



Brussels, 24th October 2023

UNACCEPTABLE ATTACKS ON PEASANTS' RIGHTS ON SEEDS: ECVC CALLS FOR A REJECTION OF THE EUROPEAN COMMISSION PROPOSAL ON PLANT REPRODUCTIVE MATERIAL

On July 5, the European Commission published [its legislative proposal on production and marketing of plant reproductive material \(PRM\)](#), presented as a simple update of European legislation in this area, which is still based on twelve directives that entered into force in the 1960s. One of the ambitions of this reform is to open the seed market to more diversity. But it also aims to guarantee fair conditions of competition for EU operators, thus moving from directives, which give Member States a certain margin of implementation, to a regulation, which is imposed uniformly throughout the EU. This reform, awaited for more than ten years after a first attempt rejected by the European Parliament in 2013, represented for ECVC the hope of fully implementing farmers' rights on seeds. Unfortunately, the proposal fails to do so, despite the EU formal obligation to implement farmers' rights on seeds¹.

In fact, the European Commission has not evaluated the impacts that the joint application of its two proposals, on PRM and [GMOs resulting from new genomic techniques \(NGT\)](#), would have on each other², nor have they evaluated the impacts of these proposals on the application of other European legislation concerning seeds, and in particular patent, plant health, control of the food chain and conservation of cultivated biodiversity legislations. Yet, these impacts would constitute a severe threat to the currently recognized rights of farmers to freely use and reuse seeds and plants from their own harvests or crops, as well as the right to practice farmer-to-farmer exchanges. After an in-depth analysis of the PRM proposal³, **ECVC considers that this new regulation would constitute a step backwards for peasants' rights on seeds obtained in International Conventions and Treaties, in the United Nations⁴ and in several national laws thanks to the mobilization of peasant organizations.** Indeed, the extension of rules which concerns the marketing of large volumes of seeds on the global market by seed companies to exchanges of seeds between farmers, would in practice prohibits these exchanges.

ECVC welcomes the Commission's desire to open the market to more biodiversity, through the catalogues of heterogeneous material, newly-bred conservation varieties or amateur⁵ varieties. Unfortunately, without a joint modification of intellectual property legislation, these openings would constitute an open path to the suppression of the fundamental right of farmers and gardeners to use seeds from their own harvests.

Finally, without guarantees to protect farmers against biopiracy, ECVC considers that the openings which are proposed to support the development of seed diversity simply aim to facilitate the monopolization of seeds and peasant knowledge by the seed industry through new registered

¹ Article 19 of the International Treaty on plant genetic resources for food and agriculture (ITPGRFA).

² See [ECVC's position and analysis of the proposed deregulation of new GMOs](#).

³ For which we have received the official translations in all EU languages three and a half months after its publication. This has prevented the fair participation in decision-making of States, citizens and peasant organizations from the vast majority of European countries that are not English speakers.

⁴ Convention on Biological Diversity (CBD), ITPGRFA, UN Declaration on the Rights of Peasants and Other People Living in Rural Areas (UNDROP).

⁵ PRM intended for final users.

varieties and patents.

Therefore, ECVC calls on the Member of European Parliament and Member States to reject this proposed regulation, which threatens the rights of farmers to use and exchange seeds from their harvests, will in practice strengthen the market domination of large seed companies and enable biopiracy.

Below you will find ECVC's detailed analysis highlighting the reasons behind this call for rejection, as well as ECVC's recommendations to implement for farmers' rights on seeds.

Concerns about the loss of national sovereignty

Seeds are not manufactured products and their quality must be adapted to the climatic, economic, social conditions and to the very diverse food and legal cultures from one country to another. The transformation of directives, which allow a certain flexibility in their application by national laws, to a regulation of direct application, removes these essential adaptations. Furthermore, the mobilization of peasants' organizations in many Member States has enabled the explicit recognition in their national laws of the collective rights of peasants to use, reuse and exchange their seeds. The transition from directives to a regulation would erase these progresses in favour of a derogation which, despite claiming to facilitate exchanges between farmers, ends up prohibiting them (see below: *the proposal fails to implement farmers' rights to exchange their seeds*).

Generally speaking, the loss of national sovereignty on this issue is concerning: Member States will, for example, no longer be able to choose to prohibit the marketing of seeds and the cultivation of varieties that could harm the cultivation of other varieties, human health or the environment, such as the cultivation of GMOs or herbicide-tolerant varieties. With this new regulation, considerable power will be granted to the Commission, which will be able to decide alone on the content, still unknown and undefined at this stage, of numerous delegated and implementing acts. This does not allow the European Parliament and the Council to properly assess the concrete impacts of multiple elements of the proposal, on which they must decide.

