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# SPROUTS FROM BRUSSELS

## Seeds & Crop Biodiversity in European Policy

Welcome to Sprouts from Brussels! This 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!](#)



## ECLLD Seed Policy Dialogue

Register to the ECLLD Seed Policy Dialogue on the FAO Seed Treaty, Thursday 30th September at 5pm!

In order to discuss policy developments that affect crop diversity movements, the European Coordination Let's Liberate Diversity (ECLLD) has launched a **series of virtual Seed Policy Dialogues**.

Following the summer break, this month's dialogue will be held on **Thursday 30th September from 17:00 – 18:30 CEST**. After a brief discussion on the content of this newsletter, the dialogue will focus on the FAO Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). It will be enriched by presentations from *Mario Morino, from the FAO ITPGRFA Secretariat* and *Riccardo BOCCI from Rete Semi Rurali*. The webinar will be held in English, with interpretation to French and Italian. You can register [here](#) to attend.

## Seed Marketing Reform – Responses to Inception Impact Assessment

Following the publication of the European Commission's inception impact assessment on 15th June 2021, we analyse in detail the feedbacks that were given by different stakeholders in the public consultation process.

Mandated in November 2019 by the European Council to carry out a study on the options to reform the EU seeds marketing rules, the European Commission had already **published the study carried out by the external consultancy ICF** on 29th April, accompanied by a [Commission Staff Working Document](#) and followed by an [Inception Impact Assessment](#), which was open for comments from the public until the 13th July 2021.



In the newsletter's previous issue, we analysed the content of said inception impact assessment. We now delve into the details of the **feedback received by the European Commission** to the document.



The inception impact assessment gathered a total of 65 responses (two responses came from the same organisation, UFS). More than half of the responses came from **business organisations** (total of 36), only 5 of which are SME's. 16 different **civil society organisations** submitted feedback, compared to 7 **public authorities**, 2 **research** institutions and 3 private **citizens**.

When looking at the **geographic distribution of feedbacks**, the weight of Belgium is apparent. This can be attributed to the important presence of Brussels-based EU advocacy organisations in the process, with 9 EU level business associations and 3 organisations self-qualified as NGOs (Act Alliance EU and IFOAM Organics, to which the author adds the European Coordination Via Campesina, considered as a business organisation in the formal calculations of the Commission). Only one national Belgian SME and one regional association (Réseau Meuse Rhin Moselle) has in reality provided feedback with a truly Belgian perspective. The dominant country is by far Germany with its 12 responses, followed by France and the Netherlands, each with 7 stakeholders, and then Austria, the Czech Republic, Denmark, and Italy with 3 responses each. Feedback also came from Finland, Greece, Hungary, Poland, Sweden, and Slovakia.

While most of the feedbacks stemming from NGO's and SME's openly favoured Option 2 with listed conditions for its success (which foresees a strict scope for the future

regime, excluding sale to amateur gardeners & seed conservation networks, and an ad hoc framework for farmers' seed exchange), most of the feedback from business associations did not directly refer to a preferred option, but rather listed their wishes for the future regime. Few feedbacks directly noted their preference for Option O (do nothing): Bifurcated Carrots, the Dutch authority NAK, the French seed industry association UFS & its sister hybrid organisation GNIS/SEMAE, and to a certain extent Dachverband (if Option 2 is not inclusive and ambitious enough), while some also proposed to carve out a new option, with optional variety registration (Campaign for Seed Sovereignty, Arche mit Zukunft, Permasinka). Option 1 was listed as a formal preference of Czech national authorities, while the third option had very little formal endorsement, probably on account of its integration to the framework of Official controls.

It should be noted at this stage that some of the feedback concerned **specific types of plant reproductive material**. Indeed, 6 responses solely related for **forest reproductive material**, which unanimously asked for a separate legal framework. They highlighted the need for modernisation, but keeping flexibility, at times advocating for a limited scope to the marketing of material for forestry purposes or integrating more consideration for genetic conservation units. Two feedbacks only addressed the ornamentals sector, while other sector-specific feedback was given for seed potatoes, maize, vine, and compound feed.

