



## **Trilogue on the draft regulation on the marketing of plant reproduction material (PRM)**

### **ECVC's priorities and amendment to align EU PRM rules with farmers' rights on seeds**

The European Coordination Via Campesina (ECVC) is a confederation of unions and organisations of peasant farmers, small and medium-scale farmers, and agricultural workers across Europe. Agrobiodiversity is one of the cornerstones of the agroecological model that we defend: the renewal of agrobiodiversity and dynamic management of seeds by farmers is an essential condition for agricultural systems that are resilient to climate changes and diseases. The implementation of farmers' collective rights on seeds, and in particular the right to use, reuse, and exchange their seeds, is necessary to achieve that.

The reform of plant reproductive material (PRM) marketing rules is an opportunity for the EU to implement these rights. However, ECVC considers that this draft regulation constitutes an important setback for farmers' rights and practices that are already recognized (or unregulated) in many Member States.

You will find below our main priorities, recommendations and amendment proposal for the ongoing PRM trilogue. Amendments that go beyond the positions of the Commission, Parliament and Council are highlighted in green. These additions seek to maintain the flexibility of the current seed marketing directives, which allow to adapt the transposition into national laws to the agricultural and cultural contexts of each EU member state.

#### **1. The right of farmers to produce and exchange their own PRM is not marketing**

On-farm PRM production for farmers' own use is not a commercial exploitation of the PRM and should be excluded from the scope of the regulation, as adopted in the European Parliament's position in 2024 (Amendment 37).

PRM exchanges between farmers are not marketing either, when they are done:

- from peer-to-peer without a public sale offering;
- for purposes of scientific research, breeding, *in situ* on-farm dynamic management of agrobiodiversity and/or mutual aid between farmers, with the ultimate purpose to adapt PRM to their specific cultivation conditions and to better suit farmers' needs for their agricultural production (EP Position, amendment 6).

**ECVC demands that these exchanges be explicitly excluded from the scope of the regulation.** One option to do so is to exclude these exchanges from the scope based on the exemption for transfers for dynamic conservation purpose (EP position amendment 6, Recital 13 a). However, the quantity limits set for these transfers (defined in Annex VIIa) are not suited for farmers. For farmers' MRV exchanges, the quantity limits must be suited to the needs of small-scale farmers for their agricultural production (as proposed by the Parliament (amendment 170), and be defined by national authorities, to be adapted to the national context.

The provisions of Article 30 are insufficient, on the one hand because they are limited to seeds only and exclude plants and other PRM; and on the other hand, because the exchanges between farmers would remain defined as PRM marketing, and therefore subjected to the administrative and plant health rules of PRM marketing, including plant passports. These rules are extremely burdensome and costly, but most importantly they are incompatible with on-farm breeding and dynamic management and would in practice lead to a ban on farmers' PRM exchanges. Plant health regulation applying to PRM marketing foresees, for example, the production of PRM aimed to be marketed in plots that are separate from agricultural production: this goes against the very logic of *in situ* on-farm selection and dynamic management, which are adaptative breeding methods consisting in the selection of the best plants from the agricultural production fields. If farmers' PRM exchanges are excluded from the scope of the PRM regulation, they will remain subjected to the plant health rules of agricultural production, which are sufficient to prevent any risk linked to these practices.

ECVC also supports the exclusion from the scope of the regulation on the production and marketing of PRM by conservation networks and organisations, which are essential for agrobiodiversity.

Amendment proposal:

Recitals

(13a) ***This Regulation should not cover PRM accessed, sold or transferred in any way in limited quantities defined by Member States for each species ~~in limited quantities as defined in Annex VIIa~~, whether free of charge or not, for the purpose of dynamic conservation as that type of PRM does not require particular harmonised identity or quality standards and does not compromise the identity and quality of other PRM marketed in the Union.*** [EP Position, Am. 6]

**Article 1 Subject matter**

This Regulation lays down rules for the production ***with a view to marketing*** [EP and Council position], and the marketing in the Union of plant reproductive material ('PRM'), and in particular requirements for the production of PRM in the field and other sites, categories of PRM, identity and quality requirements, certification, labelling, packaging, imports, professional operators, and the registration of varieties.

**Article 2 Scope of the Regulation**

[...]

4. This Regulation does not apply to:

[...]

