



Briefing on the proposed EU regulation for the marketing and production of seeds and other plant reproductive material (PRM)

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ARCHE NOAH

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Summary

The 10 EU directives governing the production and marketing of seeds and other PRM (such as fruit trees, vine, and potatoes) date back to the 1960s. They have been a driver of the loss of cultivated plant diversity¹ in the past decades by (i) promoting varieties with a very high degree of genetic uniformity, and (ii) imposing high regulatory costs and barriers to market entry for small, regional seed producers. As we face warmer temperatures, more extreme weather conditions, and the spread of new pests and diseases, the remaining genetic diversity and decentralised, local seed production will be our “lifeline” to provide more resilience.

Unfortunately, the proposed PRM regulation², published by the Commission in July 2023, threatens both the conservation and utilisation of this diversity, and its production and marketing by smaller operators who produce diverse PRM adapted to the needs of different farmers in different local growing conditions. The proposal significantly extends the scope of regulation, both in terms of the types of transfers of PRM and the range of actors that are affected. For the smallest operators, the regulatory burden is so high that it would push many to cease their work with diversity or move into illegality.

Although positive derogations are foreseen for the marketing of PRM to home gardeners and of conservation varieties to farmers, the provisions for gene banks and seed saver networks are too restrictive, failing to take account of the fundamental differences between conservation and commercial activities. In its current form, the proposal endangers the preservation of the remaining genetic diversity of cultivated plants, and goes against the commitment of the EU and its member states under the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture. Further, it fails to implement the human right of farmers and gardeners to exchange and sell their own seeds and other PRM, which was enshrined in the 2018 United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).

The proposed PRM regulation endangers the conservation and sustainable use of cultivated plant diversity, and disregards the right of farmers to harvest, use, exchange and sell their own seeds, as enshrined in international human rights law. We call on the European Parliament and Agriculture Ministers to significantly rehaul the proposal, adopting legislation that lays the foundation for a truly sustainable, resilient and diverse food system.

¹ Cultivated plant diversity means the diversity of species and varieties that are cultivated in agriculture, the genetic diversity within these species and varieties, as well as the traditional knowledge associated with their cultivation and use.

² https://food.ec.europa.eu/plants/plant-reproductive-material/legislation/future-eu-rules-plant-and-forest-reproductive-material_en

EU seed regulation – new threats to diversity

The proposal endangers the remaining diversity of cultivated plants – Under the existing legislation, the transfer of PRM for non-commercial purposes is not classified as marketing. This makes sense. Where there is no seed market, there is no need for seed marketing rules. In some member states such as Austria, it is also explicitly permitted to sell PRM in small quantities for the purpose of the preservation of plant genetic resources. This allows farmers, gardeners and community seed banks to sell endangered diversity, so that it can again be cultivated, propagated and eaten – the key to true conservation.

The proposed regulation eliminates these freedoms. The definition of “marketing” is very broad, capturing ALL transfers of PRM, even for free and for non-commercial purposes, by professional operators (Article 3). The definition of “professional operator” is equally extensive, capturing ANY actor involved professionally in a broad list of activities related to the production and marketing of PRM, including public gene banks and community seed banks, farmers producing PRM only for their own use, and garden centers selling seeds. The adapted rules for gene banks and organisations working to conserve plant genetic resources are not fit for purpose (Article 29). For example, new rules on dimensions and germination would make it impossible for public gene banks and community seed banks to pass on some of the most endangered accessions to ensure their preservation. Farmers are also no longer permitted to access gene bank material for conservation and utilisation!

However, it has been shown in many cases across Europe that the revitalisation of old varieties can provide new revenue streams for farmers and opportunities for rural development. As an over-riding priority, the proposal must provide a framework that enables, not hinders, the conservation and sustainable use of cultivated plant diversity.

Key amendments:

- Explicit exemption of the transfer of PRM for the purpose of the conservation and sustainable use of plant genetic resources and agro-biodiversity from the scope of regulation (Article 2).
- Limitation of the definitions of “marketing” and “professional operator” to where there is an intent to commercially exploit the PRM, excluding conservation actors like gene banks (Article 3).
- Removal of inappropriate restrictions to the marketing of PRM by gene banks, conservation organisations and networks (Article 29).