In order to provide a cross-cutting overview of the content of the responses to the consultation, we will analyse it through different lenses, and compare the stances of different stakeholders on (a) the place and weight given to **agrobiodiversity** and to the goals of the European Green Deal, (b) the **success** of

the current legal regime, (c) considerations on the **scope** of the legislation, (d) the different **derogatory regimes** for market access, (e) the reduction of administrative burden and delegation of tasks to **operators**, and (f) the "**modernisation** of the framework" through the recourse to bio-molecular techniques and digital tools, embracing 'innovation'.

#### (a) *Agrobiodiversity and the European Green Deal*

Not surprisingly, most of the feedback from NGO's referred to the need to recognise the value and the many contributions of cultivated agricultural biodiversity in seed, farming and food systems, reflecting those values in the future reform. In the majority of these responses, the European Green Deal and its Farm to Fork strategies were presented as tools towards more sustainability, inclusion, and valuation of agrobiodiversity.

Conversely, another dominant argument put forward relates to the fact that the seed marketing Directives themselves already contribute to the conservation of agrobiodiversity, the EGD and its Strategies, by allowing the marketing of a high number of plant varieties for different farming systems (Euroseeds, BDP, Anove, GNIS). Ensuring diversity through extensification of farming model was even viewed as a risk by the 'Controlled Environment Agriculture Industry'.

#### (b) *Success of the current legal regime*

Several industry contributions highlighted that the legislation was fit for purpose (Euroseeds, BDP, Anove), and that the findings of the Commission study were too severe on the detrimental effects of current rules (GNIS, UFS and the Czech national authority). All industry contributions also insisted that the two pillars of the legislation (variety registration and seed lot certification) be maintained in the

future reform (CIBE, Copa Cogeca, Polish Seed Trade Association, Euroseeds, BDP, Anove, GNIS/SEMAE, Rijk Zwaan, FNPSMS, Czech Seed Trade Association, Plantum, Bundesverband Saatguterzeuger, French UFS, Raiffeisenverband, VO-Firmen Bundesverband, Bayerische Saatbauverbände, Deutscher Bauernverband, Hortiadvice). This sentiment was echoed in the contributions of public authorities from the Netherlands, the Czech Republic and Germany. All of these contributions cited high seed quality, consumer protection through clear identity, fair competition, international competitiveness and trade as important features of the regime that need to be preserved.

On the other hand, most of NGO and research institutes welcomed the main findings of the study which delineated some of the problems created by the legislation well, even when pointing out the shortcomings of the exercise, especially with regards to the evaluation of the legislation's social and environmental impacts (Dachverband, OBV, IFOAM Organics, Arche Noah, Pro Specie Rara, amongst others).

### *(c) Scope of the legislation*

With regards to the future scope of the legislation, very diverging views were expressed. Several contributions, especially those supporting the Commission's Option 2, voiced their support for the **exclusion of seed conservation networks and the sale to amateur gardeners** from the scope of the legislation (ECVC, Arche Noah, RMRM, Maghaz, IFOAM Organics, Rete Semi Rurali, Pro Specie Rara), additionally emphasising that adherence to an association should not be required to benefit from such exception (ECVC, Dachverband, Arche Noah, Peliti). Industry reactions to the proposal are quite different: some accepting the idea, while making sure that knowledge about seeds is conveyed

(Dansk Gartneri), others arguing that the distinction between professional and non-professional sectors would be artificial because of existing intricate linkages between the two (GNIS, UFS), others worried about potential abuse and lack of consumer protection (BDP), proposing that only the non-commercial marketing by private end users be outside of the scope (Raiffeisenverband), or completely rejecting the idea which would lead to the illegal use of possibly low quality seeds (NAK). While German public authorities are open to the idea, albeit in the respect of phytosanitary rules to avoid spread disease into professional sector, the Czech authorities are seemingly very vehemently opposed to any exception of any sector from the scope of the legislation.

