

The draft of the regulation reflects the interests of the industry and not of the public:

The foundation of the regulation on PRM is the system of registration of the plants as VARIETIES and the certification of individual lots of propagation material. To be registered on the official catalogue, the variety has to be Distinct, highly Uniform and Stable (DUS) and in some case, mostly for agricultural species, it has to show that it complies with the criteria of "Value for Cultivation and Use (VCU)". This is tested through field sampling, laboratory tests and comparison with varieties already registered.

Does the obligatory registration of varieties promote public interest? No, it does not.

*The variety is a technical and juridical concept.* It is neither a natural condition of wild or cultivated plants: it is essential for evolution (and also for a sustainable agriculture) that living organisms are diverse (not uniform) and able to develop (not stable). Allowing only the marketing of varieties lives aside and endangers a wide spectrum of biodiversity.

Nor are the criteria applied to homogeneity an agronomic precondition for farmers.

Instead, DUS tests are primarily needed to define distinctive "plant groupings" in order to be able to claim plant variety certificates (PVC) - private exclusive rights – on them. Modern varieties tend to be genetically very similar due to common genealogy, and their distinctiveness – necessary to achieve private property rights - would be very hard to proof if each variety was not highly homogenous.

The draft proposal forces all PRM of "relevance" for the European Union into the concept of variety registration, no matter whether the operator wants to claim PVC or not.

This is done at the expense of public resources.

Moreover and quite opposite to promoting farmers' needs, case studies show that modern DUS criteria even exclude breeders' lines from the market - despite good results under on farm conditions and farmer's demand. Tests for registration are carried out under intensive farming conditions and the seeds are compared with industrial seeds on intensive farming conditions.

Thereby, modern variety registration discriminates against farming systems other than high input agro-industrial production: agro-ecological systems<sup>1</sup> or farmers facing harsh agro-climatic conditions.

Historically, the system of certification has been designed to improve transparency and quality on a developing seed market, starting from the 1920ies. Registration of varieties first served as a voluntary quality-label for improved breeders' varieties. It was converted into a legal obligation for the marketing of PRM during war time economy to force agricultural productivity, but often in the context of fascist ideology of separating "pure and valuable" from "inferior" material, e.g. in the German Third Reich.

However, obligatory registration and pre-market tests later on formed the basis of EG legislation on the marketing of propagating material, and the restrictive system was further expanded to promote the modernization and industrialisation of agriculture, whilst at the same time well protecting the interests of agro-industry.

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<sup>1</sup> See the Position paper of organic breeders in Europe (EcoPB) concerning the EU seed law revision process "Proposals to build more biodiversity within and between varieties for strengthening adaptability to climate change and to meet consumer demands". Jan. 2013

Despite the facts of...

... a massive loss of genetic resources within the last decades,  
... huge ecological problems caused by industrial farming systems  
... great burdens of a most complicated and expensive system of pre-market controls,  
... a massive concentration process of agro-chemical industry within the seed market

and despite the acclaimed goals of the revision itself, the recent PRM regulation draft continues with the same destructive approach.

With the new regulation, this system of obligatory registration and certification will become even more totalitarian, restrictive and overregulated than in the past.

Taking into account the most relevant changes in the new legislation and its likely effects on future availability of PRM, all concessions towards biodiversity and smaller stakeholders in the seed chain included in the draft must be regarded mere window-dressing:

- the scope of the regulation is not restricted to commercial exploitation of PRM; this change lacks any credible justification.
- even most relevant “technical details” will be specified in delegated acts, based on nebulous criteria
- very little provisions will be left in the competence of Member States rendering them unable to ensure food sovereignty on their territory
- obligatory registration shall be extended to all species of Annex 1
- the recent concept of Officially Recognized Descriptions is even more restrictive than the former concept of conservation- and niche-varieties
- farmers’ activities of exchanging seeds of their own harvest will be illegalized

Regarding it all together, after the implementation of the proposed regulation, we will within a short period of time face another massive boost of elimination of plant genetic resources and agricultural biodiversity.

The way to improve cultivated biodiversity: No mandatory registration of varieties and no certification of PRM

From our point of view, the straight forward way to enhance the regulation would be to completely replace the pillars of compulsory registration and certification by a voluntary system and exempt all small actors from the scope of the regulation.

The compulsory registration of varieties is reasoned with the goal of transparency on the market. However, transparency is easily achievable by labelling requirements similar to an operator’s label. Labelling is seen as a sufficient means of transparency for other markets like e.g. the food market, which has a much bigger potential of affecting human health. Conventionally bred well adapted Seeds and PRM have almost no intrinsic risk for human safety or health, therefore it is grossly disproportional to demand administrative procedures which have no apparent benefit for the public.

Another argument that is put forward for the maintenance of the major aspects of the present system is that it would be difficult or impossible for the users of PRM to recognise inadequacies concerning identity or quality at the time of purchase. While this may be true, it is true for most product markets - be they packaged food, construction services, travel arrangements or software. However, all these markets flourish to great diversity without any comparable regulation.

No food producer has to submit an altered recipe to an authority for approval before selling the food produced according to it. No software company has to submit its products to an authority who judges if the code is identifiable to the product and if all the methods of good software development have been thoroughly followed.

Civil Society will no longer accept a strict regulation of the PRM market based on assumptions that can easily be challenged and that caused so much damage already.

Eliminating compulsory registration and certification would render redundant the establishment and cumbersome maintenance of an Annex I. In a voluntary system, neither any differentiation between species nor any measure aimed at decreasing the harmful effects of the regulation on rare varieties or species would be needed any longer.

These advancements need a total redraft of the proposal. However, this redraft would lead to a shorter and refined text which would be the only way to really achieve a “Better Regulation”.

#### To sum up our demands and amendments:

- No obligatory registration and certification with sampling for seeds and other plant reproductive material (PRM) that is open pollinating and not protected by a private intellectual property right
- The scope of the regulation must remain limited to the marketing of PRM with a view to commercial exploitation
- The exchange of seeds and other plant reproductive material between farmers and between farmers and individuals must be excluded from the scope of the regulation
- Ensure that open pollinating varieties and seeds bred for organic farming or specific local conditions are not discriminated by any norms, procedures or plant health requirements.
- Micro and small enterprises shall only comply with basic rules concerning labelling as long as they are not dealing with GMO or with PRM protected by IPRs (Plant Variety Rights or patents).
- Ensure public transparency on breeding methods and Intellectual Property Rights associated with registered varieties and plants.
- Voluntary registration based on officially recognized descriptions shall be possible for all species and genera without restriction in time and geographic restrictions to “regions of origin”.

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#### About ARCHE NOAH

As a non-profit association of seed savers, we represent more than 10,000 members, most of them being diversity gardeners and farmers. We work on cultivated agro-biodiversity on a practical as well as an educational and political level. ARCHE NOAH promotes both *in situ* and *ex situ* conservation of “plant genetic resources for food and agriculture” – fruits, vegetables, cereals and berries. The association’s own collections include a seed collection containing 6.000 accessions, that are kept under genebank conditions, regularly regenerated, described and documented in a database. The *in situ* conservation of local and rare cultivars is carried out *on farm* and *in garden* by hundreds of seed savers, partly maintaining their own collections. The *on farm* conservation is – also from the point of view of FAO - considered vital in order to meet the requirements of long term conservation and to allow for evolutionary adaption of plants to a changing environment and farm conditions. Unfortunately, the present system as well as the current drafts of DG Sanco will make it very difficult to pursue such activities.