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To:	Delegations
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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 – *Letter from the Chair of COREPER to the Chair of the AGRI Committee*

Delegations will find in annex the letter of the Chair of the Permanent Representatives Committee (Part 1) to the Chair of the Committee on Agriculture and Rural Development of the European Parliament, regarding the 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 (2021/0019(COD)).

Council of the European Union

SGS 21 / 003286

Brussels, 14 July 2021

Mr Norbert Lins
Chair, European Parliament Committee on Agriculture and Rural Development
BRUSSELS

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 (2021/0019(COD))**

Dear Mr Lins,

Following the outcome of the informal trilogue between the representatives of the three institutions held on 9 July 2021 in the European Parliament regarding the Regulation in subject, the draft compromise text was agreed today by the Permanent Representatives Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the exact form as set out in the compromise text contained in the Annex to this letter, but subject to revision by the legal linguists of both institutions, the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

Ms Tamara WEINGERL POŽAR
Chair of the Permanent Representatives Committee (Part 1)

copy to: Ms Stella Kyriakides, Commissioner
Mr Bert-Jan Ruissen, Rapporteur

Rue de la Loi/Wetstraat 175 - B-1048 Bruxelles/Brussel - Belgique/België
Tél./Tel. +32 (0)2 281 61 44 - www.consilium.europa.eu

ANNEX

2021/0019 (COD)

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 Committee[1],

Acting in accordance with the ordinary legislative procedure[2],

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1 OJ C 220, 9.6.2021, p. 86.

2 Position of the European Parliament of … and decision of the Council of …..

Rue de la Loi/Wetstraat 175 - B-1048 Bruxelles/Brussel - Belgique/België
Tel./Tel. +32 (0)2 281 61 44 - www.consilium.europa.eu

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 2100/94[1] 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:

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

Rue de la Loi/Wetstraat 175 - B-1048 Bruxelles/Brussel - Belgique/België
Tel./Tel. +32 (0)2 123 45 67 - www.consilium.europa.eu

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*