Most feedbacks also touched upon the **future of seed exchanges between farmers**. Many contributions cite the UNDROP (ECVC, ACT Alliance EU, Geneva Academy, Arche Noah, Pro Specie Rara, RMRM, Dachverband, Semailles, Kokopelli, OBV, amongst others) as a baseline to delineate the contours of this regime, where not only exchange but also the sale of seeds should be allowed (Danish Seed Savers), in the framework of 'mutual aid' to be defined with the active participation of peasants in the process (ECVC, Geneva Academy). While other feedbacks are alarmed by the risk of two speed regulation for exchanges between farmers (UFS), some industry actors accept and welcome the flexibility allowing seed exchanges between farmers within certain limits to avoid abuse in professional settings (Plantum), or by referring to restrictions in traded quantities (up to 500 kgs in final delivery, Europatat).

### *(d) Derogatory regimes for market access*

Some argued for the design of a **new pathway to the market** in lieu and place of the current derogations for

conservation and amateur varieties, either through the establishment of a diversity varieties regime (Arche Noah, Pro Specie Rara), or a pathway inspired by the model of organic heterogeneous material (Kokopelli), maintaining different options to enter the market (Demeter & IFOAM Organics), creating in the end a light touch and relaxed regime for non-industrial varieties (Semailles, Peliti) or small actors (Michèle Perrin-Taillat).

Other contributions proposed changes to the current regime to simplify the registration **conservation & amateur varieties**, with guarantee minimum information for users (Copa-Cogeca), or making concrete suggestions for the registration of landraces, taking more into account their specificities (Greek Universities). Industry contributions generally underline that currently existing exceptions should be only **minimally adjusted** not to undermine the well-functioning system (Rijk Zwaan), weaken the innovative power of breeding, and may cause economic damage to farmer because of sale of 'inferior seeds' (Bundesverband Saatguterzeuger), or create unfair competition (BDP). Some argue that objective tests should be required even for small cultivars with small market value (Raiffeisenverband).

A lot of differences can also be seen with regards to the adaptation of DUS and VCU protocols for **organic varieties**, between those voicing their support for such evolution and the continuous adaptation of these protocols in light of the experiment to be carried out in line with the new Organic Regulation (IFOAM Organics, Demeter, Rete Semi Rurali, Maghaz), those rejecting the need of having different protocols to begin with (EU Federation of Maize Production, GNIS/SEMAE, Anove), mostly because current rules have inherent built-in flexibility to accommodate all types of material (Euroseeds) or those

criticising the rejection of uniformity for organic farming purposes (Plantum).

*(e) Reduction of administrative burden & Delegation of tasks to operators (“Official supervision”)*

The reduction of administrative burden by shifting specific tasks and responsibilities to **private operators** is definitely a key priority for the seed industry. As a result, all their contributions unsurprisingly support the notion of “**testing and control under official supervision**”, which would delegate certain tasks currently carried out by public authorities to authorised private operators. The notion of having ‘**One key several doors**’ was also similarly reiterated by several industry contributions, so that the DUS tests for market access also be recognised in procedures for the grant of plant variety protection to decrease costs for operators.

Unsurprisingly, all **public authorities** also demand the reduction of administrative burden, either through less documentation (Flemish Region), or welcoming the delegation of tasks to official supervision (Naktuinbouw, Arbeitsgemeinschaft). The main worry of these authorities seem to be the potential integration of the seeds marketing legislation into the official controls realm, which they view as potentially reducing existing flexibility and increasing administrative burden, even though they seem to welcome the idea of risk-based controls.

*(f) ‘Modernisation’ through biomolecular techniques and digital tools*

Industry feedbacks heavily emphasise the need for operators to have access to the latest technological developments and innovations, referring more openly to **biomolecular techniques** and hinting at other innovations less bluntly. Some contributions nonetheless

highlight the need to maintain a phenotype-based system (ECVC, Demeter, IFOAM Organics, Copacogeca), which would not jeopardise SME’s and that the use of BMTs should remain optional (Semailles, Arche Noah, IFOAM Organics, amongst others).

