

# Position on the marketing of seeds, plant health and controls

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## **Position of European Coordination Via Campesina on the marketing of seeds, plant health and controls. Working document of December 5, 2012.**

At the beginning of November 2012 the European Commission presented four non-official positions (“non-papers”) outlining new regulations on the marketing of seeds and propagating material (PMR) [1], on plant health (PH), on controls and on funding. Following a consultation with governments and the services of the Commission, an official bill should be proposed to the European Council and the Parliament in the first months of 2013.

La Via Campesina Europe analyzed these documents and developed an initial position which focuses on issues connected to “seed marketing”. It might also develop positions in the future on cross-cutting aspects, including controls and the generalization of the “hygiene package” to all agricultural production.

### **THE COMMISSION MUST REWRITE ITS DRAFT IN ORDER TO TAKE INTO CONSIDERATION FARMERS’ RIGHTS AND NOT ONLY THOSE OF THE INDUSTRY**

Although still imprecise, these proposals are presented as a simplification of the regulatory framework on the market access of seeds. On the one hand, they intend to satisfy the seed industry that detains an exclusive monopoly on varieties, which are distinct (D), uniform (U) and stable (S) and are covered by Plant Variety Protection (PVP), and to which they offer the management of the European catalogue [2] as well as the registration of varieties based on an official description complying with the current catalogue, and on the other, the genetic engineering multinationals eager to see their patented genetic manipulations enter the market without having to take the time to homogenise the varieties in which they are integrated.

Only those seeds will be marketable that comply with the 1991 UPOV [3] Convention, and which may both be protected by a PVP and only contain plants that are protected by one or more patents. Only the old varieties or “varieties with no intrinsic value” registered in the catalogue of “conservation varieties” prior to the entry into force of the new regulation will be registered based on an “officially recognised description” (ORD), which is simplified and less expensive. However, no new variety, which is non (U) and non (S), will have the option of being registered. The seeds of “population” varieties developed by farmers and adapted and adaptable to changing growing conditions and climate will be banned from marketing.

These proposals constitute on the one hand an unacceptable attack on subsistence agriculture and small-scale food production as well on the right of peasants and farmers to exchange and sell their own seeds, and on the other hand, create new environmental constraints and others connected to plant health and biosafety with the aim of eliminating seeds adapted to sustainable family and organic farming, as well as to small seed companies.

Subsistence farming systems and informal systems of seed exchange between farmers have produced all the species available for cultivation, and have conserved and renewed from generation to generation all of agricultural biodiversity, which forms the basis of modern breeding. Banning all the varieties that have not been registered would make the vast majority of local varieties conserved disappear forever.

These assaults on the rights of farmers and the right to food are designed for export. Indeed for the past 50 years Europe has been a laboratory for seed laws that it subsequently imposes on the entire planet through free trade agreements. Europeans must refuse these laws not only for themselves, but for all peoples of the world.

### **1) The access to seeds intended for small-scale farming directed to local food production must remain an inalienable human right**

Mechanised agriculture, the only sector using industrial seeds, is only practiced by less than 10% of farmers around the world. Three-quarters of the food produced on the planet comes from subsistence farming and small-scale food production intended for self-consumption and local markets. This agriculture is very diversified and economical. It is not interested in industrial seeds intended for cash-crop monocultures that are very demanding in chemical inputs and geared to the global market. The industry's propaganda wants to reduce European subsistence farming and small-scale food production to the folkloric use of a few "old varieties" by "hobby gardeners". Yet the millions of small farmers from eastern European countries that have recently acceded to the European Union do not cultivate for their pleasure, or for export to the global market, but to feed the local population. Today they are being joined by the Irish, Greek, Spanish and Portuguese people, who have been thrown out onto the street by the financial crisis and who occupy abandoned land to feed themselves.

No legislation on the marketing of seeds or on industrial property (PVP and patent) anywhere in the world has ever dared to restrict access to seeds intended for small-scale farming directed at local food production. Current European regulations also limit themselves to the production and marketing of seeds intended for commercial agriculture (marketed for "the purposes of commercial exploitation"). For several years, the industry has been using propaganda orchestrated around frivolous legal proceedings against the marketing of seeds of old varieties in order to attempt to cancel the right to sell seeds of varieties not registered in the catalogue and used in subsistence farming for the purposes of small-scale food production. The "non-paper" wants to satisfy the industry in this. As simplified as they may be, the proposed costs, bureaucracy and registration standards would lead to the disappearance of tens of thousands of old and current farmers' varieties that guarantee the right to food of the poorest populations. Indeed, these populations do not have the financial means to buy every year seeds protected by industrial property titles, which would be the only ones remaining on the market alongside some old varieties soon to become outdated, or to purchase inputs necessary for their culture. Is this evolution of rules on marketing the premise of the same evolution of rules on industrial property on seeds ? Extended to the global level, it directly targets millions of small farmers who resist land grabbing by multinationals : without farmers' seeds, they can no longer feed themselves.

