

14/12/2022



# SEED POLICY LAB 2

## EU Law of the Seed

Fulya BATUR



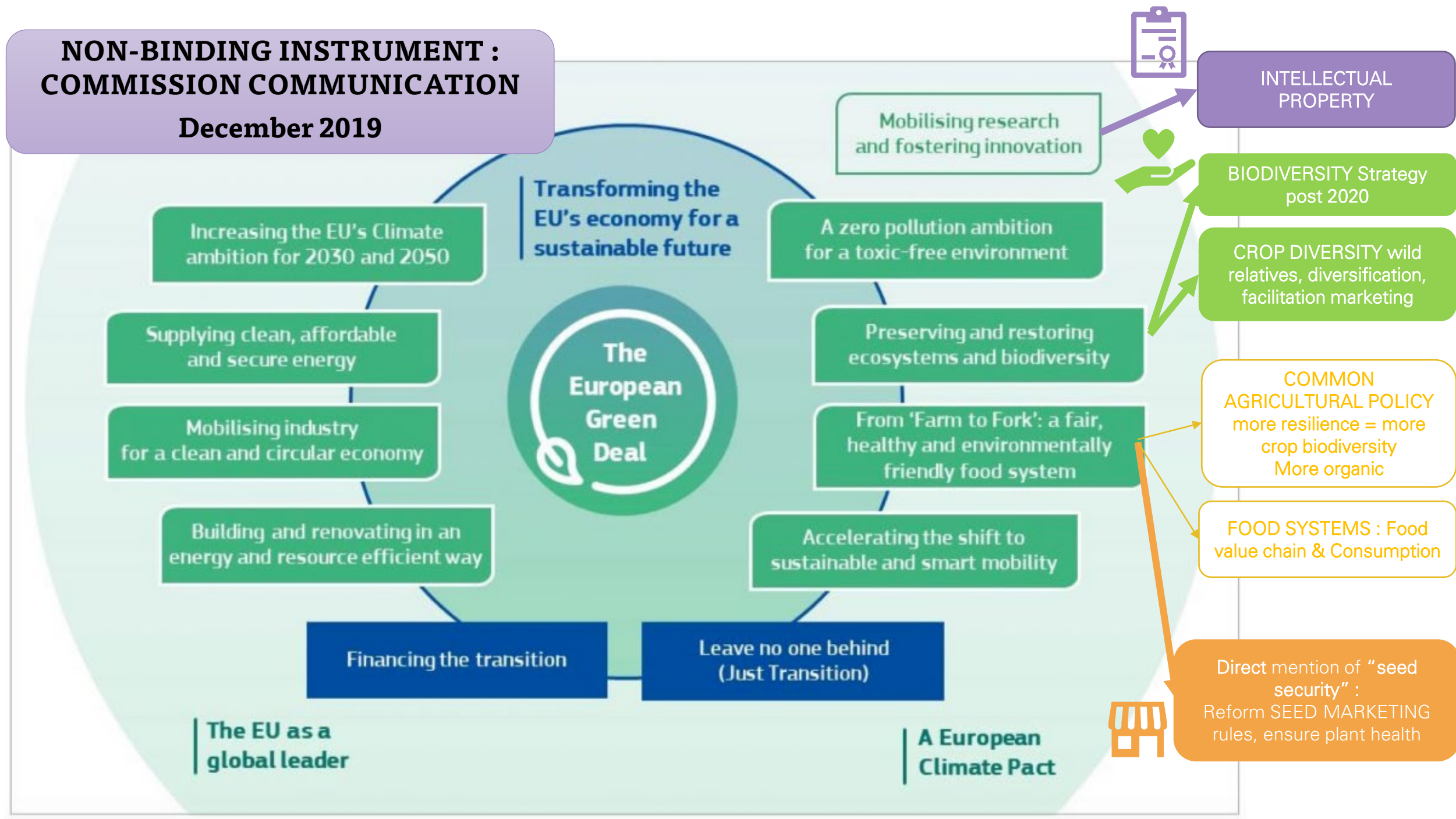
*This project has been funded with support from the European Commission. This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.*

