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## INFORMATION

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From:	General Secretariat of the Council
To:	Working Party on Genetic Resources and Innovation in Agriculture (Seeds, Propagating and Planting Materials)
Subject:	Meeting of the Working Party on Genetic Resources and Innovation in Agriculture (Seeds, Propagating and Planting Materials; PRM) on 6 and 7 November 2025 - Comments from Germany on Article 48 (Distinctness)

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Delegations will find in the annex comments from Germany on Article 48 (Distinctness) of the proposal for a Regulation on the production and marketing of PRM in the EU.

### **Comment DE:**

We thank the Danish Presidency for the amendments suggested for Art. 48. However, DE cannot support the proposed wording.

According to current legislation, a variety has to be distinct from any variety, which has been accepted for marketing or certification in the Union (Art. 5 of Directive 2002/53/EC). By this provision, it is fully ensured that all varieties that are marketed or certified in the Union are distinct from each other and can be identified.

The meaning for common knowledge for Plant Breeders' rights (PBR) is much broader, in particular, as it is not restricted to varieties on the market. The proposed text of Art. 48 corresponds to the meaning of common knowledge as applied for PBR. It would result in much stricter requirements for distinctness compared to the current situation. In specific situations, new varieties could not enter the market any more.

The following example illustrates the impact the suggested amendments would have:

A breeder applies a wheat variety for national listing. DUS and VsCU testing is carried out by the examination offices.

VsCU testing reveals that this variety has superior VsCU characteristics.

However, during DUS testing it is revealed that this new variety is not distinct from an older variety that is still listed and marketed, e.g. a variety from the same breeder.

Under the current legislation the breeder could withdraw his older variety from the national list and thus from the Common Catalogue. This would give way to the national listing of his new improved variety.

Under the proposed amendments of Art. 48 of the PRM legislation, even if the breeder withdraws the older variety, the new variety will never be able to enter the market, as it is not distinct from that older variety.

In both cases, the new variety cannot be granted Plant Breeders' Rights, as it is not distinct from the older variety, which stays to be a matter of common knowledge in the sense of PBR.

DUS testing is conducted in identical ways at the examination offices (one key several doors); however, the interpretation of the results needs to be adapted to the scopes of the different frames of legislation – Plant Variety Protection and Marketing.

Therefore, we suggest the following amendments:

#### *Article 48*

#### **Distinctness**

1. For the purposes of the official description referred to in Article 47(1), point (a)(i), a variety shall be deemed to be distinct if it is clearly distinguishable, by reference to the expression of the characteristics that results from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of

common knowledge **known in the Union** [in the Union] on the date of the submission of the application established in accordance with Article 58.

[2. ~~The existence of another variety~~ **The existence of a variety shall be deemed to be known in the Union**, as referred to in paragraph 1, a matter of common knowledge ~~taking into account the respective UPOV guidelines, inter alia, and in particular if one or more of the following conditions are complied with:~~

(a) ~~the **that** variety is included has been **is** registered in a national variety register **as referred to in Art. 44 of this regulation** at any point of time and the Union variety register;~~; or

**(b) for that variety an application for registration in a national register as referred to in Art. 44 of this regulation has been filed unless the conditions are no longer fulfilled in all the Member States concerned before the decision on the application is taken.**

~~(aa) the variety has been granted a plant variety right pursuant to Regulation (EC) No 2100/94 or pursuant to national rules, at any point of time;~~

~~(b) an application for registration of the variety has been filed submitted in accordance with Article 55 of this Regulation and is under examination;~~

~~(c) [...]~~

~~(d) an application for granting a plant variety right in respect of that variety has been submitted in accordance with Regulation (EC) No 2100/94 or in accordance with national rules in the Union and is under examination.]~~