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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](#)!



SEED POLICY DIALOGUE

ECLLD Seed Policy Dialogue

Register to the ECLLD Seed Policy Dialogue on “Patents and open-source approaches”, Thursday 8th July 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. These monthly meetings will be a place to exchange on the different policy updates compiled in the Sprouts newsletter and dig deeper into a specific topic brought forward by the ECLLD Members.

This month's dialogue will be held on **Thursday 8th July from 17:00 – 18:30 CEST**. After a brief discussion on the content of this newsletter, the dialogue will focus on intellectual property rights that impact seeds, and more specifically **patents**. It will be enriched by presentations from *Johanna ECKHARDT* from *No Patents on Seeds!*, and *Johannes KOTSCHI* from *the Global Coalition of Open Source Seed Initiatives*. The webinar will be held in English, with interpretation to French. You can register [here](#) to attend.

Seed Marketing Reform – Inception Impact Assessment

Following the publication of the Commission Staff Working Document in April 2021, the European Commission has now kicked off the official path towards a reform of the seed marketing legislation with the publication of its inception impact assessment on 15th June 2021, as a roadmap for the work ahead before a proposal is tabled at the end of 2022.

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](#) lining up options for the future reform, analysed in great detail in our last issue. We have now reached the next step in the reform process, through the publication of the [Inception Impact Assessment](#), open for comments until the 13th July 2021.

The document draws from the analysis of the problems with the legislation which were highlighted in the Staff Working Document, merging them together for a shorter analysis and proposes four options for the way forward. These problems are identified as: (1) the divergent implementation of the Directives which create a non-level playing field (including the lack of alignment of definitions, and the lack of a uniform approach for “seed conservation networks”, which are

defined for the first time in a Commission document as “operators exchanging and marketing PRM in limited amounts with the main non-profit purpose of conserving plant and forest genetic resources”), and (2) the prevention of innovation and adaptation to policy developments (stemming from complex and rigid procedures, and highlighting the lack of incentives for the use of the conservation varieties’ regime, which detrimentally impacts responses to consumer demand).

Although **Option 0, i.e. no reform and maintenance of the status quo** is mentioned as an option, different interventions of the European Commission’s DG SANTE Plant Health Unit have confirmed that this will not happen, but solely be used to compare any action to the existing baseline.

Option 1 is about legislative alignment and structural simplification, responding mostly to the needs of professional operators. If chosen, all definitions of the Directives would be aligned, including the terms ‘operators’ and ‘seed marketing’, simplify procedures by allowing testing and controls under official supervision from competent national authorities, and allowing the adaptation of criteria through technical delegated action of the European Commission (without revision of the Basic Acts).

Maintaining the changes highlighted above, **Option 2 would add flexibility to adapt and harmonise, with coherent sustainability measures**. This option interestingly foresees to exempt seed conservation networks and the sale to amateur gardeners from the scope of the legislation and provide for an *ad hoc* framework allowing the exchange in kind of seeds between farmers in an association. Although its contours are yet to be defined, this option definitely looks like the best fit to accommodate the needs of most crop diversity actors, provided that it is not

accompanied by restrictive measures (such as mandatory association affiliation, mandatory operator registration, or a mandatory sustainability criterion in variety testing that does not accommodate the needs of diversity and organic farmers).

Option 3 on the other hand, is aimed to provide the **highest guarantees for users**, and would establish that the sale of seeds to all professional and non-professional users would be viewed as seed marketing. It would keep all derogatory regimes, such as the conservation and amateur varieties, to a minimum. It would also integrate the seed legislation with the Regulation on official controls, something that Member States are not unanimously welcoming, due to the additional constraints that might be created for competent authorities.



The European Commission has not yet presented the inception impact assessment publicly to the **European Council**, but the discussions on the Commission Staff Working Document on the 26th May provide some ideas as to the approach of Member States to the reform. While most countries did not openly show support for a single option identified by the Commission (except Poland, which openly supported Option 0), they highlighted that a mixture of measures contained in all options would be the way forward. Biodiversity and traditional varieties were mentioned to different extents by quite a number of countries, namely, Malta, France, Spain, Poland, Bulgaria, Luxembourg, Austria and Ireland. The German

representative highlighted that a closer look would be needed to assess the impact of any reform on non-profit associations, hinting at the probable need to define even more exemptions. Competitiveness, innovation, and alignment with scientific developments were part of the speeches of France, Hungary, Finland, the Czech Republic, and Lithuania. The meeting can be streamed live on [this link](#) for those interested.