Co-funded by the  
Erasmus+ Programme  
of the European Union



# NON-BINDING INSTRUMENT : COMMISSION COMMUNICATION

December 2019





# EU COMPETENCE IN SEEDS & THE EUROPEAN GREEN DEAL

## BINDING INSTRUMENTS

FOUNDING EU TREATIES

REGULATIONS AND  
DIRECTIVES OF COUNCIL &  
PARLIAMENT

REGULATIONS AND  
DIRECTIVES OF THE  
COMMISSION

BIRDS & HABITATS  
DIRECTIVES

## NON-BINDING INSTRUMENTS

COMMISSION  
COMMUNICATION



ORGANIC  
ACTION PLAN

FORESTS  
ACTION PLAN

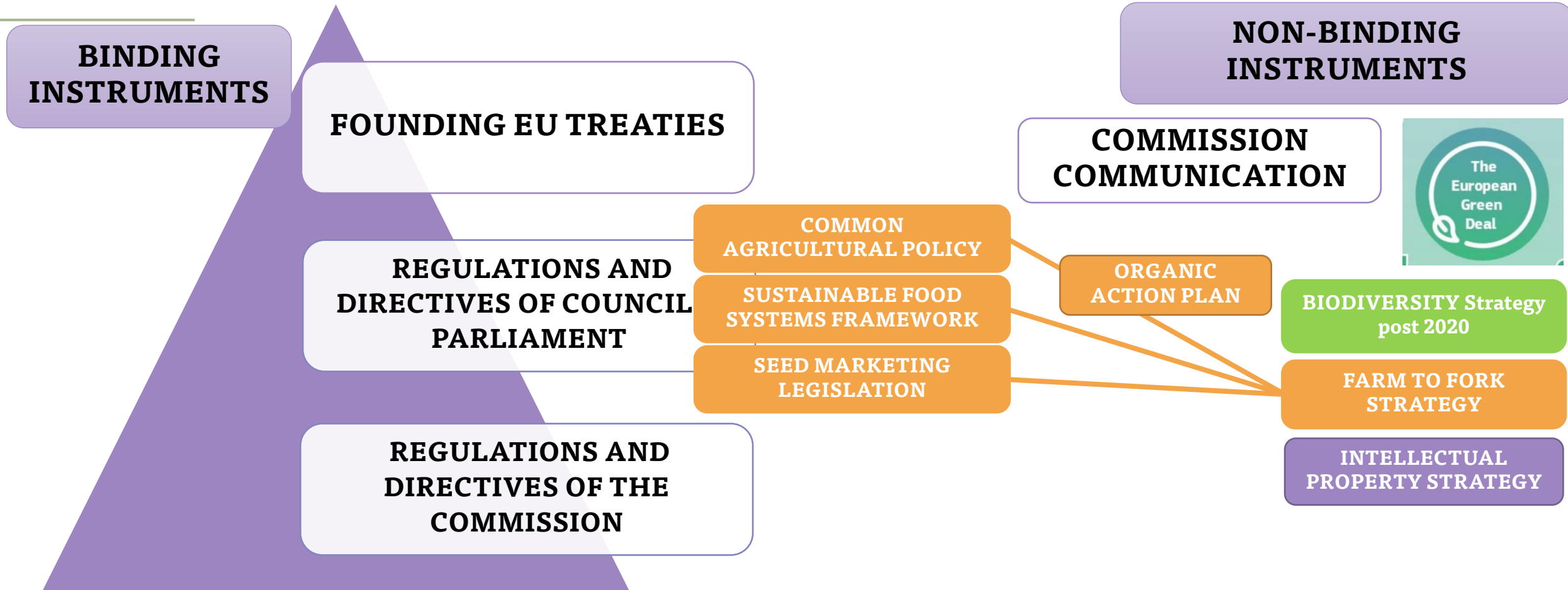
BIODIVERSITY Strategy  
post 2020

FARM TO FORK  
STRATEGY

INTELLECTUAL  
PROPERTY STRATEGY



# EU COMPETENCE IN SEEDS & THE EUROPEAN GREEN DEAL





# EU COMPETENCE IN SEEDS & THE EUROPEAN GREEN DEAL

## BINDING INSTRUMENTS

FOUNDING EU TREATIES

REGULATIONS AND  
DIRECTIVES OF COUNCIL  
PARLIAMENT

REGULATIONS AND  
DIRECTIVES OF THE  
COMMISSION

UNITARY PATENT  
SYSTEM

COMMUNITY PLANT  
VARIETY RIGHTS

## NON-BINDING INSTRUMENTS

COMMISSION  
COMMUNICATION



BIODIVERSITY Strategy  
post 2020

FARM TO FORK  
STRATEGY

INTELLECTUAL  
PROPERTY STRATEGY



# EU COMPETENCE IN SEEDS & THE EUROPEAN GREEN DEAL

## BINDING INSTRUMENTS

FOUNDING EU TREATIES

REGULATIONS AND  
DIRECTIVES OF COUNCIL &  
PARLIAMENT

REGULATIONS AND  
DIRECTIVES OF THE  
COMMISSION

## NON-BINDING INSTRUMENTS

COMMISSION  
COMMUNICATION



BIODIVERSITY Strategy  
post 2020

FARM TO FORK  
STRATEGY

INTELLECTUAL  
PROPERTY STRATEGY

LIMITED EU COMPETENCE  
BEYOND THE EU COMMON  
MARKET ?