The worry to see the integration and promotion of **new GMO’s** in seed marketing rules was highlighted by many NGO’s, asking for **transparency** of the breeding methods to be available to the public, while most industry contributions refrained from directly citing ‘new breeding techniques’ in their feedback, but rather emphasising on the need to **take into account innovation and technological developments** (Euroseeds, Polish Seed Trade Association). Unhidden support for the integration of so-called new breeding techniques came from the compound feed industry, asking for alignment with new regulatory tools to come, and from a Danish SME, calling for integration.

*Next steps*

The Commission’s DG SANTE Plant Health Unit has contracted an external consultancy to carry out the formal **Impact Assessment work**, for which upstream work has begun. Another more detailed public consultation is foreseen from November 2021 until February 2022, with the aim of tabling a proposal by the end of 2022.



## Adoption of EP INI Report on the Farm to Fork Strategy

*Following its postponement from July to September, the voting of the INI Report of the European Parliament on the Farm to Fork Strategy has taken place in the AGRI Committee, with elements directly related to crop diversity. The plenary confirmation is expected early October.*

Presented by the European Commission in May 2020, the [Farm to Fork Strategy](#) is an overarching policy framework which is part of the European Green Deal, addressing changes needed throughout the entire food value chain, from production to transformation to consumption. The **European Parliament** has been working on its **Initiative Report on the Strategy since June 2020**. Competence is shared between the Agriculture and Environment Committees on the file. The exercise has been a very difficult one, as compromise agreements have been negotiated for more than three months by the different political groups of the European Parliament. The vote before a joint hearing of the AGRI & ENVI Committee was initially planned

on 12th July but was postponed to September.

Two so-called [compromise agreements](#) (which are negotiated by all political parties and try to integrate different amendments tabled by MEPs) had been drawn up with regards to seeds and were adopted, along with the entire report during the joint AGRI and ENVI Committee vote held on 10th September.

Paragraph 7 of the report relating to “**seed diversity**” starts by underlining “the importance of ensuring the security and diversity of seed and plant propagating material to provide stable yields and plant varieties adapted to the pressures of climate change, including traditional and locally-adapted varieties, and varieties suitable for organic production, and low input farming systems, while ensuring transparency and freedom of choice for farmers and, access to genetic resources, and to innovative plant breeding in order to contribute to healthy seeds and protect plants against harmful pests and diseases and to help farmers tackle the growing risks caused by climate change ensuring an incentive for open innovation through plant variation”. The paragraph then draws attention to the worrisome growing concentration in the seed sector, and points to “the importance of open innovation through plant breeders’ rights and notes with concern the detrimental effect of wide-scoped patents in the seed sector”.

Members of the European Parliament also point to the need to strengthen EU coordination for the ‘establishment of a common platform for information exchange on preserved genetic resources’, akin to the work carried out with the [Genres Bridge](#) project. With

regards to **seed marketing rules**, the report highlights that “non-commercial production and use of traditional and locally-adapted varieties of seed by private citizens and smallholders should not be subject to disproportionate EU and national regulation; stresses the importance of preserving a strong single market for the EU seed sector”.



A separate compromise amendment was dedicated to so-called ‘**new genomic techniques**’, which have been the subject of a study by the European Commission in May 2021, opening the way towards a new legislative framework for plants obtained through targeted mutagenesis and cisgenesis, which include genome editing techniques using Crispr-Cas technology, analysed more in depth in the Sprouts’ 12th issue. The EP INI report compromise recalls that study, along with the infamous decision from the European Court of Justice (C-528/16), highlighting the precautionary principle in the framework of future legislative proposals, and the “need to ensure transparency and freedom of choice to farmers, processors and consumers”. MEP’s thus ask that “policy action should include risk assessments and a comprehensive overview and assessment of options for traceability and labelling with a view to achieving proper regulatory oversight and providing consumers with relevant information”.

The Report will now be voted in plenary session on 18th October 2021, with possibility to table amendments, an opportunity that will surely be used by

certain industry actors such as COPA-Cogeca, who request a formal impact assessment of the Strategy’s impact on EU agricultural production.

## 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).