***(ea) the production and marketing of PRM by conservation organisations and networks referred to in Article 29 in small quantities as defined in Annex VIIa, whether free of charge or not;*** [EP Am. 353]

***(eb) PRM produced by farmers for their own use*** [EP Am. 37]

***(ec) PRM exchanged in limited quantities adapted to small-scale farmers' needs, defined by Member States for each species, ~~limited quantities as defined in Annex VIIa~~, whether free of charge or for monetary compensation, for the purpose of dynamic conservation as that type of PRM does not require particular harmonised identity or quality standards and does not compromise the identity and quality of other PRM marketed in the Union.***

**Article 3 Definitions**

[...]

(2) 'professional operator' means any natural or legal person, involved professionally in one or more of the following activities in the Union ***concerning the commercial exploitation of PRM*** [EP Am. 38]:

(a) production ***with a view to marketing*** [Council position];

(b) marketing;

(c) maintenance of varieties;

(d) provision of services for identity and quality;

(e) preservation, storage, drying, processing, treating, packaging, sealing, labelling, sampling or testing;

(3) 'marketing' means the following actions conducted by a professional operator : sale, holding **with a view to sale [Council position]** , ~~transfer for free~~ [EP Am 40] or offering for sale, including online sale, or any other way of transferring transfer or distribution within, or import into, the Union **aimed at the commercial exploitation of the PRM;** [EP Am. 40]

**Article 30 PRM exchanged between farmers and article 30a (quantity limits): deletion**, on the basis that those exchanges are excluded from the scope in article 2.4.

**In the event that article 30 is maintained, it must be amended to be in line with farmers' rights**, based on the European Parliament's position. Additionally, **it should be completed by a modification of articles 4, 41 and 42** to subject these exchanges to the plant health requirements of agricultural production and exempt them from the obligations of professional operators, as detailed below:

#### **Article 4 Compliance with Regulation (EU) 2016/2031**

This Regulation shall apply without prejudice to Regulation (EU) 2016/2031. Any PRM lot produced and marketed in accordance with this Regulation, shall also comply with the rules set out in, or pursuant to, Articles 36, 37, 40, 41, 42, 49, 53 and 54 of Regulation (EU) 2016/2031 concerning Union quarantine pests, protected zone quarantine pests and RNQPs, and with the measures adopted pursuant to Article 30(1) of that Regulation.

*This Article shall not apply to PRM produced by farmers for their own use on their holding, or to PRM exchanged between farmers for scientific purposes, breeding and/or on-farm dynamic conservation and management of agrobiodiversity. These PRM are subject only to the obligations arising from the application of Regulation (EU) 2016/2031 which apply to agricultural production and not to the marketing of PRM.*

#### **Article 30 PRM exchanged ~~in-kind~~ between farmers** [EP Am. 160]

*1. This article should not cover PRM exchanged in limited quantities adapted to small-scale farmers' needs, defined by Member States for each species, whether free of charge or for monetary compensation, for the purpose of dynamic conservation as that type of PRM does not require particular harmonised identity or quality standards and does not compromise the identity and quality of other PRM marketed in the Union.*

2. By way of derogation from Articles 5 to 25, farmers may exchange **PRM** in kind **or for monetary compensation**, if such **PRM fulfils** all of the following conditions: [EP Am. 161]

- (1) **is** produced in the respective farmer's own premises; [EP Am. 162]
- (2) **is** derived from the respective farmer's own ~~harvest~~ **crops**; [EP Am. 163]
- (3) **is** not subject to a service contract conducted by the respective farmer with a professional operator performing seed production; and
- (4) the **PRM** is used for dynamic management **and conservation of the** farmer's own **PRM** for the purpose of contributing to agro-diversity. [EP Am. 165]

3. Such **PRM** shall fulfil all of the following requirements: [EP Am. 166]

- (a) not to belong to a variety for which plant variety rights have been granted in accordance with Regulation (EC) No 2100/94;
- (b) to be limited **in** quantities, defined by the competent authorities for specific species per year and per farmer, without using commercial intermediaries or public offer of marketing; and [EP Am. 167]
- (c) to be practically free from quality pests ~~and any defects likely to impact their quality as seeds and shall have satisfactory germination capacity.~~

4. Member States shall annually notify to the Commission and the other Member States the amounts per species defined in accordance with paragraph 2, point (b).