**BIODIVERSITY  
CONSERVATION,  
SUSTAINABLE USE &  
BIOPIRACY**



**SEED MARKETING**



**INTELLECTUAL  
PROPERTY RIGHTS**



# BIODIVERSITY CONSERVATION, SUSTAINABLE USE & BIOPIRACY

INTERNATIONAL LAW

EU STRATEGY (SOFT LAW)

EU LAW





# BIODIVERSITY CONSERVATION, SUSTAINABLE USE & BIOPIRACY

## INTERNATIONAL LAW



ALL BIOLOGICAL DIVERSITY & ECOSYSTEMS

REVERSE DECLINE

BIOPIRACY

Convention on  
Biological Diversity

29.12.1993

12.10.2014 Nagoya Protocol



FOOD & AGRI GENETIC RESOURCES

INTERDEPENDENCE

FOOD SECURITY



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

29.06.2004

SOVEREIGNTY

CONSERVATION

SUSTAINABLE USE

- *Promote the development and maintenance of diverse farming systems*
- *Strengthen research for the benefit of farmers,*
- *Promote participatory plant breeding*
- *Broaden the genetic base of crops and increase the range of genetic diversity available to farmers;*
- *Promote the expanded use of local and locally adapted crops, varieties and underutilized species;*
- *Review and adjust breeding strategies and regulations concerning variety release and seed distribution.'*



# BIODIVERSITY CONSERVATION, SUSTAINABLE USE & BIOPIRACY

## INTERNATIONAL LAW



Convention on  
Biological Diversity

ALL BIOLOGICAL DIVERSITY & ECOSYSTEMS

## TRADITIONAL KNOWLEDGE

- *Indigenous communities*
- *Innovative and traditional practices and uncoded knowledge cannot be used in research and development without their consent & benefit-sharing*



FOOD & AGRI GENETIC RESOURCES



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

## FARMERS' RIGHTS

- *Farmers and local communities*
- *Promotion or support farmers efforts to manage and conserve on-farm their plant genetic resources for food and agriculture*
- *Protection of traditional knowledge & participation in benefit-sharing*
- *Nothing to limit the right to save, use and sell farm-saved seeds, subject to national law*



# BIODIVERSITY CONSERVATION, SUSTAINABLE USE & BIOPIRACY

INTERNATIONAL LAW

EU STRATEGY (SOFT LAW)

## ALL BIOLOGICAL DIVERSITY & ECOSYSTEMS

- *COMMISSION COMMUNICATION : EU Biodiversity Strategy*



May 2020  
#EUGreenDeal

- > Establish protected areas for at least:



**30%**  
of land in  
Europe



**30%**  
of sea in  
Europe

With stricter protection of remaining EU primary and old-growth forests legally binding nature restoration targets in 2021.

- > Restore degraded ecosystems at land and sea across the whole of Europe by:



Increasing organic farming and biodiversity-rich landscape features on agricultural land



Halting and reversing the decline of pollinators



Restoring at least 25 000 km of EU rivers to a free-flowing state



Reducing the use and risk of pesticides by 50% by 2030



Planting 3 billion trees by 2030



# BIODIVERSITY CONSERVATION, SUSTAINABLE USE & BIOPIRACY

INTERNATIONAL LAW

EU STRATEGY (SOFT LAW)

## ALL BIOLOGICAL DIVERSITY & ECOSYSTEMS

- *COMMISSION COMMUNICATION : EU Biodiversity Strategy*



May 2020  
#EUGreenDeal

- > Establish protected areas for at least:



**30%**  
of land in  
Europe



**30%**  
of sea in  
Europe

With stricter protection of remaining EU primary and old-growth forests legally binding nature restoration targets in 2021.

- > Restore degraded ecosystems at land and sea across the whole of Europe by:



Increasing organic farming and biodiversity-rich landscape features on agricultural land



**Unlock 20 billion EUR/year for biodiversity** through various sources, including EU funds, national and private funding. Natural capital and biodiversity considerations will be integrated into business practices.



Put the EU in a **leading position in the world** in addressing the global biodiversity crisis. The Commission will mobilise all tools of external action and international partnerships for an ambitious new UN Global Biodiversity Framework at the Conference of the Parties to the Convention on Biological Diversity in 2021.





# BIODIVERSITY CONSERVATION, SUSTAINABLE USE & BIOPIRACY

INTERNATIONAL LAW

EU STRATEGY (SOFT LAW)

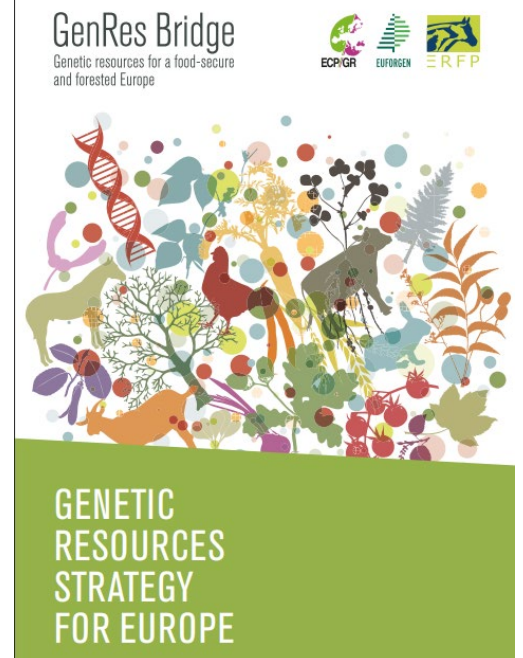
ALL BIOLOGICAL DIVERSITY & ECOSYSTEMS

FOOD & AGRI GENETIC RESOURCES

- *Nothing formal at EU level : only « Preparatory Actions for Genetic resources »*
- *EU research project outputs : need for formal EU action !*