The proposal fails to implement farmers’ right to seed – Since 2018, international law explicitly grants peasants the right to save, use, exchange and sell their own seeds and other PRM under Article 19 of UNDROF. In contrast, the European Commission now proposes arbitrary restrictions. Farmers are only allowed to exchange their seed (and not other PRM, such as potatoes or berry plants) “in kind” in small quantities under certain circumstances. Farmers' right to exchange and sell their own seeds and other PRM must be enshrined fully in EU law.

Key amendments:

- Full implementation of the right of farmers under UNDROF Article 19 to exchange and sell their farm-saved seeds or other PRM (Article 30).

- Limitation of the definitions of “marketing” and “professional operator” to where there is an intent to commercially exploit the PRM, excluding farmers who save their seeds or pass them on for free (Article 3).

The proposal fails in its attempt to make diverse varieties more widely available by creating new regulatory costs – For varieties such as landraces that do not comply with the industrial uniformity requirement (DUS testing) but are more adaptable to local and evolving growing conditions, there are legal restrictions on their marketing in the current legislation – with limitation to small quantities, small packaging sizes, and regions of origin. The proposal removes these restrictions. Both traditionally grown and newly bred varieties may now be sold in quantities that match demand as “conservation varieties” (Article 26). ARCHE NOAH supports this development.

But, at the same time, the proposal makes it more difficult for small producers to make these seeds available in the first place through additional and nebulous rules for seed production (Article 8 and Annex III) and burdensome additional reporting, monitoring, and traceability requirements (Articles 41 and 42). These rules apply to all actors involved in any way in any aspect of the production and marketing of seeds, regardless of their size. Rules developed for industry giants must be adapted for small operators, so the regulatory cost of producing diverse local varieties and species is not prohibitive.

Key amendments:

- Removal of additional rules for the production of standard seeds and material that create disproportionate regulatory cost for small seed producers (Article 8 and Annex III).
- Exemption of micro-enterprises from the new reporting, monitoring and traceability requirements for professional operators (Articles 41 and 42).
- Revised definition of “conservation varieties”, renamed as “diversity varieties”, that is appropriate for all species as well as both landraces and new ecotypes (Article 3)
- Exclusion of GMO and NGT plants from the definition of “conservation varieties” (Article 3).
- Removal of unnecessary implementing act on “conservation varieties” (Article 53) and extension of period of variety registration to 30 years (Article 69).
- Legal certainty that “conservation varieties” of all regulated species may be produced and marketed as standard seeds/material (Article 8, 26 and Annex III).

The proposal fails to prevent the misappropriation of PRM circulated in conservation networks or farmer seed systems – The proposal fails to prevent the misappropriation of traditional varieties that have been preserved in conservation networks and/or informal farmer seed systems through their registration by seed companies. This can in practice lead to the traditional custodians of these varieties losing their right to circulate them. Measures to prevent the misappropriation of traditional varieties need to be implemented – including the right for third parties to challenge decisions on variety registration.

Key amendments:

- Evaluation of the distinctness of a new variety and the suitability of the variety denomination should take into account non-registered varieties, such as varieties in the catalogues of opera-

tors selling PRM to home gardeners, or in documentation made available to the competent authority by any natural or legal persons, such as farmers or organisations involved in the conservation and sustainable use of plant genetic resources and agro-biodiversity (Articles 48 and 54).

- Competent authorities and other national experts should be consulted in the examination of the denomination of a new variety, not just the CPVO (Article 66).
- Possibility for third parties to appeal decisions on variety registration (Article 67).

The proposal allows firms to make false sustainability claims – The proposal claims to contribute to sustainability by adding agronomic criteria, such as disease resistance, to the “added value” (VCU) test as part of the variety registration process (Article 52). However, sustainability cannot be reduced to an individual trait or variety – it can only apply to a cultivation system as a whole. Under the proposal, varieties can still be tested with the unlimited application of pesticides and synthetic fertilisers. The proposal therefore opens the door to greenwashing, as it enables operators to claim that new varieties are “sustainable” even when that is not the case. All variety testing should take place under organic or low-input conditions, so new varieties are not dependent on pesticides or synthetic fertilisers.

