministers, in its Agriculture configuration in its [“Conclusions”](#) on the Farm to Fork Strategy, published on 19th October 2020, were considerably more cautious than the draft wording of the European Parliament. Member

States indeed *“welcome that new innovative ingredients and techniques may play a role in increasing sustainability, provided that they are safe for humans, animals and the environment, while bringing benefits for the society as a whole”*. With regards to seed diversity, the Council conclusions were also stronger in asking for a seeds marketing reform, and also a European policy on genetic resources.

Some view the draft European Parliament report as an unofficial testing of the waters in the institution to get a sense of its willingness to deregulate new genetic engineering techniques or new breeding techniques in different advocacy jargons.



SPROUTS FROM BRUSSELS Glossary

This Glossary is intended to provide some guidance to better understand the institutional structure of European policymaking. Please get in touch if you wish to see additional terms defined here.

European Institutions

The **EUROPEAN COMMISSION** is the executive branch of the European Union. Different Commissioners, supported by 30'000 bureaucrats, have the power to submit legislative proposals, and are tasked with following the implementation of European law. The Commission is divided into different **DIRECTORATE GENERALS (“DG”)**, which are akin to national Ministries. Due to the multi-disciplinary nature of crop diversity, a few DG's are responsible for policy portfolios that impact seeds. DG SANTE is responsible for plant health, seeds marketing, the authorisation of phytosanitary products and the regulatory framework for genetically modified organisms. DG AGRI is responsible for agricultural policy and rural development, while DG ENV is responsible for the Union's environmental policy, including biodiversity and soil quality frameworks.

The **EUROPEAN PARLIAMENT** is one of the two institutions making up the legislative branch of the European Union, with its directly elected 705 Members of Parliament (“MEP”) from all EU Member States. Its powers have been quite reinforced since the Treaty of Lisbon, and now the Parliament has a say in all policy files linked to crop diversity. It works in different **COMMITTEES** (ENVI and AGRI are both competent for matters related to crop diversity), but all texts need to be adopted in so-called **PLENARY**, which regroups all MEP's. Even though European elections are carried out on the basis of national lists, MEP's then congregate into European-level political groups : the European People's Party (EPP), Socialists & Democrats (S&D), liberals Renew Europe (RE), Identity & Democracy (ID), Greens/EFA, Conservatives (ECR), leftists GUE, and the non-affiliated few.

The **EUROPEAN COUNCIL** is the last institution of the legislative branch of the European Union, composed of heads of States and governments, in different configurations according to the topic at hand. For matters related to crop diversity, the main interlocutor is the AGRIFISH Council, but also the ENVI Council to a certain extent.

Instruments of European Law

There are two instruments in European law: a **REGULATION** (of the COUNCIL and the PARLIAMENT) is directly applicable in all Member States, without the need for a specific national law, which means that the rights and obligations of the Regulation can be indisputably invoked by citizens, and be applied by national judges. With regards to crop diversity, the new Organic production regime, as well as rules concerning plant health are both enshrined in Regulations.

A **DIRECTIVE** on the other hand, is not directly applicable in Member States, which need to transpose the European rules in national laws and/or decrees. This tool gives much more margin of manoeuvre to national authorities, which explains the wide differences that exist between national seed marketing regimes, the principles of which are set in 12 different European Directives.

In a **REGULATION** or a **DIRECTIVE**, the European Parliament and the European Council can decide to give the Commission the power to further specify certain aspects of the general rules, which will lead to a **COMMISSION REGULATION**. There are two types of Commission legislative action in this framework: **IMPLEMENTING ACTS** are adopted to ensure uniform conditions for the implementation of European law, while **DELEGATED ACTS** are adopted on the basis of a specific delegation of power in a **BASIC ACT** (i.e. either a **REGULATION** or **DIRECTIVE** of the European Council and Parliament), that defines the objectives, content and scope of the delegation of power. Both Implementing and Delegated Acts are prepared by the Commission with heavy involvement of national authorities, regrouped either in a Committee or an Expert Group. The European Parliament is involved only at the approval stage for Delegated Act, while stakeholders are consulted through the “Have Your Say” website of the European Commission once the drafts (of both Implementing and Delegated) Acts have been finalised, four weeks before their adoption by the competent structure(s).