#### **Article 30a Maximum quantity of each species which may be exchanged**

~~The Commission is empowered to adopt delegated acts in accordance with Article 75, supplementing this Regulation, in order to set up, for each species, the maximum quantity which may be exchanged, referred to in Article 30(2), point (b). That quantity shall be set taking into consideration the needs of small-scale professional farmers as well as plant health risks, while promoting the development and maintenance of diverse farming systems. [EP Am. 170]~~

*Quantity limits, defined by Member States for specific species per year and per farmer, shall be set taking into consideration the needs of small-scale professional farmers [defined in Regulation (EC) No 2100/94 establishing a Community plant variety rights system] while promoting the development and maintenance of diverse farming systems.*

**Article 41 Obligations of professional operators producing PRM**

[...]

*The activities referred to in Articles 29 and 30 shall not be subject to the provisions of this Article. [EP Am. 202]*

**Article 42 Traceability**

[...]

*The activities referred to in Articles 29 and 30 shall not be subject to the provisions of this Article. [EP Am. 203]*

## **2. Farmers demand clear and transparent information on breeding methods and intellectual property rights (IPR) covering the PRM**

The breeding methods and IPR covering the PRM should appear both on the label and in the registers. It is extremely important that farmers have access to this information, especially in light of the ongoing negotiations on GM-plants obtained by new genomic techniques (GMOs-NGTs) and the potential entry into the EU seed market of numerous patented PRM.

On the question of IPR, ECVC is also concerned to see several articles referring to the use of biomolecular techniques for registration in the catalogue, certification and controls. The use of biomolecular techniques, if it were to replace the description of the phenotypic characteristics of varieties, would on one hand undermine many operators who do not have access to these techniques, and especially farmers who make choices based on phenotypic characteristics, not on molecular characteristics. Secondly, it would also provide data that is only relevant to patent holders on the genetic information identified by these techniques. The purpose of this regulation is the fair marketing of PRM, and not the protection of intellectual property rights.

Amendment proposal:

**Article 17 Content of labels**

[...]

*2. The official label and the operators' label shall include, where applicable, a reference to the plant variety right [EP Am. 116] and any other intellectual property right covering the PRM, its parts or to biological materials or genetic information contained therein. This information must also appear on any official or private catalogue referencing these PRM.*

**Article 56 Contents of the application for registration of a variety**

1.The application for registration of a variety in a national variety register shall consist of the following:

[...]

(j) where the variety contains or consists of a genetically modified organism, evidence that the genetically modified organism in question is authorised for cultivation in the Union, in accordance with Directive 2001/18/EC or Regulation (EC) No 1829/2003, **and, where applicable, that cultivation is not excluded in the respective Member State concerned in** accordance with Article 26b of Directive 2001/18/EC

(k) where the application concerns conservation varieties, information related to the production of an officially recognised description of the variety, a proof of that description and any document or publication supporting it;

(l) in the case of an application concerning varieties with a granted plant variety right pursuant to Regulation (EC) No 2100/94 or to the legislation of a Member State, the proof that the variety is protected by such right, with the corresponding official description; **and information on whether the variety has been granted plant variety rights pursuant to Regulation (EC) No 2100/94, or pursuant to national rules of a Member State, or on whether an application for plant variety rights has been submitted** ; [Council position]

(m) in case the variety contains or consists of a category 1 NGT as defined in Article 3(7) of Regulation (EU) .../... of the European Parliament and of the Council (Office of Publications, please insert reference to NGT Regulation), evidence that the plant has obtained a declaration of category 1 NGT plant status pursuant to Article 6 or 7 of that Regulation or is progeny of such plant(s);

(n) in case the variety contains or consists of a category 2 NGT plant as defined in Article 3(8) of Regulation (EU) .../... (Office of Publications, please insert reference to NGT Regulation), indication of that fact;

(o) **in the case of varieties tolerant to herbicides, an indication of that fact, and the active substance to which the variety is tolerant** [Council position]

**(oa) the breeding techniques used for the development of the variety;** [EP Am. 243]

**(p) The existence of intellectual property rights on the variety as a whole or its components;**

2. The application for registration of a variety in a national variety register shall be accompanied by a sample to be used for the examination of that variety. The competent authority of the respective Member State shall set a deadline for the submission of that sample and specify its quality and quantity.

**If the information pursuant to paragraph 1(j), (l), (m), (n), (o), (p) and (q) is omitted, the competent authority shall reject or, where applicable, withdraw the registration of the variety and apply a fine.**

#### **Article 7 Requirements for the production and marketing of pre-basic, basic and certified seed and material**

[...]