*Under the 2030 Biodiversity Strategy, the European Commission commits to taking steps to facilitate the registration of plant varieties to ensure easier market access for traditional and locally-adapted crop varieties, as well as to restoring at least 10% of agricultural land under high diversity landscape features,*





# BIODIVERSITY CONSERVATION, SUSTAINABLE USE & BIOPIRACY

INTERNATIONAL LAW

EU STRATEGY (SOFT LAW)

EU LAW



Convention on  
Biological Diversity

ALL BIOLOGICAL DIVERSITY & ECOSYSTEMS



FOOD & AGRI GENETIC RESOURCES



The International Treaty  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

## CONSERVATION

- *Habitats Directive*
- *Natura 2000 sites*
- Member States laws (implementation : designation, Action Plans)

## NAGOYA PROTOCOL

- *EU Regulation 511/2014, 16.04.14*
- *Commission Implementing Regulation 2015/1866, 13.10.15*
- Member States laws (esp. access regimes)

- *No direct EU legislation to ensure conservation !*
- *Indirect rules : Common agricultural policy, seed marketing legislation, etc...*
- Member States laws and action plans with sections on crop diversity



**BIODIVERSITY  
CONSERVATION,  
SUSTAINABLE USE &  
BIOPIRACY**

**Any questions?**



**SEED MARKETING**



**INTELLECTUAL  
PROPERTY RIGHTS**



# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS

PAST REFORM

NEW REFORM



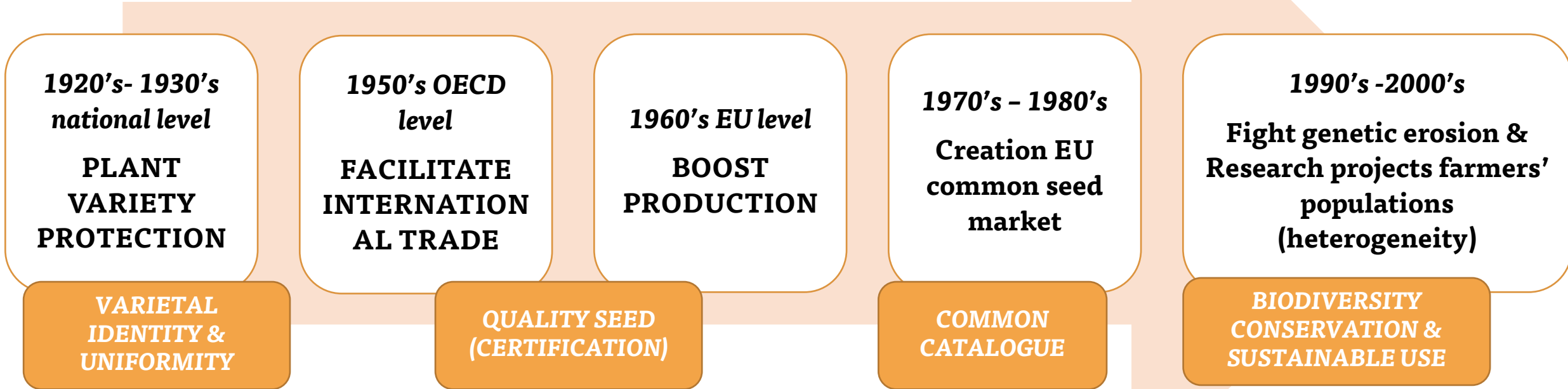
“Sustainable food systems also rely on seed security and diversity. Farmers need to have access to a range of quality seeds for plant varieties adapted to the pressures of climate change. The Commission will take measures to facilitate the registration of seed varieties, including for organic farming, and to ensure easier market access for traditional and locally-adapted varieties”.





