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Seeds & Crop Biodiversity in European Policy

Welcome to Sprouts from Brussels! This monthly newsletter wishes to inform the seeds and crop biodiversity movement across Europe on the policy developments which may have an impact on their activities. If you wish to be part of the conversation, and receive this briefing every month, subscribe [here](#)! If you wish to read previous issues, click [here](#)!



Seed Marketing Directives

Preliminary interviews for the study under way – European Commission reaction to French amendment to its national seed laws

The consultancy (ICF) that will do the background work for the [study requested by Member States](#) to the European Commission on the options to reform the seeds marketing rules has contacted the limited number of stakeholders that had been chosen by the European Commission (DG SANTE, Plant Health Unit) for preliminary interviews on the study. IFOAM EU and Arche Noah are amongst those contacted to participate in this preliminary exercise, the complete methodology of which is still unclear at the time of writing.

The publication of the study is expected during the first quarter of 2021 and will be followed by an impact assessment to be drafted by DG SANTE officials. The European Commission has already informally signalled that the reform process will not be a complete systemic overhaul, and is likely to be more targeted than the 2013 exercise, but will

definitely address the issue of conservation and amateur varieties, as well as the “sale” of seeds to non-professional users.

On this particular topic, the European Commission has confirmed its restrictive approach to the terms “commercial exploitation” used in the seeds marketing Directives, which, if interpreted loosely at national level, would allow the exchange and sale of biodiverse seeds outside the scope of these rules. The Commission submitted a [statement opinion](#) to the French authorities in response to an amendment of the national Rural Code that allows the sale of non-registered varieties to non-professional final users. The amendment (a similar version of which had already [been voted before but annulled by the Constitutional Court](#)) comes through a wide-scoped law on transparency in the food chain. In its statement, the European Commission argues that only a very limited number of acts, which are cited in certain seed marketing Directives, should not be viewed as acts falling under the notion of “commercial exploitation of seeds” (i.e. the exchange of seeds for inspection or controls, for experimental purposes, the supply of seeds for the production of certain primary goods aimed at industrial production). Although the Commission recognises that such list of exceptions is not an exhaustive one, it quickly notes that the sale of seeds to non-professional users

cannot be viewed as such an exception, without bringing forward any substantive legal (or technical) arguments. It also argues that, given the ongoing study and reform process, a common European approach to the topic would be preferable, and asks the French authorities to defer the implementation of the new national rules by six months. The statement has been criticised by numerous [farmers](#) and [seed savers'](#) associations. The next leg of the French saga on the sale of non-registered varieties to non-professional users, which has actually started in 2016 through a different law, is expected on 25th September 2020, date where national authorities need to inform the Commission of the response to the statement. But that will hardly be the last chapter of the story.



Organic Regulation

The Saga of Organic Heterogeneous Material (“OHM”) continues

While the lead for the [Organic Regulation](#) in the European Commission is with the Directorate General for Agriculture (DG AGRI, Unit Organic), the technical work on the new notification regime for the marketing of OHM is done by Directorate General for Health and Food Safety (DG SANTE, Unit Plant Health).

The **Expert Group** on Organics which negotiates the Delegated Act (DA) has last met virtually on the [14th July 2020](#), but has surprisingly not discussed the topic of OHM. They were indeed supposed to review the outcome of the “Inter-Service Consultation”, i.e. the feedback mechanism between the different Directorate Generals of the European Commission. As the Commission has received quite a few critical comments from different stakeholders and the European Parliament over the restrictive approach taken by the draft Act, it is safe to assume that either substantive changes are being made on the Draft Delegated Act, or legal arguments are being developed inside the Commission to ensure that the DA is adopted in line with the EU Treaties. Either way, the Act will be opened for public consultation before its adoption, allowing for a last round of comments by stakeholders before the end of the year.



CAP Biodiversity Evaluation

The European Commission seeks your opinion on the impact of its Common Agricultural Policy on Natural Resources

In parallel to the ongoing Common Agricultural (“CAP”) reform process, and the Farm to Fork Strategy, the

European Commission’s DG Environment is carrying out a comprehensive evaluation of the effects of the CAP on Biodiversity Soil, and Water. Building on a roadmap published in 2018 and on a [study](#) published in March 2020 on the “Evaluation of the impact of the CAP on habitats, landscapes and biodiversity”, the current public [consultation](#) is open until 22th October 2020.