4. The Commission may adopt implementing acts specifying the production and marketing requirements referred to in Part A and Part B of Annex II for certain genera, species or categories of PRM, and, where appropriate, for certain grades, classes, generations or other sub-divisions of the category concerned. Those requirements shall concern one or more of the following elements

- (a) specific uses of the genera, species or the types of the PRM concerned;
- (b) production methods of PRM, including sexual and asexual reproduction and in vitro propagation;
- (c) conditions for sowing or planting;
- (d) field cultivation;
- (e) harvesting and post-harvesting;
- (f) germination rates, purity and content of other PRM, moisture, vigour, presence of earth or extraneous matter;
- (g) certification methods of PRM ~~including the application of bio-molecular or other technical methods, as well as their approval and use, and the listing of approved methods in the Union;~~

#### **Article 8 Requirements for the production and marketing of standard seed and material**

[...]

5. The Commission may adopt implementing acts specifying the production and marketing requirements referred to in ~~Part A and Part B~~ of Annex III for certain genera or species of standard seed or material. Those requirements shall concern one or more of the following elements:

[...]

*(g) the application of bio-molecular or other technical methods, as well as their approval and use, and the listing of approved methods in the Union;*

**Article 24 Control plot tests for pre-basic, basic and certified seeds**

[...]

*5. In the case of control of varietal identity and purity, the use of bio-molecular techniques may be used as a supplementary tool where the results of the control plot tests referred to in paragraph 1 are non-conclusive.*

**3. New diverse seed categories must not be an entry door for patented GMOs, including those obtained by NGTs**

ECVC very much welcomes the introduction of diverse categories, which can only partially fulfil DUS criteria. These are needed for farmers and especially agroecological farmers (new conservation varieties and local varieties). However, these PRM categories shouldn't be an entry door for patented GMOs-NGTs, which will be possible if the proposal on plant obtained by NGTs is adopted.

GMOs and GMOs-NGTs, which are developed in laboratories for the global market and covered by patents, are completely incompatible with the objectives of these diverse categories, which is to favour the local adaptation of PRM and to be re-used by farmers and gardeners. For this reason, **GMOs, GMOs-NGTs and IPRs should be banned in these new categories, as this was partially recognized by the European Parliament.** In the amendments below, ECVC also suggests some improvement to make sure that these categories are fit for their purpose.

**For the same reason, ECVC recommends that the organic heterogenous material also remains organic only,** to avoid the market of patented GM-varieties in this category. The organic heterogenous material, as enforced by the organic regulation, has been used with great success by many farmers, and should remain unchanged.

Amendment proposal

**Article 3 Definitions**

[...]

(27) 'heterogeneous material' means a plant grouping within a single botanical taxon of the lowest known rank which:

- (a) presents common phenotypic characteristics;
- (b) is characterised by a high level of genetic and phenotypic diversity between individual reproductive units, so that that plant grouping is represented by the material as a whole, and not by a small number of units;
- (c) is not a variety; and
- (d) is not a mixture of varieties; [Council position]

[...]

(29) 'conservation variety' means a variety that is:

- (a) is traditionally grown under specific local conditions in the Union, and adapted to those conditions,
- (b) is characterised by **reduced uniformity** due to a **certain** level of genetic and phenotypical diversity between individual reproductive units ;
- (c) **is not an F1 hybrid** [EP AM 56];
- (d) **is not subject, as a whole or in genetic components, to intellectual property rights that limit its use for conservation, research, breeding, education, including on farm by a farmer who uses the PRM grown on the farm, of that variety for those objectives** [EP AM 58];
- (e) **does not consist of a GMO or a category 1 NGT plant as defined in Article 3(7) of Regulation (EU) or of a category 2 NGT plant as defined in Article 3(8) of Regulation (EU) .../... (Office of Publications, please**

*insert reference to NGT Regulation ...);*

**(29a) 'local variety' means a variety that :** [Council position]

**(a) is newly or recently locally bred for adaptation to local agro-climatic conditions or farming systems in the context of the sustainable use of plant genetic resources for food and agriculture [EP AM 55];**

**(b) adapted to the local agro-climatic conditions and farming systems of that region;**

**(c) is characterised by reduced uniformity due to a certain level of genetic and phenotypic diversity between individual reproductive units ;**

**(d) is not an F1 hybrid [EP AM 56];**

**(e) is not subject, as a whole or in genetic components, to intellectual property rights that limit its use for conservation, research, breeding, education, including on farm by a farmer who uses the PRM grown on the farm, of that variety for those objectives [EP AM 58];**

**(f) does not consist of a GMO or a category 1 NGT plant as defined in Article 3(7) of Regulation (EU) or of a category 2 NGT plant as defined in Article 3(8) of Regulation (EU) .../... (Office of Publications, please insert reference to NGT Regulation ...);**