# SEED MARKETING (incl. PLANT HEALTH)

## HISTORY

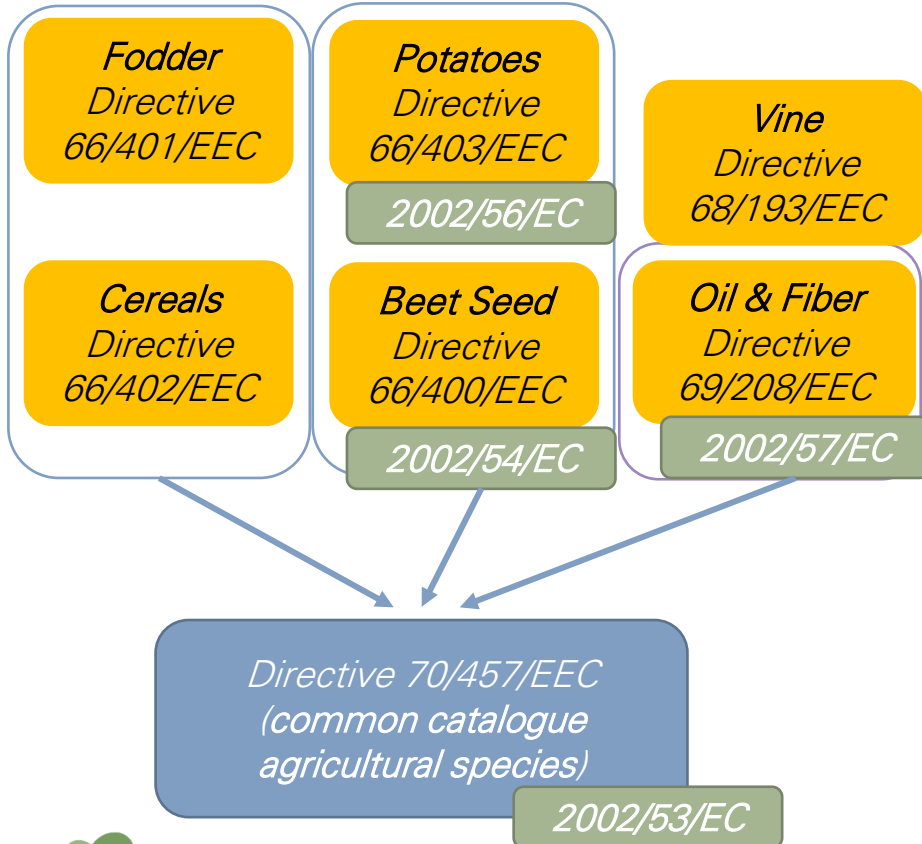




# SEED MARKETING (incl. PLANT HEALTH)

## HISTORY

### 12 Directives (Council/Parliament)



### 3 Commission Directives (derogatory regimes)



### One new Regulation (from 01.01.2022)

Organic Production  
Reg. 2018/0848

COM Regulation (2021/1189  
Delegated Act) Organic  
Heterogeneous material



# SEED MARKETING (incl. PLANT HEALTH)

## PLANT HEALTH RULES

Reg.  
2016/2031

Trigger:  
movement  
(not  
marketing)

## PRINCIPLE

PRE-MARKETING  
REGISTRATION

SEED  
PRODUCTION  
RULES

LABELLING &  
PACKAGING

## Specifics

VARIETY

DUS

DUS &  
VCU

SUPPLIER & VARIETY  
INFO

OHM NOTIFICATION

QUALITY standards (purity &  
germination)

CERTIFICATION

Mandatory

Optional

OFFICIAL SEAL

OFFICIAL LABEL

## Which species?

Vegetables & Vine

Agricultural Crop species (cereals, fodder, beet,  
potatoes, oil & fiber) & Chicory

Fruits, Ornamentals, Forest,  
Vegetable other than seeds

All regulated species

All regulated

Cereals

LIGHT : standard veg, fruit CAC material

Vine



# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

*Seed marketing laws only apply to listed species*

## WHICH SPECIES ?

- *Regulated?*
- *Which Directive or national law?*

*Seed marketing laws only apply to seed marketing*

## WHAT DO YOU DO WITH YOUR SEEDS ?

- *Non-commercial" use, outside of any commercial exploitation (i.e. farming systems)?*
- *Research & selection?*
- *If offered for sale (on the Internet or markets), to whom and in what context do you sell seeds & propagating material?*