During a [hearing](#) held at the **European Parliament’s** Committee on Agriculture and Rural Development on 22nd June 2021. Very few MEP’s took the floor during the hearing, and most of them actually highlighted the need to provide for a breeders’ and farmer’s exception to use varieties, which is an issue linked to plant variety protection and patent laws. Herbert Dorfmann, Italian coordinator of the largest (Christian Democrat) political group, was surprisingly quite open towards foreseen opportunities in the legislation for crop diversity initiatives, stating that individuals and associations working with usually little quantities of old varieties should be supported in their work, in a compromise with the important industrial seed sector. An Austrian member of the EPP, Mrs. Schimiedt Bauer also mentioned the need to support local seed producers and establish uniform standards across the EU. The German coordinator of the Greens/EFA Group, Martin Hausling, highlighted that today, more liberal and more restrictive implementation of the seed Directives created a lot of problems, especially with regards to landraces, and that, even though a high

number of varieties are registered in the EU, one needs to look at who is really using the system, and support SME's and farmers' access to it. The hearing was also an opportunity for MEP's such as the liberal Renew member Shreijer-Pierik, and the Socialist Olekas to mention the need to ensure competitiveness of the European seed industry, notably by facilitating the recourse to varieties developed with 'new plant breeding techniques', such as Crispr-Cas. All MEP's, and the European Commission, highlighted that the contentious end of the previous reform, through which the Commission proposal was officially withdrawn in 2015, should be avoided at all cost. Given the little interest shown by MEP's to the debate, there is an urging need for crop diversity actors to engage with their representatives so that elected officials take stock and ownership of the file in 2022.

Next steps

The Commission's DG SANTE Plant Health Unit will contract an external consultancy to carry out the formal **Impact Assessment work**, which will begin in the Autumn. 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.



EP Report on the EU Biodiversity Strategy

The European Parliament has voted on its own opinion report regarding the EU Biodiversity Strategy on 9th June, with little attention to crop diversity.

Presented by the European Commission in May 2020 as part of the European Green Deal, the [Biodiversity Strategy](#) aims to “bring nature back to our lives”, and “back to agricultural land”, recognising the vital role played by farmers in the preservation of biodiversity, while pointing out to certain agricultural practices that are key drivers of biodiversity loss. The Strategy also called on reversing the “decline of genetic diversity, including through the facilitation of the use of traditional varieties of crops and breeds”, linking such use to healthier, more varied and nutritious diets. The European Parliament's Environment Committee had been working on its own report on the Strategy since its publication, and the institution has finally voted on the final document on the 9th of June during a Strasbourg plenary session, with quite some attention to seed diversity.

[The EP Resolution text](#) calls Member States to “safeguard the genetic diversity of wild species through adequate conservation measures”, but also “regrets the fact that agricultural production and consumption are being increasingly focused on a limited range of agricultural crops, and within them, limited varieties and genotypes; underlines that enhancing and preserving genetic variability through natural means is crucial to promoting the diversity of agricultural ecosystems and preserving local genetic resources, in particular as a repository of solutions to face environmental and climatic challenges; highlights the importance of using local breeds and varieties best suited to the local ecosystems”, but does not push for direct action to be taken in that direction.

While the report contains a lengthy paragraph asking for caution on the development and release of so-called “gene drive organisms”, calling for a moratorium on the basis of the precautionary principle, it also includes an indirect reference to new genetic engineering techniques, which should be part of the toolbox of farmers to reduce the need of pesticide use, comprising of “alternative, effective, affordable and environmentally safe crop protection solutions and methods”. According to the European Parliament, this toolbox could contain “biological control techniques, new low risk pesticides and bio-pesticides, more effective application techniques facilitated by tools such as digital and precision farming, epidemiological models, a wider and improved range of options for resistant varieties requiring fewer inputs, and bolstered research and innovation training and advisory systems, including in agro-ecological farming practices”.



EP Report on the Farm to Fork Strategy

Compromise amendments have been finalised on the INI Report of the European Parliament on the Farm to Fork Strategy, with a committee vote expected in mid July, and in September for plenary approval.

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**, where the competence is shared between the Agriculture and Environment Committees. 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 process has also stalled due to the negotiations of the future Common Agricultural Policy, which have been really tense and intense, and that the Farm to Fork Strategy is heavily contested by industry actors, which [have been asking for an impact assessment](#) of the non-binding instrument ever since its publication.

While the EP INI report is expected to be voted on 12th July at the Committee for Agriculture, its final form is still nebulous, especially with regards to seeds. Few amendments have been tabled deeply contrasting one another, either putting the emphasis on the facilitation of traditional varieties' registration, or pushing for 'innovative plant breeding', or 'new plant breeding techniques' as the ultimate solution to achieve the goals set out by the Strategy. It seems that the compromise agreements favour the second option, although mentioning "innovative breeding" rather than the typical terminology used to designate new

genetic engineering techniques such as Crispr Cas. A possible other compromise refers to the precautionary principle and the "transparency and freedom of choice for farmers" with regards to "new genomic techniques". Should the AGRI Committee vote go on as planned, the INI report will be taken to the EP Plenary in September 2021.

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).