**Article 27 PRM of heterogenous material:** deletion [Council position]

**Article 81 (amendments Organic Regulation):** deletion [Council position]

**Annex VI Requirements for production and marketing of PRM of heterogenous material as referred to in article 27(2):** deletion [Council position]

#### **4. An opt-out clause must be maintained to give Member States flexibility on cultivation at national level**

Previous experience shows that the issue of PRM cultivation is dealt with more comprehensively at Member State level. The marketing of PRM certainly needs to be regulated at EU level to preserve the internal market. However, the cultivation may require more flexibility in certain cases, as this issue has a strong national, regional and local dimension due to its link with land use, local agricultural structures, the protection or conservation of habitats, ecosystems and landscapes and for cultural reasons. In accordance with Article 2(2) of the Treaty on the Functioning of the European Union, Member States should be able to adopt legally binding acts restricting or prohibiting the cultivation of PRM on their territory after their marketing in the EU has been authorised. **It is therefore important to maintain in the new regulation the opt-out clause from the current seed marketing directives.**

This issue is also directly related to the question of cultivation conditions for varieties which may lead to undesirable agronomic effects, such as herbicide tolerant varieties. The opt-out clause allows Member States to ban the cultivation of these varieties if they pose plant-health threats to the cultivation of other varieties.

**Concerning the cultivation conditions proposed for herbicide tolerant varieties and other varieties with undesirable agronomic effects (article 47), ECVC indicate that it would be much more effective to ban the cultivation of certain varieties if it has been demonstrated that they have undesirable effects on other crops and/or on the environment, rather than to impose cultivation conditions for these varieties.** This is the case notably for herbicide tolerant varieties, which create weed resistance to the associated herbicides. It is also the case for varieties which have been genetically modified to produce an insecticide molecule, which cause detrimental effects to ecosystems. The harmfulness of these two characteristics has also been recognized by the outcome of the trilogue on the proposal on GM-plants obtained by NGTs, which has established that these two traits (tolerance to herbicide and

production of insecticide) should be considered as “unsustainable traits” in light of the draft NGT regulation.

Unless the cultivation of these varieties is imposed in a strictly confined environment, cultivation conditions for of herbicide-tolerant varieties will not be able to eliminate the risks mentioned above in the long term. On the other hand, cultivation conditions would exempt the breeders of these varieties from any liability in the event of damage resulting from their cultivation, shifting the responsibility of this damage onto the farmers, which could be accused of not respecting these cultivation conditions.

*Amendment proposal*

**Article 71 Removal from national variety registers**

1. The competent authority of the respective Member State shall remove a variety from the national variety register, if:

- (a) it concludes, on the basis of any new evidence, that the requirements for registration, as set out in Article 47(1) are no longer fulfilled;
- (b) the applicant does not pay the fee that the competent authority has established in accordance with Articles 55, 59(4), 67(6) and 69(3);
- (c) the person responsible for the variety maintenance, as referred to in Article 72, so requests, or that person has ceased to maintain the variety and no other person has become responsible for its maintenance;
- (d) the variety is no longer maintained pursuant to requirements of Article 72;
- (e) the variety is maintained in a third country, which has not provided assistance on the controls of that maintenance pursuant to Article 72(7);
- (f) at the time of the application, false or fraudulent data were supplied on the basis of which the registration was decided; (g) no application for renewal has been submitted by the deadline referred to in Article 70(1) and the validity period of registration referred to in Article 69(1) has expired.

2. On request by the applicant, the competent authority may allow that a variety removed from the national variety register in accordance with paragraph 1, point (g), continues to be made available on the market until 30 June of the third year following the removal from the register. That request shall be submitted no later than the date of the expiration of the validity period of registration.

3. Following its removal from a national variety register, as referred to in paragraph 1, the variety concerned shall be immediately removed from the Union variety register, if it is not registered in any other national variety register.

