Second Commission Draft Proposal of a new Regulation on the Marketing of PRM

Introduction

The Real Seed Collection Ltd is a UK registered seed supplier. For 15 years we have specialised in the research, breeding, conservation and supply of open-pollinated vegetable seed, chosen to meet the socio-agronomic needs of home gardeners. Our other main activity is the organisation of a membership-based seed club, the aim of which is public education to encourage and facilitate home seed saving and in-situ genetic conservation.

Therefore we write to you in two distinct capacities, firstly as a the directors of an SME supplying the UK home-garden vegetable seed sector (UK Company No 5924934), and secondly representing the members of our seed club (numbering 7402 active members in the past 12 month period).

Subject

We are writing to you about the review of the PRM legislation underway by DG SANCO, and to bring to your attention that this legislation will be greatly detrimental to both the industry and consumers.

We understand and agree that the old legislation was in need of review, and indeed this process has been through several iterations in recent years, with various amendments and derogations in an attempt to address its shortcomings.

Problem

However, analysis of the latest draft of the new legislation shows it is much more restrictive than even the unworkable system currently in place. It is such a backward step – even compared to the existing legislation - that we are compelled to write to you now, to formally place on the record our objection to this legislation.

If implemented, it will have severe negative impacts across many areas: it restricts freedom of trade and the free movement of goods, it causes disproportionate interference with the entire seed sector, decreases agricultural biodiversity, impedes genetic conservation, and reduces consumer choice. And all this is without any benefit over the current system.

To make matters worse, all of the above are not even necessary to achieve the stated aims of increasing informed consumer choice, which could just as well be achieved by a system of strict labelling without mandatory registration of PRM.

We understand that there is a drive from within DG SANCO to approach the issue of PRM control from a consumer-protection point of view. But in this case there has been no effort at all to balance the need for consumer protection against the equally important principles of allowing operators in a free market to conduct their business as they see fit, and consumers to make a free choice of what they purchase.

Specific Issues

The basic problem is that the latest draft tries to return to the current system, minus the few progressive derogations of the past few years that tried to at least slightly ameliorate its shortcomings. This was not the case with previous drafts and there has obviously been a deliberate regression during the latest negotiations.

Specifically:

- Art 25 (1) still mandates the registration of all PRM varieties. This is simply not appropriate and has no benefit to consumers while having huge negative effects for the seed industry and the environment. Mandatory registration of all agronomic plant varieties in the EU is wrong both legally and scientifically. It was a mistake from the start, leading to decreased consumer choice, decreased business activity, decreased biodiversity, reduced food security, and accelerating loss of biodiversity. It contravenes all the basic tenets of the EU charter (see attached legal paper).

- Regional restrictions have been reintroduced. In Art 25 (2). These were accepted by all to be discredited after their introduction in EC 2009/145, and were removed from the first drafts, but they have now been reinserted without any explanation or logic.

- All the derogations to help preserve biodiversity and make easier registration of 'amateur' varieties (=varieties currently economically unimportant but suitable for particular agro-economic conditions such as low input sustainable farming) have been removed. This is despite a 4 year consultative and legislative process to introduce these to the previous legislation in order to address its shortcomings.

- Registration by means of an official description has been changed in meaning, now allowing only old varieties already known before the date of legislation to be registered without testing. Previously this was the replacement derogation for 'amateur' varieties, allowing new 'amateur' varieties to be registered more easily, without DUS/VCU appraisal and costs.

- Originally operators who deal only with small packets were exempt from regulation. But Art 5 has now been reworded so as to only exempt for example shops selling packets of seed, and not the producers of small packets of seed. This is a huge blow to the home garden seed industry, as it adds a vast amount of regulatory interference to their business, which is unnecessary as it is already covered by stringent food safety and consumer-protection laws.

- All PRM are to be sold in packets sealed with tamper-evident seals, even including small packets of seed for home garden use. Although not obvious, this is a large burden on the seed trade as the machines to do this cost upwards of 40,000 EUR. It represents a disproportionate barrier to entry to the sector and a disproportionate cost to operators already in the sector. While obviously necessary for large bulk sacks of seed for farm use, it is not required for small home-garden seed packets, as there are no known instances of tampering with small retail packets of seed – it simply is not a problem for the home-garden industry or consumer.

- There is an annual fee for variety registration (Article 87 (e)) of all PRM and there is automatic deletion from the register if the fee is not paid. Therefore if the maintainer does not pay the annual fee for any reason - even the simple chance of a business closing due to retirement or downturn means immediate deletion from the list and consequent loss of consumer choice, biodiversity, food security and plant genetic resources.