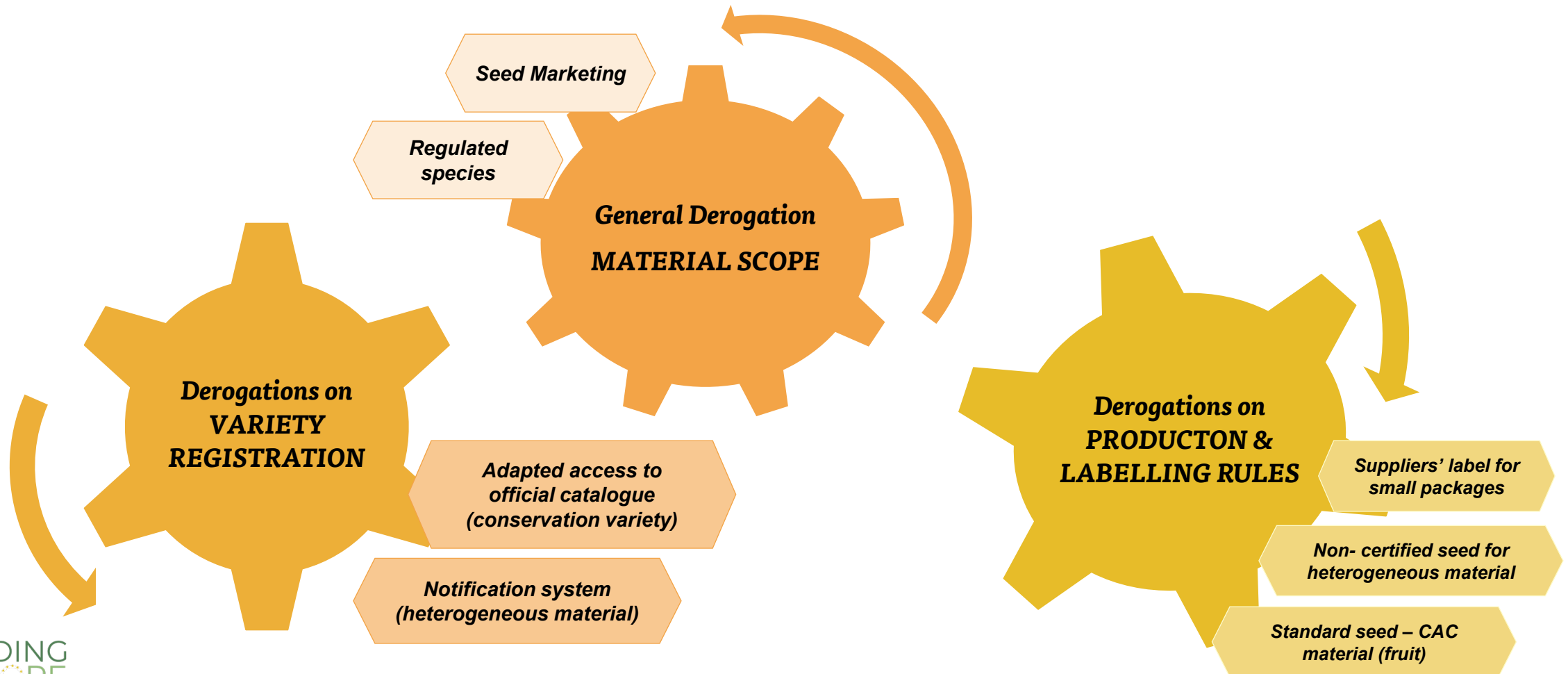
# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS





# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS

PAST REFORM

**2008**

*FCEC Study  
(external  
evaluation)*

**2010**

*FCEC Study  
Variety  
registration*

**2011**

*European  
Commission  
Options  
Paper &  
Public  
consultations*

**2012**

*European  
Commission  
Impact  
Assessment*

**MAY 2013**  
**PROPOSAL**

**OCTOBER  
2013**

*EP AGRI  
Report*

**FEB 2014**

*ENVI opinion  
& AGRI  
rejection  
**MARCH 2014**  
EP plenary  
rejection*

**MARCH 2014**

*Withdrawal  
proposal*



# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS

PAST REFORM

2008

FCEC Study  
(external  
evaluation)

2010

FCEC Study  
Variety  
registration

2011

European  
Commission  
Options  
Paper &  
Public  
consultations

2012

European  
Commission  
Impact  
Assessment

MAY 2013  
**PROPOSAL**  
(2013/0137)

OCTOBER  
2013

EP AGRI  
Report

FEB 2014

ENVI opinion  
& AGRI  
rejection  
MARCH 2014  
EP plenary  
rejection

MARCH 2014

Withdrawal  
proposal



## REGULATION

- Replaces 12 Directives, uniform application & loss of flexibility

## SEED MARKETING ?

- No more link to “commercial exploitation” but “making available on the market”
- Exception for seeds ONLY intended for conservation, exchange between non-professionals (not farmers)

## REGULATED SPECIES ?

- Formal criteria : area / value of production in EU, high number of operators
- Annex of the Regulation, to be amended by Commission Regulation



# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS

PAST REFORM

2008

FCEC Study  
(external  
evaluation)

2010

FCEC Study  
Variety  
registration

2011

European  
Commission  
Options  
Paper &  
Public  
consultations

2012

European  
Commission  
Impact  
Assessment

MAY 2013  
**PROPOSAL**  
(2013/0137)

OCTOBER  
2013

EP AGRI  
Report

FEB 2014

ENVI opinion  
& AGRI  
rejection  
MARCH 2014  
EP plenary  
rejection

MARCH 2014

Withdrawal  
proposal



## PRINCIPLE OF REGISTRATION

- Mandatory for all operators
- Mandatory for all crop species (except rootstocks)
- Based on DUS and environmental VCU for species of particular agricultural importance

