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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	9611/21
No. Cion doc.:	COM(2021) 36 final
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the extension of the term of Community plant variety rights for the species asparagus and the species groups flower bulbs, woody small fruits and woody ornamentals - <i>Mandate</i>

1. The European Commission submitted the above proposal to the European Parliament and to the Council on 3 February 2021.
2. The proposal was examined by the Working Party on Agricultural Questions (Plant Breeders' Rights), which, following the preparation of a compromise text by the Presidency, reached an agreement on the text of the proposed Regulation¹.
3. On 16 June 2021, the Committee of Permanent Representatives (Part 1) confirmed the agreement reached by the Working Party on the text and mandated the Presidency to enter into negotiations with the European Parliament on the basis of the above-mentioned text, with a view to reaching, if possible, a first-reading agreement².
4. At a trilogue meeting on 9 July 2021, representatives of the European Parliament and of the Council agreed on amendments which are substantially the same as in the COREPER mandate given to the Presidency.

¹ ST 9209/21 + WK 7698/2021 INIT

² ST 9611/21

5. Delegations will find in annex the text as agreed during the trilogue.
 6. The Committee of Permanent Representatives (Part 1) is invited to mandate the Chair of the Permanent Representatives Committee to send a letter to the Chair of the AGRI Committee of the European Parliament indicating that should the European Parliament at its first reading adopt the text as set out in the annex to this note, the Council would accept the voted text of the European Parliament.
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REGULATION 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 the first paragraph of Article 118 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 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 ... 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 period 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 that species and those species groups requires more time 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.
- (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:

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

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 the fourth indent of Article 116(4) 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 the fourth indent of Article 116(4) 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

For the Council

The President

The President