- Annex II brings for the first time the entire on-farm process of all seed production into regulatory control, implementing a regime of inspection and control for the production of seed including the ability to interfere with planting distances, crop rotation plans and soil amendment. While this is arguably of value for Certfied and Basic seed, there is no logical requirement at all for this level of

oversight in the production of Standard Seed, a historic category that was introduced precisely in order to indicate its less-stringently controlled production.

Our Request

We understand from industry sources in Brussels that there are serious reservations about the new legislation among some of the country representatives involved in the process, but that they are not greatly coordinating their objections publicly or as a group.

We therefore request that you, as our representatives, **take a robust negotiating position** in further discussions on the topic, and notify the forum of our views which are as follows:

1) There should be no mandatory registration of PRM in Article 25 (1). It is not necessary for the stated aims and is clearly disproportionate. It will eventually lead to legal challenge (at the member state level) when the implementing legislation is introduced, and there is a high probability that such a challenge will succeed, leading to disarrary in the local regulatory agencies and legislature.

2) All regional restrictions recently introduced for production and maintenance of PRM e.g. Art 25 (2) and Art 97 must removed. They are illogical and disproportionate, returning to the already discredited legislation of 'conservation varieties' in EC/2009/145

3) Article 5 defining operators must revert to the previous wording *(of "small quantities of plant reproductive material to final users")* , so that operators dealing only with small packets retailed to final consumers are exempt from regulation, not just the shops selling seeds.

4) If the mandatory registration of PRM is not removed, there must be some functional method added to register what are currently called 'amateur varieties' at reduced cost and inspection.

5) There must be no annual fees for the continued listing of PRM. This is equivalent to a rent on the use of plant genetic resources, and combined with the legislation forcing registration of all PRM, is hugely disproportionate to operators in the sector. It can be seen as the CPVO nationalising all plant genetic resources and then demanding a fee for business to reproduce and sell them, and is likely to fail when challenged legally. This would of course be avoided if registration was voluntary.

6) Article 27 must be changed so that small packets are clearly exempt from the requirement for tamper-evident sealing mechanisms. It is disproportionate in that there is no evidence anywhere in the EU of a problem with tampering with small packets, and the cost of addressing this non-existent issue are very high.

7) Annex II must be retitled so that it only applies to Basic, Pre-Basic and Certified PRM. There is no justification for on-farm, in-soil regulatory management and inspection throughout the growing season, with attendant regulatory cost recovery, for the production of Standard Seed, which by definition is the seed that is not inspected and tested to the same extent as the others. It is disproportionate to the benefit sought.

8) Finally, we are aware that in many cases, the proposed legislation makes provision to address the above issues by means of devolved legislation at a later date.
However, this is completely unacceptable. Our analysis of many hundreds of pages of conflicting and poorly worded legislation from Directive 98/56/EC, 1999/105/EC, 2002/53/EC, 2002/54/EC, 2002/55/EC onwards, and all their resulting local implementations (UK Seed Marketing Regulations etc) leaves us with no confidence whatsoever that the resulting devolved legislation – if it ever actually materializes - will address the issues at all or even be relevant to concerns

which are currently well understood but will be forgotten once the current consultees have dispersed.
Consequently the basic and drastic flaws in the legislation that we have identified above must be addressed now, before the final paper is laid before the Council, and not left to the vague chance of possible devolved fixes at a later date.

Summary
The legislation as it stands is hugely unfair to business, but does not increase consumer protection, and is greatly damaging to biodiversity and conservation of plant genetic resources. It does not achieve its stated aims and is in all respects worse than the legislation it replaces.

Please convey these concerns and the specific numbered points above, on behalf of:

- UK registered seed operative 7289, The Real Seed Collection Ltd,
- and also on behalf of the 7402 members of our seed club in the UK,
- and with the long-term interests of UK food security and biodiversity in mind.

Yours faithfully,

Ben Gabel
Director
The Real Seed Collection Ltd

PS: For your information, attached is a sheet explaining in more exact terms how the proposed legislation breaches the EU principle of proportionality, the freedom to conduct a business within the meaning of Article 16 of the Charter of Fundamental Rights, the free movement of goods established in Article 34 TFEU and the principle of equal treatment within the meaning of Article 20 of the Charter. This analysis is based on earlier work by Advocate General Kokott of the European Court of Justice.