## DEROGATIONS ?

- **Heterogeneous material** (not variety, to be sold as standard seed, but details to be defined in Commission delegated acts)
- **Niche market material** (only in small quantities by micro-entreprises & non-professionals, standard seed but details to be defined in Commission delegated acts)
- **Varieties with official description** (replaces conservation varieties : landraces and deleted varieties, only in region of origin, details in delegated acts)





# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS

PAST REFORM

2008

FCEC Study  
(external  
evaluation)

2010

FCEC Study  
Variety  
registration

2011

European  
Commission  
Options  
Paper &  
Public  
consultations

2012

European  
Commission  
Impact  
Assessment

MAY 2013  
PROPOSAL  
(2013/0137)

OCTOBER  
2013

EP AGRI  
Report

FEB 2014

ENVI opinion  
& AGRI  
rejection  
MARCH 2014  
EP plenary  
rejection

MARCH 2014

Withdrawal  
proposal



## SEED PRODUCTION

- Mandatory seed lot certification
- Exception standard seed for all species, but only for derogatory regimes & “proportionate”

## LABELLING & PACKAGING

- Official label
- Operators’ label : controls “under official supervision” (also for other elements)
- Derogations for small packages



# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS

PAST REFORM

2008

FCEC Study  
(external  
evaluation)

2010

FCEC Study  
Variety  
registration

2011

European  
Commission  
Options  
Paper &  
Public  
consultations

2012

European  
Commission  
Impact  
Assessment

MAY 2013  
PROPOSAL  
(2013/0137)

OCTOBER  
2013

EP AGRI  
Report

FEB 2014

ENVI opinion  
& AGRI  
rejection  
MARCH 2014  
EP plenary  
rejection

MARCH 2014

Withdrawal  
proposal



## AGRI RAPPORTEUR (Silvestris, EPP) : proposed AMENDMENTS TO PROPOSAL

- COM Proposal not sufficiently clear, especially on derogatory regimes
- More simplification needed in variety registration procedure (especially niche material) & no limitation to micro-entreprises
- Too many delegated acts



# SEED MARKETING (incl. PLANT HEALTH)

HISTORY

PRINCIPLES

SCOPE

DEROGATIONS

PAST REFORM

2008

FCEC Study  
(external  
evaluation)

2010

FCEC Study  
Variety  
registration

2011

European  
Commission  
Options  
Paper &  
Public  
consultations

2012

European  
Commission  
Impact  
Assessment

MAY 2013  
PROPOSAL  
(2013/0137)

OCTOBER  
2013

EP AGRI  
Report

FEB 2014

ENVI opinion  
& AGRI  
rejection  
MARCH 2014  
EP plenary  
rejection

MARCH 2014

Withdrawal  
proposal



## ENVI Opinion (Ayuso, EPP) : proposes REJECTION

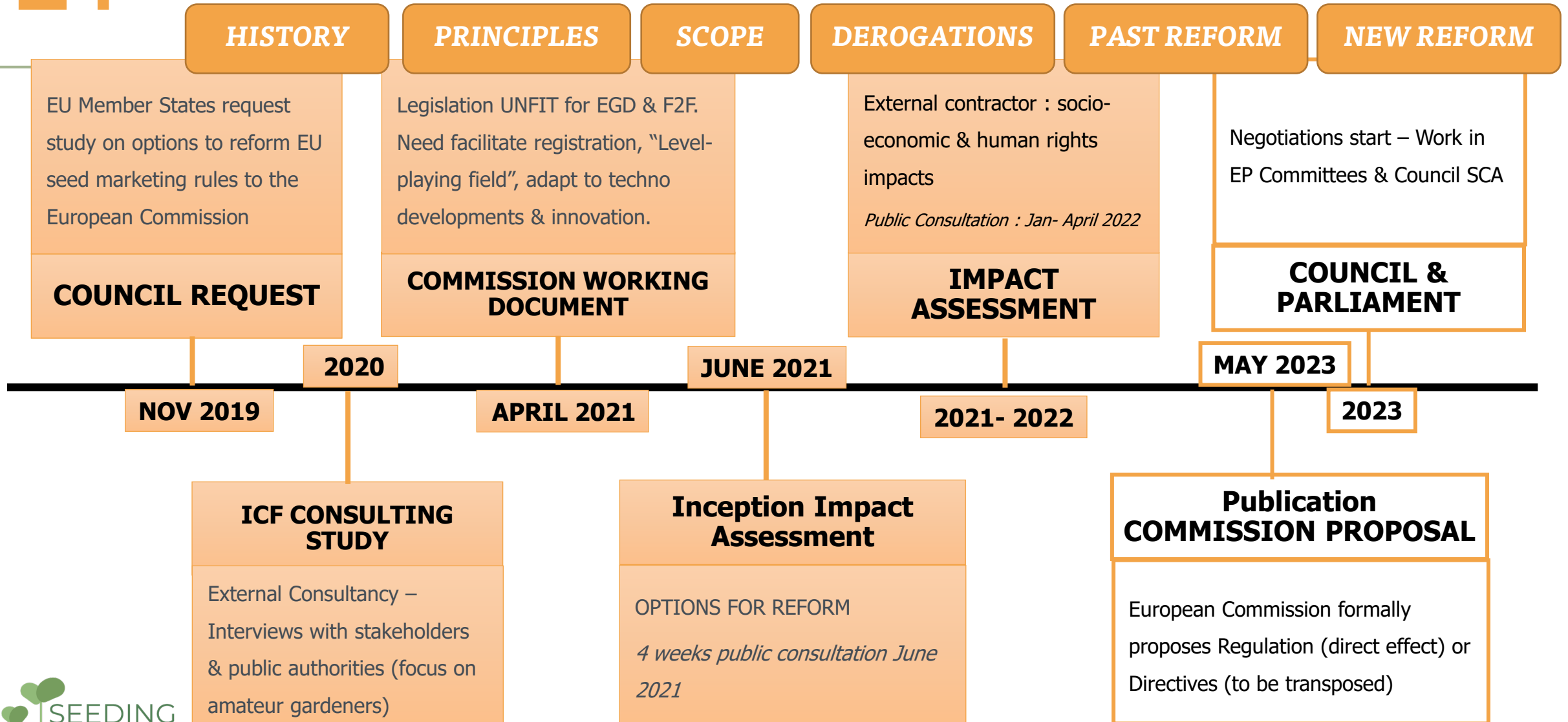
- Overall objective should include facilitation & encouragement biodiversity maintenance in agriculture & horticulture
- "One size fits all" & too many delegated Acts, Concerns over forest material, ornamentals, sale to home gardeners
- Extended powers to CPVO & private actors

