



Slow Food Foundation  
for Biodiversity



## *Stop the loss of agricultural biodiversity now!*

February 2013

### **Call for significant changes in the new Regulation on Marketing of Plant Reproductive Material (PRM) to safe agricultural biodiversity, the rights of farmers in Europe and developing countries, global food security and consumers' choice and transparency**

Dear Commissioner Borg,

In November 2012, DG SANCO issued an updated draft proposal for a new Plant Reproductive Material (PRM) regulation, which will replace numerous directives, aiming at inter-service consultation.

As civil society organisations representing hundreds of thousands of European citizens we again call on you<sup>1</sup> to make the future PRM legislation more respectful towards environment, sustainable agriculture, farmers' rights, consumers' expectations, global food security and needs of small actors in the seed chain, and prevent the **strong negative consequences of the current draft proposal**.

#### **Our main demands:**

##### Concerning promoting agro-biodiversity:

- ✓ No obligatory registration and certification with sampling for seeds and other plant reproductive material (PRM) that is open pollinating and not protected by a private intellectual property right (IPR).

##### Concerning promoting democracy and farmers' rights:

- ✓ The exchange of seeds and other plant reproductive material between farmers and between farmers and individuals must be excluded from the scope of the regulation;
- ✓ The scope of the regulation must be limited to the marketing of PRM *with a view to commercial exploitation and above certain quantities (as defined in art. 8 (2) of Reg. 1765/92)*;

##### Concerning promoting consumers' choice and transparency:

- ✓ Ensure that open pollinating varieties and seeds bred for organic farming or specific local conditions are not discriminated by norms of (even voluntary) registration, certification and plant health requirements.
- ✓ Micro and small enterprises shall only comply with basic rules concerning the operators as long as they are not dealing with GMO or with PRM protected by IPRs (Plant Variety Rights or patents).
- ✓ Ensure transparency on breeding methods and Intellectual Property Rights associated with registered varieties and plants.

Please find our analysis and more detailed reasoning how to achieve a real "better regulation" below. We are ready to discuss these proposals with you. European civil society will closely monitor the moves and decisions of the European law makers and it is ready to stand up for its demands.

Yours sincerely,  
The signing organisations as listed

<sup>1</sup> As we already expressed in the Seedforall.org open letter, sent in April 2012.

**The signing organisations:**

Arche Noah

Aprodev (Association of World Council of Churches related Development Organisations in Europe)

Birdlife

Eurocoop

Friends of the Earth Europe

Grain

IFOAM EU (EU Group of the International Federation of Organic Agriculture Movements)

Save Our Seeds

Slow Food Foundation for Biodiversity

Sowing the Future

**This letter goes:**

Tonio Borg, Commissioner for Health and Consumer Protection

Dacian Ciolos, Commissioner for Agriculture and Rural Development

Janez Potočnik, Commissioner for the Environment

László Andor, Commissioner for Employment, Social Affairs and Inclusion

Antonio Tajani, Commissioner for Industry and Entrepreneurship

Andris Piebalgs, Commissioner for Development

Johannes Hahn, Commissioner for Regional Policy

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## ***Our analysis in more details:***

### **The draft is a massive threat for biodiversity and agro-ecology**

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The present system of mandatory official registration and certification is being continued in the draft proposal. This restrictive system is largely responsible for the decrease of cultivated biodiversity in the past decades. It imposes the same burdens on varieties for household gardens, farmers' varieties and varieties mainly used on local markets as on PRM used in industrial agriculture on very large areas. This system leads to more dramatic loss of agricultural biodiversity in the future, neglecting EU obligations<sup>2</sup>.

The narrow derogations provided for "old varieties" are not nearly sufficient. Any geographic, time and quantitative restriction reduces agricultural diversity to a museum concept, failing to conceive diversity as a dynamic process of uttermost importance for a future sustainable agriculture and global food security.

#### **We demand**

- Registration and certification with costs and sampling shall not be obligatory for PRM that is open pollinating, and not protected by a private intellectual property rights (plant variety certificates or patents).
- Voluntary registration based on officially recognized descriptions shall be possible for all species and genera without restriction in time and geographic restrictions to "regions of origin".

### **The legislative proposal must respect farmers' rights and choices**

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The draft makes farmers' practice of exchanging seeds from their own harvest *punishable*. This thousands-of-years old practice, however, still has great relevance for thousands of non-industrial farms in the EU. It is a part of our rural culture and has proofed an effective strategy of labor division in rural communities. These activities of farmers contribute to the conservation and, by farmers' breeding activities, the further development of agricultural biodiversity. They contribute to the adaptation of crops to local conditions and might improve the resilience of agro-ecosystems during climate change. Furthermore, ensuring local PRM supply and the possibility to rely on local knowledge should be considered an essential part of emergency preparedness and response in any case of disaster.

The exchange of seed and other plant reproductive material between farmers, and the direct marketing of seed at a local scale are not a commercial activity in the sense of the legislation. On the contrary, they are complementary activities. They have to remain out of scope in order to ensure legal security for farmers, who are not operators in the meaning of the PRM legislation and in order to better comply with the commitments resulting from the International Treaty on Plant Genetic Resources for Food and Agriculture<sup>3</sup>. Also article 109 of the "Future We Want" declaration of the Rio+20 United Nations Conference recognises the importance of traditional sustainable agricultural practices, explicitly including traditional seed supply systems.