The PRM proposal would enable the marketing of untraced GMOs/NGT

Currently, only varieties covered by a plant variety right, which requires the same constraints of homogeneity and stability of varieties as the common catalogue, can be marketed. The new PRM regulation opens the market to non-organic heterogeneous material, newly-bred conservation varieties and seeds for amateur gardeners (final users) that not only concern ancient seeds, but also new breeds, which would not be subject to the constraints of homogeneity and stability. This opening is good news for cultivated biodiversity.

The bad news is that, in the current state of European patent law, this opening would enable the marketing of new patented GMOs. Indeed, all GMO processes, both new and old, profoundly destabilize the entire genome of plants and make it very difficult⁶ to stabilize their characters and therefore to obtain homogenous varieties. These new commercial categories are not subject to the obligations of homogeneity and stability of the common catalogue and plant variety rights. They thus offer an entry door for seed companies to introduce new patented GMOs onto the market without having to waste many years stabilizing and homogenizing their characteristics.

⁶ And impossible for many so-called "recalcitrant" plants.

The PRM proposal would open the door to removing farmers' rights to use their farm-saved seeds

The introduction of patented GMOs through those new categories poses a serious problem to the farmers' exemption which allow farmers to reuse farm-saved seeds. Despite a regrettable obligation to pay royalties, which are deeply unfair, the right of farmers to reuse farm-saved seeds currently remains guaranteed by the directive on the protection of biotechnological inventions⁷ and by the regulation on plant varieties⁸: farmers have the right to use seeds from varieties covered by a plant variety right, including when they contain patented "biological material" or "genetic information".

Heterogeneous, conservation or amateur seeds patented using NGT, which would not be covered by a plant variety right, will thus be subject only to patent law. This would eliminate the fundamental right of farmers to use farm-saved seeds.

Farmers are not seed companies

The proposed definition of marketing (article 3.3 of the PRM proposal), as well as its scope, are not acceptable for ECVC. Indeed, this definition now extends to all "*actions conducted by a professional operator: sale, holding, transfer for free, or offering for sale or any other way of transferring or distribution within, or import into, the Union*" and not only transfers for marketing purposes as it is currently the case. Farmers are therefore defined as professional operators who must respect all the constraints of this proposal (article 3.2).

Exchanges of seeds between farmers, for the conservation or dynamic management of biodiversity cultivated *in situ* on the farm, are therefore considered as marketing between professional operators. ECVC has always defended that these exchanges of modest quantities of seeds are not marketing but mutual aid and that farmers who exchange seeds from their harvest, free of charge or in return for their expenses, are not seed companies. Marketing must remain limited to the public offer of sale and not extend to simple non-commercial peer-to-peer exchanges of goods or services.

The proposal fails to implement farmers' rights to exchange their seeds

Directly linked to the problem of definition exposed below, the derogation on the exchange of seeds between farmers (article 30) does not allow but, on the contrary, eliminates the collective rights of farmers to exchange seeds and plants from their own harvests or their own crops for the dynamic management of biodiversity on the farm.

Indeed, first of all, the seeds exchanged will now be subject to the plant health rules designed for the marketing of large quantities of PRM on the global market (article 3.1 read in conjunction with articles 3. 2 and 3.3), which are much more restrictive than those applying to agricultural crops and the self-production of seeds on the farm. Beyond the obligations of the plant passport and the analysis of each batch of seeds exchanged for the species concerned, the obligation to produce them in plots separate from any production plot aimed at the agricultural market effectively prohibits conservation and dynamic management on the farm, which is necessarily carried out in the production plots aimed at the agricultural market. ECVC considers that it is totally disproportionate and unjustified to apply to farmers who exchange a few seeds

⁷ Directive 98/44/EC, article 11.1

⁸ 2100/94/EC

between themselves the same plant health rules, analysis, self-controls, and the same bureaucratic burden as to seed companies which market tons of seeds on the global market. The same is true for individual farmers and small businesses which market their seeds and should be subject to control rules and bureaucracy adapted to their size and capabilities.

In addition, other important limitations should be noted:

- . The proposed framework for exchanges between farmers only concerns seeds, not seedlings or other plant reproductive materials. This does not correspond to the practice of farmers and constitutes a restriction compared to the national laws in force in several Member States;
- . Member States will be able to set quantity limits for trade, which are not defined at this stage, but may, if they are too restrictive, effectively prohibit the collective dynamic management of biodiversity cultivated on farms.

ECVC calls for positive rights for peasant seed systems

ECVC recalls that, beyond the recognition of these rights in Article 19 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), **the rights of farmer collectives on their seeds and the protection of their knowledge are also part of the formal obligations of the EU, which is a signatory to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Article 9 of ITPGRFA establishes the obligations for parties to guarantee their application**, while article 12.3.d forbids the patenting of genetic resources.

