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European Union

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NOTE

From: General Secretariat of the Council
To: Working Party on Agricultural Questions (Seeds and Propagating Material)
Subject: Study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material (cf. ST 8287/2021 INIT) - letter from the European Commission

Delegations will find in annex a letter from the European Commission concerning its study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material (cf. ST 8287/2021 INIT). It addresses the Council's request to the Commission to submit a proposal, if appropriate in view of the outcomes of the study, or otherwise to inform the Council on other measures required as a follow-up to the study (cf. Council Decision (EU) 2019/1905).



EUROPEAN COMMISSION

Maroš Šefčovič
Vice-President

Brussels, 29/04/2021

Dear Minister,

Please find enclosed the Commission's response to the Council's request under Article 241 TFEU, by way of Council Decision (EU) 2019/1905 of 8 November 2019, requesting the Commission to submit a study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material, and a proposal, if appropriate in view of the outcomes of the study.

Yours sincerely,

Maroš Šefčovič

Mr. Augusto Santos Silva
Minister of Foreign Affairs of Portugal

The Commission's response to the Council's request under Article 241 TFEU, by way of Council Decision (EU) 2019/1905 of 8 November 2019, requesting the Commission to submit a study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material, and submit a proposal, if appropriate in view of the outcomes of the study.

The Council, in its Decision (EU) 2019/1905 of 8 November 2019, requested the Commission to submit, by 31 December 2020, a study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material ('PRM study'), and submit a proposal, if appropriate in view of the outcomes of the study. Delays related to the COVID-19 pandemic led to a four-month delay of the submission of the PRM study to the Council.

Please find herewith the requested study in the form of a Commission Staff Working Document, accompanied by the report of an external contractor. The study is based on an evaluation in 2007-2008, on experiences with the implementation of the current legislation in the past decade, and on targeted consultations and surveys carried out by the external contractor that include the views of Member States and relevant EU-level stakeholders. Consulted stakeholders were selected with a view to involving a representative sample of EU-level organisations and associations that could be impacted or have shown interest in PRM related policies.

The request from the Council and the resulting PRM study is the most recent step of a process, which started more than a decade ago. Based on an evaluation in 2007-2008, an Action Plan in 2009 and an impact assessment in 2011-2012¹, the European Commission adopted in May 2013 a proposal for a Regulation on the production and marketing of plant reproductive material including forest reproductive material (FRM) replacing 12 Directives. The main objective of this proposal was to create a common and simplified framework for all sectors of seed and other PRM including FRM. It was, however, rejected by the European Parliament in 2014, and withdrawn by the European Commission in March 2015. According to the European Parliament, one Regulation could not address the requirements of the broad range of PRM and cover forest reproductive material. The European Parliament also had concerns regarding the marketing to amateur gardeners, the unnecessary burden on operators and competent authorities, and insufficient biodiversity provisions.

The results of the PRM study confirm that the main findings of the 2007-2008 evaluation and the 2011-2012 impact assessment remain generally valid. However, in the recent years there have been new technical developments in the seed production and breeding sector, coupled with an increasing demand for sustainability in agriculture and an increasing need for conservation of agro-biodiversity and adaptation to climate change.

The PRM study identifies the following key problems with the existing legislation²:

¹ Documents related to the 2013 proposal can be found here:

https://ec.europa.eu/food/plant/plant_propagation_material/legislation/review_eu_rules_en

² Marketing of seed and other PRM, including FRM, is currently regulated by 12 Council Directives, structured into one horizontal Directive on the Common Catalogue of varieties of agricultural plant species (Directive 2002/53/EC) and 11 vertical Marketing Directives: Council Directives 66/401/EEC (fodder plant seed), 66/402/EEC (cereal seed), 68/193/EEC (vine propagating material), 1998/56/EC (ornamental plants), 2002/54/EC (beet seed), 2002/55/EC (vegetable seed), 2002/56/EC (seed potatoes), 2002/57/EC (oil and fibre plants),

