Council of the European Union

Brussels, 16 June 2021
(OR. en)

9887/21
ADD 1

Interinstitutional File:
2021/0019(COD)

AGRI 285
AGRILEG 127
CODEC 909
SEMENCES 30

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	9611/21 ADD 1
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 - *Mandate for negotiations with the European Parliament*

Delegations will find in Annex the text supported by the Working Party on Agricultural Questions (Plant Breeder Rights)[1] as the basis for negotiations with the European Parliament on the above-mentioned proposal.

[1] WK 7698/21

ANNEX

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 Committee[2]

Acting in accordance with the ordinary legislative procedure[3]

[2] OJ C ../../….2020, p. ….

[3] 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 incentivi**s**~~z~~e 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, t~~**T**he 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 ***1***~~*2*~~

Extension of the term of Community plant variety rights

1. The term of the **Community plant variety** right**s**~~.~~**, 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 **2**~~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 **1**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~~ **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 ~~3~~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*