The external study argued in favour of extensive cropping systems with sparse crops and high crop rotation diversity, especially those that contain fallow, as systems that support habitat preservation by providing more options for species in terms of food and breeding habitat. With regards to crop diversity more specifically, it defended the existing crop diversification measures within the CAP, highlighting that decoupled payments for diversity in Italy had led farmers to experiment with riskier crops, and led farmers more towards fallows across the EU, although the diversification measures had merely been taken up in 0,8% of the arable area in 10 Member States.

The Public Consultation builds on the outcomes of the study and will lead to a Commission Staff Working Document at the end of 2020, with the primary lead of DG Environment, rather than DG Agriculture, epitomising the tensions between the two entities over this topic.

SPROUTS FROM BRUSSELS Glossary

This Glossary is intended to provide some guidance to better understand the institutional structure of European policymaking. Please get in touch if you wish to see additional terms defined here.

European Institutions

The **EUROPEAN COMMISSION** is the executive branch of the European Union. Different Commissioners, supported by 30'000 bureaucrats, have the power to submit legislative proposals, and are tasked with following the implementation of European law. The Commission is divided into different **DIRECTORATE GENERALS (“DG”)**, which are akin to national Ministries. Due to the multi-disciplinary nature of crop diversity, a few DG’s are responsible for policy portfolios that impact seeds. DG SANTE is responsible for plant health, seeds marketing, the authorisation of phytosanitary products and the regulatory framework for genetically modified organisms. DG AGRI is responsible for agricultural policy and rural development, while DG ENV is responsible for the Union’s environmental policy, including biodiversity and soil quality frameworks.

The **EUROPEAN PARLIAMENT** is one of the two institutions making up the legislative branch of the European Union, with its directly elected 705 Members of Parliament (“MEP”) from all EU Member States. Its powers have been quite reinforced since the Treaty of Lisbon, and now the Parliament has a say in all policy files linked to crop diversity. It works in different **COMMITTEES** (ENVI and AGRI are both competent for matters related to crop diversity), but all texts need to be adopted in so-called **PLENARY**, which regroups all MEP’s. Even though European elections are carried out on the basis of national lists, MEP’s then congregate into European-level political groups : the European People’s Party (EPP), Socialists & Democrats (S&D), liberals Renew Europe (RE), Identity & Democracy (ID), Greens/EFA, Conservatives (ECR), leftists GUE, and the non-affiliated few.

The **EUROPEAN COUNCIL** is the last institution of the legislative branch of the European Union, composed of heads of States and governments, in different configurations according to the topic at hand. For matters related to crop diversity, the main interlocutor is the AGRIFISH Council, but also the ENVI Council to a certain extent.

Instruments of European Law

There are two instruments in European law: a **REGULATION** (of the COUNCIL and the PARLIAMENT) is directly applicable in all Member States, without the need for a specific national law, which means that the rights and obligations of the Regulation can be indisputably invoked by citizens, and be applied by national judges. With regards to crop diversity, the new Organic production regime, as well as rules concerning plant health are both enshrined in Regulations.

A **DIRECTIVE** on the other hand, is not directly applicable in Member States, which need to transpose the European rules in national laws and/or decrees. This tool gives much more margin of manoeuvre to national authorities, which explains the wide differences that exist between national seed marketing regimes, the principles of which are set in 12 different European Directives.

In a **REGULATION** or a **DIRECTIVE**, the European Parliament and the European Council can decide to give the Commission the power to further specify certain aspects of the general rules, which will lead to a **COMMISSION REGULATION**. There are two types of Commission legislative action in this framework: **IMPLEMENTING ACTS** are adopted to ensure uniform conditions for the implementation of European law, while **DELEGATED ACTS** are adopted on the basis of a specific delegation of power in a **BASIC ACT** (i.e. either a **REGULATION** or **DIRECTIVE** of the European Council and Parliament), that defines the objectives, content and scope of the delegation of power. Both Implementing and Delegated Acts are prepared by the Commission with heavy involvement of national authorities, regrouped either in a Committee or an Expert Group. The European Parliament is involved only at the approval stage for Delegated Act, while stakeholders are consulted through the “Have Your Say” website of the European Commission once the drafts (of both Implementing and Delegated) Acts have been finalised, four weeks before their adoption by the competent structure(s).