- 1) The fragmented legislation, developed over several decades, causes lack of coherence between the marketing Directives and leaves room for interpretation. Such interpretation contributes to non-harmonised implementation resulting in a non-level playing field for the operators. Moreover, the legislation offers the possibility of many derogations. Member States have applied these derogations in different ways.
- 2) Complex and rigid procedures, including detailed technical requirements in the marketing Directives, hinder *de facto* technical amendments, create a cumbersome decision-making process, and put a high burden on competent authorities carrying out certification. The basic legislation does not facilitate the introduction of lighter registration requirements for traditional and locally adapted plant varieties and tree species which could contribute to seed diversity and security. Likewise, it does not facilitate the introduction of testing requirements for the development of organic varieties suitable to organic production. In addition, the legislation does not support the conservation and sustainable use of plant genetic resources and forest genetic resources, and biodiversity under the Biodiversity Strategy.
- 3) Lack of clarity of the PRM and FRM legislation and the outdated provisions cause non-harmonised implementation of the legislation. The incorporation of sustainability criteria in all sectors, including the forestry sector, which could ensure seed and food security supporting sustainable agri-food production and resilient forests is impeded. The rigidity of the current legal framework complicates the creation of synergies with other policies. All of this poses difficulties to address policy issues identified in the Green Deal and its related strategies such as the Farm to Fork Strategy, the EU Adaptation Strategy on mitigating the impact of, and adapting to climate change, the new EU Forest Strategy on healthy and resilient forests and the European Digital Strategy.
- 4) The lack of a harmonised and risk-based framework for official controls and IT support systems creates a non-level playing field for official controls within the Union, limiting the ability for competent authorities to enforce risk-based measures, and to ensure an efficient use of control resources.
- 5) The current PRM legal framework (which includes also FRM) does not allow taking account of all technical and scientific developments. The rigidity of the regulatory framework may create barriers for the market access of PRM and FRM and new production processes obtained through scientific and technical progress. The current rules impede the use of scientific and technical developments that could support the production and registration of PRM and FRM and the certification of PRM.

The study identifies the following options to address these problems:

2008/72/EC (vegetable propagating material), 2008/90/EC (fruit plant propagating material) and one Directive that covers FRM (1999/105/EC). In addition, there are several dozen implementing acts, listed here: https://ec.europa.eu/food/plant/plant_propagation_material/legislation/specific_legislation_en

- **Option 0: Do nothing**

No change in the current situation; focus on implementing the legislation in a way, which takes into account the objectives of the Green Deal and the Farm to Fork Strategy.

- **Option 1: Improve procedures and coherence of the legislation, and introduce *ad hoc* measures to increase sustainability**

This option would include amendments to the Directives to align their structure and decision-making procedures, as well as to introduce measures in support of sustainability.

- **Option 2: Flexibility to adapt to technological developments, to improve access to genetic resources and to address the sustainability objectives in a coherent way**

This option would introduce amendments to the Directives responding more comprehensively to the need for more sustainability and more biodiversity. It would contribute to climate change adaptation and mitigation by creating more flexibility in the registration and marketing of varieties and procedures in general. It would finally consider the particularities of exchange of seed between farmers, and allow for an easy adaptation of the legislation to scientific and technical developments. It includes two sub-options, 2A and 2B, which address different policy choices relating to the scope of application of the Directives, the extent of the flexibility afforded to operators and competent authorities, and official controls.

The Council also requested the Commission to submit a proposal (accompanied by an impact assessment), if appropriate in view of the outcomes of the study, or otherwise to inform the Council of alternative measures required as a follow-up to the study.

The Commission considers that action needs to be taken in the field of PRM and FRM to address the current concerns that were at the basis of the Council request, and are further confirmed by the study. Action in these fields will also contribute to the objectives of the European Green Deal and Farm to Fork and Biodiversity Strategies, which are at the centre of the current priorities of the European Union. The EU Climate Adaptation Strategy announced that more work is needed to encourage collaborative, transnational production and transfer of seeds and planting material through active policies and actions by amending the Directive on the marketing of forest reproductive material and the Marketing Directives on seed and other propagating material.

Based on the outcome of the study and the information available, the Commission has concluded that there is sufficient evidence and scientific basis to take policy action, which will entail carrying out an impact assessment. The Commission intends, following due consideration of the outcome of an impact assessment, to adopt a legislative proposal revising the current legal framework. The proposal would put into effect amendments in order for the legislation to be in line with the European Green Deal and the Farm to Fork, Biodiversity and Climate Adaptation Strategies, uniformly applied, efficient and effective, more open to integrating new and future developments, ensuring a high level of protection of the environment, more sustainable and supportive of biodiversity and climate proof.

In terms of next steps, the PRM study, alongside supporting data, will be published on 29 April 2021 on a dedicated Commission website: https://ec.europa.eu/food/plant_en. I would like to inform you that we also intend to publish this letter in order to communicate the Commission's intentions to stakeholders and the general public.

After the publication of the study, the Commission will engage in a wide-ranging communication effort to share its results and to discuss its outcome with the European Parliament, the Council, and stakeholders in dedicated meetings. It is important for the Commission to gather views on the proposed follow-up.

The future policy action will be prepared in full respect of proportionality, subsidiarity and better law-making principles. We expect to publish an inception impact assessment in the second quarter of 2021. The impact assessment will follow, and will include further consultation of all interested parties.

I take this opportunity to thank the Member States for their contributions to the study, which have allowed us to gather a comprehensive overview on the current status of the implementation of the PRM and FRM legislation across the European Union. We look forward to further discussions on this topic in the European Parliament, the Council, and with stakeholders.

I would like to ask for your support on the next steps to ensure a comprehensive and balanced debate to allow us to develop a future-proof harmonised legal framework suited to this important sector, which not only forms the basis of food security but also significantly contributes to biodiversity and the sustainability of the agri-food chain.