***4. A Member State may, in accordance with the provisions laid down in Article 114(5) and (6) of the Treaty on the Functioning of the European Union, be authorised to prohibit, for all or part of its territory, the use of PRM or to prescribe appropriate conditions for the cultivation of such PRM and, in the case provided for in point (c), conditions for the use of products resulting from the cultivation of such PRM :***

***(a) if there is evidence that the cultivation of this PRM could harm the cultivation of other PRM in terms of plant health; or***

***(b) if it has been established, on the basis of official cultivation examinations carried out in the applicant Member State, that the PRM does not produce, in any part of its territory, results corresponding to those obtained for a comparable PRM admitted to the territory of that Member State or if it is known that the PRM, because of its nature or maturity class, is not suitable for cultivation in any part of its territory;***

***(c) if it has valid reasons, other than those already mentioned or which may have been mentioned at the time of its registration, for considering that the PRM presents a risk to human health or the environment.***

**Article 47 Requirements for registration in national variety registers**

1. Varieties shall be registered in a national variety register in accordance with Articles 55 to 68, only if:  
[...]

(c) where the varieties contain or consist of genetically modified organisms, the organism is authorised for cultivation in the respective Member State pursuant to Article 19 of Directive 2001/18/EC or Articles 7 and 19 of Regulation (EC) 1829/2003, or, where applicable, in the respective Member State in accordance with Article 26b of Directive 2001/18/EC;

(d) where the varieties contain or consist of a category 1 NGT plant as defined in Article 3(7) of Regulation (EU) .../... (Office of Publications, please insert reference to NGT Regulation ...), that plant has obtained a declaration of category 1 NGT plant status pursuant to Article 6 or 7 of that Regulation or is progeny of such plants; (e) where the varieties contain or consist of a category 2 NGT plant as defined in Article 3(8) of Regulation (EU) .../... (Office of Publications, please insert reference to NGT Regulation), that plant has been authorised pursuant to Chapter III of that Regulation;

*(f) they have not been made tolerant to herbicides where the varieties are tolerant to herbicides, they are subject to cultivation conditions for the production of PRM and for any other purpose, adopted pursuant to paragraph 3 or, in the case they have not been adopted, as adopted by the competent authorities responsible for registration, to avoid the development of herbicide resistance in weeds due to their use;*

*(g) they have not undergone any artificial genetic modification making them resistant to harmful organisms and/or tolerant to herbicides where the varieties have particular characteristics other than the ones referred to in point (f) that may lead to undesirable agronomic effects, they are subject to cultivation conditions for the production of PRM and any other purpose, adopted pursuant to paragraph 3 or, in the case they have not been adopted, as adopted by the competent authorities responsible for their registration, to avoid those particular undesirable agronomic effects, such as the development of resistance of pests to the respective varieties or undesirable effects on pollinators.*

## 5. Provisions to avoid biopiracy (misappropriation) during variety registrations are needed to comply with the EU's international obligations

The registration of new commercial categories, such as new conservation varieties, may be incompatible with farmers' rights and the EU's international commitments<sup>1</sup> when these varieties have been previously developed, cultivated, and saved by farmers and local or Indigenous communities who have not been informed, consulted, or have explicitly given their prior consent for the registration of this variety. Such cases are illegitimate appropriation of the genetic resources of local, indigenous or peasant communities, i.e. biopiracy. It may result for example in banning the marketing of products under certain denominations, which were previously used by farmers and local communities before the variety registration. **To be in line with the EU's international obligations, the new regulation must contain provisions to prevent such biopiracy cases, including through a wide consultation of various actors (farmers, conservation networks, small breeders, etc.) and an examination of the suitability of variety denominations.**

Yet, so far, they are absent from the different versions of the text, except for two provisions proposed by the European Parliament, which we detail in the amendment proposal below. These two provisions alone are insufficient and must be completed.

### *Amendment proposal*

#### **Article 53 Registration of conservation varieties**

[...]

**6. A conservation variety may not be registered without the free and informed consent of farmers, local communities or breeders who developed, cultivated and preserved it prior to registration**

#### **Article 54 Suitability of variety denominations**

1. For the purposes of Article 47(1), point (b), the denomination of a variety shall not be deemed suitable if:
  - (a) its use in the territory of the Union is precluded by the prior right of a third party;
  - (b) it may commonly cause its users difficulties as regards recognition or reproduction;
  - (c) it is identical to, or may be confused with, a variety denomination:

<sup>1</sup> International Treaty on Plant Genetic Resources for Food and Agriculture and the Convention on Biological Diversity.

