



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the extension of the term of the Community plant variety rights for varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals

REGULATION (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**on the extension of the term of the Community plant variety rights
for varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs,
woody small fruits and woody ornamentals**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 118, first paragraph, thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 220, 9.6.2021, p. 86.

² Position of the European Parliament of 14 September 2021 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) Technical difficulties in breeding, due to complex genetic backgrounds or due to the slow or technically complicated reproduction of the species *Asparagus officinalis* L. and the species groups flower bulbs, woody small fruits and woody ornamentals, need to be addressed by means of investments in research and development activities. Once protection of plant variety rights is granted for that species and those species groups, it takes years to multiply the plants and to build up a stock that is sufficiently large to generate a reasonable income. Accordingly, the time during which the holder of the plant variety rights can generate income based on that protection is limited. To encourage investments in research and development for varieties of that species and those species groups, it is necessary to prolong the term of protection of plant variety rights and incentivise breeding activities to develop new varieties in order to meet the needs of farmers and consumers and to address the impact of climate change. Those investments require more time to be profitable than for the overwhelming majority of other species, such as agricultural crops, which often have a shorter life span and a larger and wider range of consumers.

- (2) The market introduction and market uptake of a new variety of the species *Asparagus officinalis* L. and the species groups flower bulbs, woody small fruits and woody ornamentals require more time in order for that new variety to be profitable than for other species, as experience has shown that such a new variety reveals its commercial value only in the long term. For those reasons, an equitable refunding of investments in research and development is only possible at a fairly late stage of the protection of that species and those species groups in comparison with other species.
- (3) Council Regulation (EC) No 2100/94¹ establishes a system of Community plant variety rights as the sole and exclusive form of Community industrial property rights for plant varieties. In accordance with Article 19(1) of that Regulation, the term of the Community plant variety right is to run until the end of the 25th calendar year or, in the case of varieties of vine and tree species, until the end of the 30th calendar year, following the year of grant.
- (4) In order to establish a legal environment conducive to achieving an equitable refunding, it is appropriate to extend by a further five years the term of the Community plant variety rights for varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals. That extension should apply to rights granted before, on or after the date of entry into force of this Regulation.

¹ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1.9.1994, p. 1).

- (5) For reasons of consistency, such extension should apply to all Community plant variety rights for varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals.
- (6) The period of extension should be reduced if national property rights for those varieties have been effective in a Member State prior to the grant of a Community plant variety right and, accordingly, would already have allowed breeders to exploit their varieties,

HAVE ADOPTED THIS REGULATION:

Article 1

Extension of the term of Community plant variety rights

1. The term of the Community plant variety rights, as provided for in Article 19(1) of Regulation (EC) No 2100/94, shall, for varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals, be extended by five years.
2. Paragraph 1 of this Article is without prejudice to Article 116(4), fourth indent, of Regulation (EC) No 2100/94.

Article 2

Reduction of the extension

For plant varieties for which one or more national plant variety rights have been granted prior to the grant of a Community plant variety right, but to which Article 116(4), fourth indent, of Regulation (EC) No 2100/94 does not apply, the extension of the term provided for in Article 1 of this Regulation shall be reduced by the longest period in full calendar years during which any national plant variety right or rights granted have been effective in a Member State in respect of the same variety prior to the grant of the Community plant variety rights.

Article 3
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
