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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 February 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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

Delegations will find attached document COM(2021) 36 final.

Encl.: COM(2021) 36 final

EUROPEAN
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Brussels, 3.2.2021
COM(2021) 36 final

2021/0019 (COD)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The initiative concerns a Regulation adopted on the basis of Article 118 (1) of the Treaty on the Functioning of the European Union on extending the term of protection from 25 years to 30 years for the species asparagus, and the species groups flower bulbs, woody small fruits and woody ornamentals, as currently set out in Article 19 of Council Regulation (EC) No 2100/94 on Community Plant Variety Rights. Such an additional protection is currently in place for species of trees, vines and potatoes. The extension request was made by the Administrative Council of the Community Plant Variety Office (CPVO) following a request of breeders represented by the breeders' organisations Ciopora, Euroseeds and Plantum, as well as the company James Hutton Ltd.

The CPVO and the Commission (DG SANTE) have carried out an analysis, whether for the species concerned there are technical difficulties in breeding requiring expenditure of research activities for a long period, whether the multiplication of propagating material takes long, whether the new varieties reveal commercial value only in the long term and the return for investments into research activities is only possible at a fairly late stage of the protection in comparison with other horticultural or agricultural crops. The analysis carried out shows that for the species of asparagus, and for the species groups flower bulbs, woody small fruits and woody ornamentals the term of protection should be extended by five years in order to establish a legal environment conducive to achieving an equitable refunding of research and breeding.• Consistency with existing policy provisions in the policy area

This is a technical implementation of existing requirements and thus consistent with existing policy provisions in the policy area of European plant breeders' rights.

• Consistency with other Union policies

This proposal is in line and complies with the Union's rules.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis of this act is Article 118 (1) of the Treaty on the Functioning of the European Union, which empowers the European Parliament and the Council, in accordance with the ordinary legislative procedure to establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

• Subsidiarity (for non-exclusive competence)

Requirements for plant breeders' rights are regulated at the Union level, and in order to guarantee the same protection period for plant breeders' rights, action at Union level is necessary.

- **Proportionality**

This is the only possible form of Union action to achieve the pursued objective.

- **Choice of the instrument**

The legal instrument is provided for by the legal base, Article 118 of the Treaty on the Functioning of the European Union.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

- **Stakeholder consultations**

Several breeders' organisations have made a request to prolong the protection period for certain species. The key stake holders and Member States have been informed and consulted both in the Administrative Council of CPVO, which resulted in a formal request of the body to the Commission, and in the Standing Committee on Plants, Animal, Food and Feed. No separate consultation has been required, as the initiative only concerns technical implementation of existing rules and no separate consultation has taken place under similar initiatives in the past.

- **Collection and use of expertise**

The Commission has carried out a technical analysis together with the CPVO.

- **Impact assessment**

It is an act of technical nature and implementing existing rules drawn on the experience of the parties concerned. Therefore, there is no requirement for impact assessment.

- **Regulatory fitness and simplification**

This proposal is not linked to REFIT. This proposal of an additional period of protection of five years would help to achieve sufficient return of investments made and encourage the breeding of new improved varieties for the benefit of growers, consumers and the society at large. Moreover, the access of in particular of SMEs to export markets could be facilitated. The nature of the problem will not change when society makes greater use of the internet and social media except that the offer of new plant varieties over internet (internet sales) to consumers most likely keeps increasing.

- **Fundamental rights**

Right to intellectual property, Article 17(2) of the Charter of Fundamental Rights of the European Union[1]

4. BUDGETARY IMPLICATIONS

No

[1] Charter of Fundamental Rights of the European Union (OJ C 326, p. 391, 26.10.2012).

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

N/A

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

The aim of this proposal is to increase the protection of Community Plant Variety Rights from 25 to 30 years for the species asparagus, and the species groups flower bulbs, woody small fruits and woody ornamental crops. For this purpose a Regulation to provide for the extension is provided for and in its Article 2(1) the term of protection for the concerned species is extended by five years.

Moreover, Article 2(2) of this proposal intends to take into count the duration of national plant variety rights. In the case of varieties for which a national plant variety right was granted prior to the grant of the Community plant variety right, but to which Article 116(4) fourth indent of the Regulation 1994/2100 EC does not apply, the extension referred to in Article 2(2) of this proposal shall be reduced by the longest period in full years during which any national property 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 right.

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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

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[2]

Acting in accordance with the ordinary legislative procedure[3]

Whereas:

(1) Technical difficulties in breeding, due to complex genetic backgrounds or due to the slow or technically complicated reproduction of the species asparagus and the species groups flower bulbs, woody small fruits and woody ornamentals require investments for research activities. Once protection is granted for the species mentioned, 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 rights can generate income based on the protection is limited for practical reasons. To encourage the investment in research and development for such varieties it is necessary to prolong the period of variety protection and incentivize breeding activities to develop new varieties to face the needs of farmers and consumers and to face the impact of climate change. Those investments require a longer period 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 customers.

(2) In addition, the market introduction and market uptake of a new variety of those species requires a longer time, as experience has shown that a new variety reveals its commercial value only in the long term. For those reasons, an equitable refunding of the research investment is only possible at a fairly late stage of the protection of those species in comparison with the other crops.

(3) In order to establish a legal environment conducive to achieving an equitable refunding, it is appropriate to extend by further five years the term of the Community plant variety rights concerning the species asparagus, and the species groups flower bulbs, woody small fruits and woody ornamentals.

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2 OJ C ../../….2020, p. ….

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

(4) For reasons of consistency, such extension should apply to all Community plant variety rights regarding the species asparagus, and the species groups flower bulbs, woody small fruits and woody ornamentals.

(5) The period of extension should be reduced if national property rights in respect of 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
Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'the plant varieties concerned' means the plant varieties of the species asparagus and the species groups flower bulbs, woody small fruits and woody ornamentals;

(2) 'the term of the right' means the term, resulting from Article 19(1) of Council Regulation (EC) No 2100/94, of a Community plant variety right.

Article 2
Extension of the term of rights

1. The term of the right of the plant varieties concerned shall be extended by five years. That extension shall apply to rights granted before, on or after 1 July 2021.

2. Paragraph 1 is without prejudice to:

   (a) Article 3 of this Regulation;

   (b) the fourth indent of Article 116(4) of Regulation (EC) No 2100/94.

Article 3
Reduction of the extension of the term of rights

1. For the plant varieties referred to in paragraph 2, the extension of the term provided for in Article 2 shall be reduced by the longest period in full calendar years during which any national property 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 right.

2. Paragraph 1 shall apply to the plant varieties concerned not subject to the fourth indent of Article 116(4) of Regulation (EC) No 2100/94 and which have been granted one or more national plant variety rights prior to the grant of a Community plant variety right.

Article 4
Entry into force and application

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

It shall apply from 1 July 2021.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*