- (i) under which another variety of the same or of a closely related species is entered in a national variety register or in the Union variety register; or ***in documentation provided to the competent authority by a natural or legal person involved in the dynamic conservation*** [EP Am. 236]
- (ii) under which material of another variety has been made available on the market in a Member State or in a Member of the International Union for the Protection of New Varieties of Plants, ***unless variety referred to in point (i) or (ii) no longer remains in existence and its denomination has acquired no special significance*** [EP Am. 237];
- (d) it is identical to, or may be confused with, other designations which are commonly used for making available on the market goods or which have to be kept free pursuant to Union legislation;
- (e) it is liable to give offence in one of the Member States or is contrary to the public order;
- (f) it is liable to mislead or to cause confusion concerning the characteristics, the value or the identity of the variety, or the identity of the breeder.
- (g) its denomination is already used to designate unregistered traditional, local or farmers' varieties or the products derived from them.***
- (h) its denomination is similar or too close to a protected denomination (protected designation of origin, controlled designation of origin, trademarks, etc.).***
2. Without prejudice to paragraph 1, if a variety is already registered in other national variety registers, the denomination shall be deemed suitable, only if it is identical to that appearing in those registers. This paragraph shall not apply if:
- (a) the denomination is likely to mislead or cause confusion concerning the relevant variety in one or more Member States; or
- (b) the rights of third parties impede the free use of that denomination in connection with the variety in question.
3. Where, after the registration of a variety, it is established by the competent authority that at the time of the registration the denomination of the variety was not suitable within the meaning of paragraphs 1 and 2, the applicant shall submit an application for a new denomination. The competent authority shall decide on that application upon consultation with CPVO.

#### **Article 56 Contents of the application for registration of a variety**

1. The application for registration of a variety in a national variety register shall consist of the following: [...]
- (j) where the variety contains or consists of a genetically modified organism, evidence that the genetically modified organism in question is authorised for cultivation in the Union, in accordance with Directive 2001/18/EC or Regulation (EC) No 1829/2003, or, where applicable, in the respective Member State in accordance with Article 26b of Directive 2001/18/EC ;
- (k) where the application concerns conservation varieties, information related to the production of an officially recognised description of the variety, a proof of that description and any document or publication supporting it, ***as well as the free, informed and written consent of the farmers, local communities or breeders who developed, cultivated and saved it prior to its registration;***
- (l) in the case of an application concerning varieties with a granted plant variety right pursuant to Regulation (EC) No 2100/94 or the legislation of a Member State, the proof that the variety is protected by such right, with the corresponding official description;
- (m) in case the variety contains or consists of a category 1 NGT as defined in Article 3(7) of Regulation (EU) .../... of the European Parliament and of the Council<sup>1</sup> (Office of Publications, please insert reference to NGT Regulation), evidence that the plant has obtained a declaration of category 1 NGT plant status pursuant to Article 6 or 7 of that Regulation or is progeny of such plant(s);
- (o) ***in the event that the the variety is tolerant to herbicides as referred to in Article 47(1), point (f), or has particular characteristics that may lead to undesirable agronomic effects as referred to in Article 47(1), point (g), an indication of that fact ;***
- (oa) the breeding techniques used for the development of the variety;***
- (ob) the existence of any intellectual property rights covering the variety, its components, and characteristics, within the limits of the rights applied for or granted for that variety to the applicant, including where the applicant has signed a contractual licence or has obtained a compulsory licence for the use of a patent owned by another operator.*** [EP position, amendments 242, 243 and 244], ***which should publicly available.***

**Article 66 Examination of the denomination of a variety**

After the formal examination of the application provided for in Article 57, and prior to the registration of a variety in a national variety register pursuant to Article 67, the competent authority shall consult the CPVO on the variety denomination proposed by the applicant.

The CPVO shall submit to the competent authority a recommendation on the suitability of the variety denomination proposed by the applicant, in accordance with Article 54. The competent authority shall inform the applicant on that recommendation.

*The CPVO shall verify, where necessary, through wide consultation with the public, genetic resource centres, farmers' organisations, local communities and national and territorial authorities, that this denomination is not already being used for varieties already developed, saved or cultivated by farmers, local communities or breeders who market their products under this denomination without having registered it.*

## 6. Farmers also support adapted rules for conservation organisations and networks

The activities of conservation networks and organisations are essential for the conservation and renewal of agrobiodiversity. Farmers can be part of these networks and greatly benefit from their work. ECVC supports that the production and transfers for conservation purposes be excluded from the scope of the regulation (see amendment below in section 1.), with the possibility for these networks to transfer PRM to farmers which are members of these networks or who practice on-farm breeding, dynamic conservation and management<sup>2</sup>. Building on the position of the European Parliament, **ECVC also supports a definition of “conservation” that includes both *in situ* and *ex situ* conservation. However, we are in favour of maintaining a distinction between “static conservation” (keeping identical) and “dynamic conservation or management” of genetic resources, i.e., an adaptive breeding method selecting used to adapt the plants to the local cultivation conditions.**

*Amendment proposal*

### **Article 3 Definitions**

[...]