Key amendments:

- All references to the word “sustainable” are removed in the VCU test (Article 52).
- Clarification that the VCU test should be carried out under organic or low-input conditions for conventional varieties, as well as under organic conditions for organic varieties (Article 52).

The proposal undermines the recently adopted EU Organic Regulation – The PRM proposal re-opens critical aspects of EU Organic Regulation, which only came into force 2022, in particular with regard to the marketing and production of “organic heterogeneous material” (such as populations and non-genetically uniform landraces) and the definition of organic breeding. This creates huge uncertainty for organic breeders. There should be no changes to the EU Organic Regulation.

Key amendments:

- Deletion of all amendments to the Regulation (EU) 2018/848 (Article 81).

The proposal includes improvements for hobby gardeners – Positive features of the proposal are a complete exemption from regulation for the private exchange and sale of seed between home gardeners (Article 2), and an exemption from compulsory variety registration and seed certification for PRM sold in small packages to hobby gardeners (Article 28). This exemption is important because the needs of hobby gardeners are different from the needs of farmers. To provide legal certainty for operators, the definition of small packages should be in the regulation itself, not in an implementing act. ARCHENOAH supports strongly these important derogations.

Key amendments:

- Add definition of small quantities, based on the existing legislation (Article 28).

The proposal creates problems for the conservation of fruit diversity – The proposal seeks, for the first time, to bring the rules for different types of PRM into one regulation. Unfortunately, it fails to reflect some of the fundamental, biological differences between different types of PRM. Some technical corrections are necessary. Critically, the proposal omits adapted production rules for traditional varieties of fruit trees, which would in practice make their marketing impossible. The proposal must allow for “commonly known varieties” of fruit trees in the existing national lists to be marketed in future as “conservation varieties”, with adapted rules for standard material.

Key amendments:

- Addition of “commonly known varieties” in national lists under Directive 2008/90/EC to the variety registers as conservation varieties (Article 68).
- Replication of the current “CAC material” production rules under the provisions for standard material for fruit trees (Annex III).
- Adapted rules on variety maintenance for conservation varieties of fruit trees that reflect the on-the-ground reality (Article 72).

The proposal bans imports of seeds from gene banks and of conservation and amateur varieties –

As a general principle PRM may only be imported from third countries if a Commission audit determines that the PRM fulfills requirements equivalent to Union rules. However, Article 39 does not allow for such an audit to take place for PRM of derogatory regimes (conservation varieties, heterogenous material, PRM for home gardeners, and PRM from gene banks). This means that the import, for example, of amateur varieties from the UK, niche varieties from Switzerland, or any material from gene banks outside of the EU into the Union would be impossible! This represents a significant restriction for the availability of new diversity, which will become increasingly important for adaptation to new climatic conditions, and has no adequate justification. The import of PRM of derogatory regimes must be possible!

Key amendments:

- Deletion of exclusion of derogatory regimes for possibility to import on the basis of equivalence (Article 39).

Fails to provide sufficient transparency for farmers and gardeners on the seeds they buy –

As in other sectors of the economy, consumers (whether farmers or home gardeners) have the right to information about the products they are buying. There should be transparency on whether any intellectual property rights, such as patents, apply to the variety or its genetic components, as well as on the breeding method (Article 47 and Annex VII).

Key amendments:

- Addition of information on intellectual property rights and breeding methods to the variety registers (Annex VII).
- Addition of information on intellectual property rights to official labels (Article 17).

Who we are:

Since 1990, the non-profit association ARCHE NOAH has been conserving and cultivating thousands of endangered vegetable, fruit and grain varieties with the aim of bringing these traditional and rare cultural assets back into gardens and fields and onto plates. As part of this work, we advocate for a policy that promotes cultivated plant diversity in Europe instead of further eroding it.

ARCHE NOAH, Gesellschaft für die Erhaltung der Kulturpflanzenvielfalt und ihre Entwicklung
Obere Straße 40, 3553 Schiltern, Austria / 194 rue due Trône, 1050 Ixelles, Belgium

Contact: seedpolicy@arche-noah.at