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NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	6030/21 - 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 (COM(2021) 36 final) – <i>Presidency text</i>

On the above-mentioned Commission proposal for a Regulation 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 (doc. COM(2021) 36 final), Delegations will find in Annex the text prepared by the Presidency including suggestions for amendments.

Additions to the original Commission proposal are indicated in **bold and underlined** text; deletions are in ~~strikethrough~~ text.

The amendments reflect the comments received during the informal videoconference of the members of the Working Party on Agricultural Questions (Plant Breeders Rights) on 4 March 2021, as well as drafting suggestions from the Council Legal Service, while keeping the form of a self-standing act as originally proposed by the Commission.

In the meantime, the Presidency has been informed that the European Parliament plans to adopt its position to agree on the proposal without amendments at a forthcoming plenary.

Delegations are invited to submit any comments on the text to the Presidency (carlos.godinho@dgav.pt), with a copy to the General Secretariat of the Council (LIFE.3@consilium.europa.eu), by close of business on Friday 4 June 2021. In the absence of objections or requests for further amendments by that date, the Presidency intends to submit the text to COREPER as a "I" item, as the basis for a mandate to enter into negotiations with the European Parliament.

2021/0019 (COD)

Proposal for a

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. ~~asparagus~~ 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 .././....2020, p.

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.~~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~~ of those species it is necessary to prolong the period of variety protection and incentivise breeding activities to develop new varieties to ~~face~~ meet the needs of farmers and consumers and to face the impact of climate change. Those investments require ~~a longer period~~ 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 customers.
- (2) ~~In addition, the~~ The market introduction and market uptake of a new variety of those species requires more time to be profitable than for other such species~~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 species~~crops~~.
- (3) Council Regulation (EC) No 2100/94 establishes a system of Community plant variety rights as the sole and exclusive form of Community industrial property rights for plant varieties. According to Article 19(1) of that Regulation, the term of the Community plant variety right shall 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.

- (3) 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 ~~concerning~~ for varieties of the species *Asparagus officinalis* L.asparagus, and of the species groups flower bulbs, woody small fruits and woody ornamentals. **That extension shall apply to rights granted before, on or after the date of entry into force of the present Regulation.**
- (4) For reasons of consistency, such extension should apply to all Community plant variety rights ~~regarding~~ for varieties of the species *Asparagus officinalis* L.asparagus, and of 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~~ 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

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 ~~12~~

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, ~~of for~~ the varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals, 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 ~~23~~

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 ~~12~~ 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 varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals 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.~~

~~Alternative: 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 No 2100/94 does not apply, the extension of the term provided for in Article 1 of this Regulation 19(1) of Regulation (EC) No 2100/94 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 rights.~~

Article 34

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

The President

For the Council

The President