**(35a) ‘dynamic conservation or dynamic management means the preservation of genetic diversity within and between cultivated plant species, and includes both *in situ* conservation and *ex situ* conservation, with the aim of a sustainable use of plant genetic resources and agro-biodiversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining the potential to meet the needs and aspirations of present and future generations; [EP position];**

### **Article 29 PRM marketed to, by, between, and within organisations and networks for the conservation of plant genetic resources [EP position]**

1. By way of derogation from Articles 5 to 25, **PRM intended for the *static or dynamic conservation of plant genetic resources* may be *produced and* marketed to, *by*, between, *and within* gene banks organisations and networks *having a purpose defined in their articles of association or other equivalent document to any natural or legal person who carries out conservation of that PRM and to farmers or non-professional users* whereby any of the activities are carried out for non-profit purposes. [EP position]**

In the cases provided for in the first and the second subparagraphs, PRM shall fulfil the following requirements:

- (a) be listed in a register kept by those gene banks, organisations and networks with an appropriate description of that PRM; **and**
- (b) be conserved by those gene banks, organisations and networks, and, **where quantities allow it**, samples of that PRM be made available by them to the competent authorities upon request; and

<sup>2</sup> When necessary, the transfer from conservation organisations to farmers should be formalized by a transfer agreement complying with the requirements of ITPGRFA.

(c) be practically free from quality pests and any defects likely to impair its quality as a reproductive material, and have satisfactory vigour and dimensions in respect of its usefulness as PRM, and, in the case of seeds, have satisfactory germination capacity.

2. The ~~gene banks~~ **conservation** organisations and networks shall notify the competent authority of the use of the derogation referred to in paragraph 1 and the species concerned.

**Article 41c Derogation from obligations of professional operators** [Council position]

**1. By way of derogation from Article 41, point (b), professional operators shall not be required to be registered if they exclusively carry out one or more of the following activities:**

**(a) the production and marketing of PRM by nano-enterprises intended to be used exclusively by and marketed directly to non-professional users pursuant to Article 28.**

**(b) the production and marketing of PRM intended for the conservation of plant genetic resources by organisations and networks whose annual income doesn't exceed the income of a nano-enterprise pursuant to Article 29.**

**(c) the exchange of PRM between farmers pursuant to Article 2.4.e.c**

## 7. Sustainability evaluation (VSCU) should remain informative only

Sustainability cannot be evaluated in the varieties only; it needs to take into account the whole farming system. ECVC considers that the VSCU testing could be detrimental to varieties that perform well in agroecological or organic conditions but can have poor performances in an intensive agricultural model. This is especially true if testing in organic and low-input conditions is not made mandatory in the new regulation. For this reason, we demand that the sustainability evaluation be for information purposes only. This goes in the direction of the position of the Parliament, proposing to apply VSCU on a voluntary basis only for fruits and vegetables.

*Amendment proposal*

**Article 52 Value for sustainable cultivation and use**

1. For the purposes of Article 47(1), point (c), the value of a variety for sustainable cultivation and use of a variety shall be considered as satisfactory if, compared to other varieties of the same species registered in the national variety register of the respective Member State, its characteristics, taken as a whole, offer a clear improvement for the sustainable cultivation and the uses which can be made of the crops, other plants or the products derived therefrom.

[...]

**1a. Examination of the value for sustainable cultivation and use shall be made possible for the species listed in Parts B and C of Annex I on a voluntary basis.** ~~Where the examination of the sustainable cultivation and use has been carried out by an official competent authority or under the official supervision and guidance of the competent authority pursuant to Article 61, it shall allow the inclusion of claim on the area of the label mentioned in Article 17(5). That claim shall only concern the characteristics that have been shown to offer a clear improvement compared to other varieties of the same species during the examination tests. The voluntary system shall allow competent authorities to develop methodologies to assess the characteristics listed under paragraph 1, second subparagraph, points (a) to (g).~~ [EP Am. 224]

[...]

**4a. Competent authorities shall include testing of conventional seed under low input conditions, organic in-conversion, or organic conditions.** [EP Am. 228]

**5. When registering a variety, the results of the value for sustainable cultivation and use tests are indicated for information purposes only. Under no circumstances may they be taken into account for the acceptance or refusal of the registration of a variety.**