In addition, peasant seed systems, which include all the practices and knowledge of peasants concerning seeds, including seed exchange practices, are essential in order to meet the sustainability ambitions set by the EU. They are necessary to develop seeds, through dynamic on-farm management, adapted to each local climate and cultivation conditions, which require fewer chemical inputs thanks to this adaptation and their resulting greater resilience. They are essential to ensure the renewal of cultivated biodiversity, which is in catastrophic decline due to current policies of uniformity, stability and intellectual property of commercial seeds. Finally, peasant seed systems are essential for practicing agriculture that respects ecosystems, following the principles of peasant agroecology.

For all these reasons, ECVC calls for the legal recognition of peasant seed systems and a positive right for farmers to exchange their seeds without this practice being considered as marketing. ECVC defends the following proposition: exchanges between farmers, free of charge or in exchange of monetary compensation, must be considered as mutual aid in the context of agricultural production. This implies that plant health and control rules of agricultural production, which are less restrictive, would apply, and not those concerning the large-scale marketing of industrial seeds⁹.

Biopiracy: which protection for peasant seeds?

Biopiracy is a major concern for farmers, especially since the seed industry is constantly looking for new genetic resources. In many countries, farmers have seen their peasant seeds registered

⁹ For more information on ECVC proposal on peasant seed systems, see [pp. 19-22 of ECVC position on the incorporation of peasants' rights on seeds in EU law \(2021\)](#).

without their consent by seed companies, including under their commonly used name. They therefore lost the right to freely use this name for their traditional seeds and the products derived from them since they belong to ecotypes that were not described during these registrations. In the PRM proposal, nothing protects farmers against these practices.

Furthermore, and as indicated above, the new categories of heterogeneous material, new conservation varieties and varieties for final users will make it possible to speed up the marketing of patented but untraced GMOs/NGT. **In short, farmers who would like to use this diversified seed supply, which is in theory a positive step forward, could unknowingly use patented seeds or seeds containing patented genetic information. If they use part of their harvests in good faith, they would then be threatened with infringement proceedings, against which they will have no means to defend themselves¹⁰.** The same will apply in case of contamination of their crops with patented GMOs. This would concern both small traditional seed companies and farmers who use or market their own seeds naturally containing patented biological material or genetic information.

In face of this major problem, ECVC requests an impact evaluation of the application of the PRM proposal to be carried out, which would take into account its links with: the proposal for a new legislation for GMOs/NGT, the patents covering these GMOs/NGTs, and the application of other plant health and control regulations and their impacts on the rights of farmers. This impact evaluation would have to take into account all national, European and international legislation concerning seeds, plant genetic resources and biodiversity.

It would be irresponsible for the European Parliament and the Council to debate these proposals without first knowing the substantial impacts, including socio-economic impacts, linked to changes in the application of patent law and other regulations, that this proposal could cause. These assessments must be carried out before any agreement in the Council and the European Parliament. In this regard, the Commission's proposal to carry out an impact assessment concerning only patents by 2026 is unacceptable.

ECVC also demands that heterogeneous material not be extended to non-organic seeds. This will not be enough to guarantee the absence of patented GMOs in heterogeneous material, because even if organic seeds cannot be GMOs (Organic regulation), they can still contain patented genetic information (article 9, Directive 98/ 44/EC). However, maintaining the heterogeneous material for organic varieties only can help limit the introduction of patented seeds, because the production conditions will have to be organic, which is incompatible with the use of NGT. Especially since nothing prevents non-organic farmers from purchasing and cultivating heterogeneous organic material, contrary to what is claimed to justify the opening of heterogeneous material to non-organic seeds.

Herbicide-tolerant varieties: who will be responsible in case of undesirable effects?

The Commission wants to impose growing conditions for herbicide-tolerant varieties (HTV), which means imposing a reversal of the burden of proof in the case of damages. Indeed, in the event of damage or undesirable agronomic effects (such as weed resistance) resulting from these

¹⁰ See on this matter the [position of ECVC on the project of deregulation of new GMOs/NGT](#).

crops, farmers will be considered responsible for not having respected these conditions. This would relieve the seed companies which sell those HTV of any obligation to compensate and repair these damages. However, these varieties are extremely harmful to the environment regardless of their growing conditions. Companies which market these seeds should therefore be held liable in the event of undesirable agronomic or health effects, especially given the fact that it would no longer be possible for Member States, according to the PRM proposal, to prohibit their cultivation or, in the absence of traceability, to remove them from the food chain.

Sustainability assessment of varieties must take into account the agrarian systems in which these varieties are cultivated

Finally, ECVC is opposed to the introduction of a sustainability assessment for variety registration (value for sustainable cultivation and use). It makes no sense to assess the sustainability of a variety without taking into account the agrarian system in which it is cultivated: for example, an organic seed will not be sustainable in an industrial agrarian system. On the contrary, there is a risk that this assessment will restrict the marketing of sustainable varieties, provided they are grown in sustainable farming systems such as peasant and organic farming, to the benefit of industrial varieties adapted to intensive monocultures, which are only sustainable in these farming systems, which are themselves unsustainable.