



EUROPEAN COMMISSION

Brussels, 22.10.2013
C(2013) 6999 final

Dear President,

The Commission would like to thank the Tweede Kamer for its Reasoned Opinion concerning the Proposal for a Regulation of the European Parliament and of the Council on the production and making available on the market of plant reproductive material {COM(2013) 262 final}.

The Commission has taken note of the view of the Tweede Kamer that the proposal does not comply with the principle of subsidiarity.

In reply to this, as well as to other not directly subsidiarity-related observations and suggestions of the Tweede Kamer, the Commission would like to provide the following clarifications.

Requirements for registration of varieties

It is in the interest of breeders, farmers and society in general that new varieties, of particular species important for agricultural development (listed in Annex I of the proposal), satisfy particular quality and health conditions and are in line with international standards. Those varieties must therefore be proven to be distinct, uniform and stable (DUS) in order to ensure the confidence and interests of their users.

The proposal takes into account the particular case of traditional varieties and their multi-functional role for local societies and biodiversity (for the purpose of the proposal those varieties are referred to as varieties with 'officially recognised description'). Therefore, the proposal introduces very light requirements for the registration of those varieties if made available on the market before the entry into force of that draft Regulation. In particular, and as set out in Articles 10(3) and 57, any such variety must only fulfil the following conditions:

(a) it has a description which has been recognised by a competent authority, and makes that variety identifiable by indicating the specific characteristics of the variety;

(b) it is produced in the region(s) of its origin;

*Ms Anouchka VAN MILTENBURG
President of the Tweede Kamer
Postbus 20018
NL – 2500 EA DEN HAAG*

(c) it is not registered in any EU register as variety with official description, namely as variety subject to official testing for DUS.

Those conditions ensure that traditional varieties are not subject to any DUS or VCU (Value for Cultivation and Use) testing. The proposal would ensure that those varieties remain produced in their regions of origin, thus keeping their local character. According to Article 88 of the proposal, their registration would be subject to reduced fees, while no annual fees for their inclusion in the register and maintenance will be imposed. Moreover, and according to Article 89 of the proposal, micro-enterprises, which are usually involved in the production and marketing of those varieties, would be exempted from any fee for that registration.

Traditional varieties already accepted in accordance with Article 3 of Directive 2008/62/EC or Article 3(1) of Directive 2009/145/EC would be automatically registered in the national variety registers as varieties provided with an officially recognised description, without any further requirements.

It should be further noted that the registration of traditional varieties, which is linked to an obligation to maintain those varieties, contributes to the prevention of their loss. This is an important development, taking into account the big number of varieties which have disappeared over the last century.

Moreover, and in line with the subsidiarity principle, registration of varieties would continue to be carried out by competent authorities in national variety registers. Once a variety is registered in a national variety register, it can be freely marketed throughout the Union without any further requirements. However, breeders, and any other applicants, would also have the option to directly register their varieties in a Union variety register, in case they consider that this would better serve their interests. This option would only be possible for varieties with official description on the basis of a DUS test (see Articles 50, 51 and 56).

Finally, it should be highlighted that it would be possible to produce and market niche market material, as defined in Article 36 of the proposal, without belonging to a registered variety. This exemption would allow the placing of material by amateurs or micro-enterprises on markets which are usually local markets. Such a provision is seen as more proportionate and suitable to serve the principle of subsidiarity.

All those provisions are necessary to ensure equal conditions for competition among the operators concerned throughout the Union. They are also necessary to ensure that all users of those varieties in the Union, including farmers or final consumers, enjoy the same level of information and confidence in the products that they use, as well as a high level of quality of plant reproductive material. Therefore, those provisions should be adopted through an EU Regulation, as the above objectives could be better achieved at EU level rather than through individual national or regional measures.

In conclusion, the requirement for the registration of varieties is proportionate and appropriate for the purpose of offering informed choices to their users, while ensuring their recording and maintenance, through registration under very light requirements. Those objectives could be better achieved through an EU Regulation, as traditional varieties are equally important and sensitive throughout the Union. However, the amount of the

registration fees should be determined by the Member States pursuant to the principle of subsidiarity.

Exemption of fees for micro-enterprises

The exemption of micro-enterprises from fees for official controls and registration of varieties is in line with the general Union policy to support those enterprises due to their particularly small size. It will be the obligation of the Member States to properly implement those rules, and also control their implementation by stakeholders, to prevent that some enterprises might engage into inappropriate practices, as the ones described in the opinion of the Tweede Kamer. It should be further noted that, in the Commission's view, exemptions for micro-enterprises should better be established at Union level in order to guarantee the same benefits for all enterprises concerned and to ensure a level playing field throughout the internal market.

Legal bases for implementing and delegated acts

The proposal would replace 12 Directives on the production and marketing of seeds and propagating material. Those Directives have already been used as legal bases for the adoption of approximately 90 implementing acts setting out technical requirements. This already constitutes an extensive acquis.

The new proposal covers a wide area of plant reproductive material, ranging from agricultural seeds to vegetables, vine, fruit plants, ornamental plants and forest reproductive material. Therefore, its text should only cover the basic rules and principles concerning those areas. More specific and technical matters concerning particular sectors, such as species, uses of species or categories of material, should only be adopted, as appropriate, through implementing or delegated acts. Those acts would be adopted after taking into account the scientific and technical developments at Union and international level. It should be further noted that the power conferred upon the Commission for the adoption of those acts is subject to control by Member States, in the case of implementing acts, and the Council and the European Parliament, in the case of delegated acts, as set out by Articles 290 and 291(2) of the Treaty on the Functioning of the European Union.

Finally, it should be noted that also the current legislation leaves the specification of technical details to measures adopted by the Commission.

Conclusions to the subsidiarity related observations of the Tweede Kamer

Taking into account all the above points, the Commission believes that its Proposal fully complies with the principle of subsidiarity; it aims at ensuring informed choices for all users of plant reproductive material and high quality of that material throughout the market chain. At the same time, the proposal offers flexible provisions to allow for exemptions or lighter requirements for traditional varieties and micro-enterprises. That approach serves the principle of proportionality and also the need to regulate matters that can be achieved better at EU level rather than at national level, such as guaranteeing a level playing field for operators and assuring the protection of consumers' interests. Finally, it should be noted that the proposal is supported by the results of an impact assessment based on an extensive consultation with Member States and stakeholders.

Further remarks regarding the consultation of the organic sector on the proposed Regulation on official controls {COM(2013) 265 final}

Operators and authorities of the organic sector are currently under the obligation to comply with rules on official controls provided for in two different sets of Union legislation: The general provisions of Regulation (EC) No 882/2004 on official controls and the specific official control provisions as described in Articles 27 to 31 of Regulation (EC) No 834/2007 on organic production and labelling of organic products. The proposal on official controls only aims to tackle these gaps and overlaps in requirements across the general and the sector specific provisions related to official controls. Potential changes of the latter may stem from the on-going review of the Union's legal framework on organic production. Stakeholders of the organic sector participate actively in the review process through different actions including a public consultation that took place from January to April 2013, a series of hearings and specific discussions within the framework of the Advisory Group on organic farming. The conclusions of the review process will inter alia feed the secondary acts on sector specific official control rules foreseen by the proposal on official controls.

The Commission hopes that these clarifications address the concerns raised in the Reasoned Opinion of the Tweede Kamer and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*