## AGRI REPORT : requests plenary to REJECT proposal

**CONFIRMED IN PLENARY VOTE**



# SEED MARKETING (incl. PLANT HEALTH)





**BIODIVERSITY  
CONSERVATION,  
SUSTAINABLE USE &  
BIOPIRACY**



**SEED MARKETING**

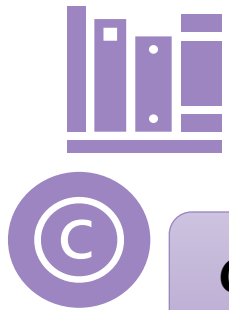


**INTELLECTUAL  
PROPERTY RIGHTS**

**Any questions?**



# INTELLECTUAL PROPERTY RIGHTS

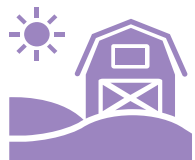


**RESPECT  
CREATIVITY**

**COPYRIGHT**

**PROTECT  
BRANDING**

**TRADEMARK**



**HONOUR AGRI  
PRODUCT / TRADITION**

**GEOGRAPHICAL  
INDICATION**

**FOSTER  
INNOVATION**

**PLANT  
VARIETY**

**PATENT**





# INTELLECTUAL PROPERTY RIGHTS

© Syngenta



## PLANT VARIETY PROTECTION

PHENOTYPE. Plant varieties SX387 and/or OLMECA

*Need Syngenta's consent to use the PROTECTED variety outside of breeders & farmers' privilege*



## PATENT GENOTYPE.

EP1812575 - Tomato plants higher levels of resistance to Botrytis  
(HYPOTHETICAL) *Need Syngenta's consent to use the variety (for acts listed in national laws)*



## TRADEMARK

"KUMATO"

*Need Syngenta's consent to use the name Kumato on tomatoes*



# INTELLECTUAL PROPERTY RIGHTS



## Update IP protection

- Support rapid rollout of unitary patent system
- Optimise the supplementary protection certificate system
- Strengthen protection for geographical indications
- Upgrade design protection
- Improve system for protection of plant varieties
- Promote use of new technologies (blockchain, AI)

Targeted reform to start in 2023





# A HUMAN RIGHTS PERSPECTIVE ON SEEDS?

United Nations

A/HRC/RES/39/12



**General Assembly**

Distr.: General  
8 October 2018

Original: English

**Human Rights Council**

**Thirty-ninth session**

10–28 September 2018

Agenda item 3

**Resolution adopted by the Human Rights Council  
on 28 September 2018**

**39/12. United Nations Declaration on the Rights of Peasants and Other People  
Working in Rural Areas**

**Right to save, use, exchange & sell  
their own seeds**

**Right to maintain, control &  
develop their own seeds**

**Right to have access to locally  
adapted seeds**

**Right to participate in decision-  
making**

**Right to the protection of TK &  
sharing of benefits**

**STATE obligation to respect,  
protect and fulfil the right to seeds**

**Support peasant seed systems and to promote  
the use of peasant seeds and agrobiodiversity**

**Ensure participation of peasants in decision-making**



**THANK YOU !**

**See you this Friday...**