The marketing of old or new, non-GM, freely reproducible seeds for the purposes of small-scale farming intended for local food production must continue to be exempt from any obligation of certification or official registration. For this purpose, the scope of the regulation connected to the "catalogue" should remain as it is today, namely limited to the marketing of seeds "for the purposes of commercial exploitation." The variety only needs to be registered on a publicly accessible list held by and under the responsibility of the operator to avoid any confusion about the designation of other varieties. Minimal obligations relating to germination capacity, specific and varietal purity (except

for mixtures) and basic health precautions shall be sufficient to ensure the fair and honest character of marketing activities of these seeds.

## **2) Guarantee the right of farmers to exchange and sell their own seeds**

This right is enshrined in the International Seed Treaty [4] ratified by the European Union in order to protect the activity of farmers who participate in the conservation of agricultural biodiversity in their fields. The selection and dynamic management of on-farm cultivated biodiversity are not commercial activities. They are not subject to current European laws that are limited to the marketing of seeds, against payment or free of charge, “for the purposes of commercial exploitation”. The production of these farmers’ seeds is essential to allow for the adaptation of crops to climate change and to new requirements for the reduction of chemical inputs. It guarantees the autonomy of farmers and peoples in the face of the domination by a few seed companies. The “non-paper” wants to subject this autonomy to the good will of gene banks controlled by seed corporations that only accept ex situ conservation in cold storage rooms or else through digitization, and who oppose any notion of dynamic on-farm conservation.

Networks of in situ conservation must remain outside the scope of laws on the marketing of seeds. And along with them all “in-kind” exchange of seeds between farmers who contribute, through their agricultural production, to the local adaptation of varieties, the selection, conservation and / or dynamic management of agricultural biodiversity. In accordance with its purpose as defined in Article 1, the regulation on PMR should apply only to operators who produce plant reproductive material intended to be placed on the market and / or to be sold. It should be clear that the farmers who produce their own plant reproductive material and exchange it in-kind, free of charge or for a fee, directly with other farmers, without commercial intermediaries or a public offer of marketing, are not operators to whom the PMR law applies.

## **3) Open up the catalogue to traditional and new population varieties adapted to sustainable family farming and organic farming**

The “non-paper” introduces a new definition of variety based on the 1991 UPOV Convention, imposed on all registrations and which excludes population varieties. Indeed, the only eligible varieties are those with characteristics defined by a genotype (pure lines) or a certain combination of genotypes (F1 hybrids or synthetic populations). These standardized varieties cannot adapt to soil diversity or climate variability without significant recourse to chemical inputs. Their monopoly is a serious break to the development of sustainable family farming and organic farming. Registration based on ORD, which does not impose the criteria of U and S, can only allow the registration of population varieties if it must not comply with this definition of UPOV.

In addition, registration based on ORD must not be limited to old varieties, but remain open to new local, farmers’ and population varieties, adapted to new growing conditions that will be imposed on farmers, in particular with the amplification of climate change. Varieties adapted to particular growing conditions, and not a region of origin or of specific adaptation, must continue to have access to registration based on ORD. Their maintenance should not be limited to a particular region. In addition, the requirement to control environmental risks and risks connected to plant health exclusively through genetics, biological sterilisation and/or chemical treatment of the seeds amounts to negate the important capacities of sustainable family farming and organic farming to control diseases and respect the environment through good agricultural practices.

Registration based on ORD without the requirement of DUS and VCU must be open to population varieties defined by their characters resulting from varying combinations of several genotypes. It should not be restricted to varieties marketed prior the publication of the regulation, but remain

open to any new variety, whether local or adapted to particular growing conditions. Only local varieties connected to a specific region should be maintained in their region of origin, unless this is technically impossible (i.e. important need for isolation in the case of cross-pollinated species). Seeds of all the species belonging to these varieties must be sold in the “standard” category, without certification requirement. Plant health and environmental standards of an agriculture based on chemical inputs should not be imposed on subsistence farming and organic agriculture. PH Regulation must include specific items for that.

#### **4) Stop patented and genetically manipulated varieties and plants**

Current regulations guarantee exclusive access to the seed market for uniform (U) and stable (S) varieties that can be protected by PVP. Non (U) and (S) varieties can be patented, but they can currently only be cultivated under an inclusive contract [5] without an exchange of the title on the seeds and crop. In addition, patent holders on genetic modifications to plants want to market their innovations without being forced to go through the long period of multiplications implied by the uniformity and stability of varieties. They should not be able to enter the market through the new registration procedure based on ORD, which is no longer subject to the obligations of U and S.

On the other hand, many consumers in the organic sector and elsewhere reject any genetic modification that violates the integrity of the plant cell, including not only transgenesis which is now labelled, but also mutagenesis and cell fusion, as well as any other technique leading to a genetic modification that does not occur naturally through multiplication and/or natural recombination.

Registration based on ORD should be reserved for freely reproducible non-GM varieties, and closed not only to any variety protected by a PVP, but also patented varieties or plants that are covered by patents. Registration must be accompanied by an obligation to disclose information on the particular method of genetic modification used [6].

#### **5) Fight against biopiracy**

The PVP partially meets the requirements of benefit-sharing under the Convention on Biological Diversity by leaving the new protected variety free for creating new selections. This requirement is not completely respected because since the 1991 UPOV Convention and EU Regulation 2100/94, it prohibits or restricts the free use of farm-saved seed. The patent does not meet any of these obligations. Instead, it prohibits reuse of seeds and plants to which its protection applies. In the current framework, which imposes no information on the genetic resources used, it is impossible to apply the obligations of the Nagoya agreements, in particular whether the obligations of prior informed consent and benefit-sharing have been met.

Any registration not accompanied on the one hand by accurate information on all forms of industrial property that may apply to plants of the variety (PVP on varieties or patent on plants) as well as on the plant genetic resources used for creating the new variety, and on the other hand, by evidence of compliance with prior informed consent and benefit-sharing shall exclude all restriction on reusing freely a variety in order to select another and on marketing it, or on farm-saved seed [7].

#### **6) Protect human health and the environment**

The competent authorities should be able to refuse to register a variety if it poses a risk to human, animal or plant health, or the environment. National authorities must, for the same reason, be able to refuse the marketing of seeds and the cultivation on their territory of seeds belonging to varieties listed in the European catalogue.

## **7) Do not divert health safety rules to strengthen ownership of seeds by industrial property rights**

Laws for the protection of industrial property leave the burden of proof of any infringement to holders of the title. In the absence of presumption of infringement, farmers have no obligation to inform breeders. The choice of varieties is indeed protected by the right to privacy of personal and professional information. The traceability requirements for seeds imposed on operators for reasons of health safety (Article 57 of Regulation PH) should not be diverted from their purpose by the competent authorities who have access to this information. The information should not be transmitted to holders of industrial property title. The absence of guarantees of non disclosure of the information could incite farmers to fail to meet the plant health requirements.

## **8) Maintain a public registration and control service within financial and technical reach of small operators**

The management of the European catalogue is entrusted to the European Union's Community Plant Variety Office (CPVO) that manages PVP. It will be able to register varieties directly at the European level (List A) and supervise national registration (list B). Registration at the European level cannot take into account local ecosystems. This would benefit very large companies that want to flood the European market with the same varieties that have "no roots" in a specific territory, dependent on inputs and totally disconnected from soils. Such varieties do not fulfil the objective of reducing inputs, of local adaptation to climate change and biodiversity.

The "non-paper" and organizes a full and definitive privatization of public services connected to registration and control. The new procedures of self-registration, self-control and self-issuance of health certificates "under official control" are only accessible to large operators who can recoup on large quantities of marketed seeds the costs for the required equipment (certified trial plots and laboratories), the hiring of authorized qualified personnel, and the multiplication of analyses. If public services are deserted by large operators, they will not be able to remain in place and will be replaced by certifying bodies set up by the seed industry. The commercial dependence of these certifying bodies financed primarily by their most important clients opens the door to all kinds of abuses. Small operators unable to meet required standards will be held first responsible for the slightest commercial or health incident, without any possible recourse, on the mere grounds of not having been able to implement the imposed risk management measures.

Variety registration should not be done at European level, but only at the national level. Certification must remain an official mission performed directly by the competent authorities and not by private operators. The registration of varieties and the quality control of seeds must remain a public service that is accessible to all, and free of charge for freely reproducible varieties and seeds, obtained and produced in a manner that occurs naturally by multiplication and/or by natural recombination, and exempt of all industrial property title. Health, biosafety and traceability requirements must be proportionate to the size of companies to which they apply.

## **European Coordination Via Campesina**

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\* <http://www.eurovia.org/spip.php?article711&lang=fr>

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## Footnotes

[1] Hereafter, the term “seeds” stands for “seeds and propagating material”.

[2] Entrusted to the Community Plant Variety Office (CPVO) responsible for the registration and control of PVP.

[3] International Union for the Protection of New Varieties of Plants.

[4] International Treaty on Plant Genetic Resources for Food and Agriculture (IT PGRFA).

[5] As described in article 2- 1) a) of EC directive 2002/55.

[6] We demand a ban on PVP as defined in the European regulation 2100/94, and on all forms of patents on the reproduction of life forms and transgenic plants. We demand a plant health related, environmental and socio-economic evaluation of all other technologies of gene manipulation. If this evaluation authorises some of these technologies, we demand a mandatory labelling of seeds and products originating from it. These bans and regulations depend on the amendment of other regulations on intellectual and industrial property rights (IPR) and on biosecurity that must still be achieved.

[7] See note 6