Threatening farmers' voluntary services to conserve and develop agricultural biodiversity results in:

- > reduction of local food security
- > loss of diversity *in situ* (conserved by farmers at very low public costs), and therefore:
- > more public costs for *ex situ* conservation activities

Furthermore, criminalizing farmers will be "exported" to third countries through the EU equivalence system and specific bilateral or multilateral export agreements. Especially in developing countries where informal farmers' seeds still play a crucial role for local food systems, the consequences of such EU PRM legislation will be even more devastating, putting at risk traditional informal farming systems who feed 70 percent of the world's population, including the most vulnerable.

#### **We demand**

- Exclude the exchange of PRM between farmers and between farmers and individuals from the scope of the regulation

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<sup>2</sup> E.g. the obligation to protect "plant genetic resources" *in situ* through their sustainable use, as stipulated by the [Convention on Biological Diversity CBD](#); the EU key targets set by the [EU biodiversity strategy 2020](#): better protection of ecosystems and their services, increased contribution of sustainable agriculture and forestry to biodiversity, conservation of Europe's agricultural genetic diversity.

<sup>3</sup> The [International Treaty ITPGRFA](#) expresses the obligation to implement farmers' rights to save, use, exchange and sell their own farm-saved seeds, and to implement policies ensuring the sustainable use of plant genetic resources, recognizing the enormous contribution of farmers, especially small scale and traditional farmers, and local communities to the conservation and development of plant genetic resources.

- Limit the scope of the regulation *per definitionem* to the marketing of PRM *with a view to commercial exploitation above certain quantities*<sup>4</sup>.

## **The legislative proposal must respect consumers' choice and transparency**

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The compulsory registration of varieties is often reasoned with consumer protection and transparency on the market. Considering however the resulting reduction of choice on the seed- and on the food-market, due to the technical, financial and administrative burdens imposed on varieties and operators that ignore the increasing demand for more diverse and locally produced food, the PRM draft cannot be regarded as an instrument to safeguard consumers' interests. This proposal is also an obstacle to growing crops for self supply as it reduces the choice of PRM with a broad genetic background which could better adapt to local conditions. In addition, this legislation only focuses at large scale. The reality is totally different at local scale, where the traceability is easily achieved through the direct marketing of seed.

DUS – Distinct, Uniform and Stable - tests, preceding registration of varieties, are reasoned with ensuring high quality. Yet, what is high quality depends on the specific demands of the users - that greatly differ. For a household gardener, a variety without official registration might fit perfectly, however he cannot purchase it due to market restrictions. Farmers looking for seeds or plants with special aesthetic or culinary qualities do not always get what they need from the professional market. Organic farmers, looking for seeds or plants combining a lower than average yield potential with high robustness and therefore little need for external inputs, are not sufficiently provided with adequate PRM.

Another argument that is put forward for the maintenance of the present system is that it would be difficult or impossible for the users of PRM to recognise inadequacies concerning identity or quality at the time of purchase. This may be true; however, it is true for most product markets - be they packaged food, construction services, travel arrangements or software. All these markets flourish to great diversity without any mandatory official pre-market tests like in the PRM regulation. Registration according to DUS criteria and with VCU – Value for cultivation and use - tests could however remain as an option and will provide those consumers who want it with respective PRM categories.

Transparency, on the other hand, could easily be achieved by labelling requirements similar to an operator's label. Labelling is seen as a sufficient means of transparency for other markets like e.g. the food market that has a much bigger potential of affecting human health. An inscription of varieties that are open pollinating, freely reproducible, bred with conventional techniques not protected by IPRs, on a register without DUS tests and at no costs, would at any time ensure traceability and biodiversity. Opposite to its own claims and despite consumers' demands, the draft regulation does not provide for transparency about breeding methods and Intellectual Property Rights related to the varieties on the seed market. In addition, this text, together with the Plant Health Proposal, infringes the trade secret recognised by the European Court of Justice to the farmers reproducing seed as it will facilitate information flow to the industry regarding IP-protected seeds.

### **We demand**

- The exchange of seeds and other plant reproductive material between farmers and between farmers and individuals must be excluded from the scope of the regulation.
- Micro and small enterprises shall only comply with basic rules concerning the operators as long as they are not dealing with any technic of genetic modification<sup>5</sup> or with PRM protected by intellectual property titles (Plant Variety Rights or patents).
- DUS criteria and testing methods shall be adapted for varieties that are bred to support the needs of agro-ecological systems, ensuring that open pollinating varieties and seeds bred for organic farming or specific local conditions are not discriminated by (even voluntary) registration, certification and plant health norms.
- Breeders shall provide information to the public on breeding methods and Intellectual Property Rights associated with a variety and its parent lines when applying for registration. Confidentiality shall not be conceded after registration.

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<sup>4</sup> As an example article 8 of Council Regulation (EEC) No. 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops defines the notion of small farmer as claiming compensatory payments for an area no bigger than the area which would be needed to produce 92 tons of cereals. The same idea might be reused to define the non-commercial quantities of seed: seed that are produced on an area no bigger than the area which would be needed to produce 92 tons of cereals.

<sup>5</sup> As listed in Annexes IA and IB of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC.