

Reform of the Seed Marketing Law Assessment of the EU Commission proposal from the perspective of on-farm conservation

The Umbrella organisation for cultivated plant and livestock breed diversity is an association of 25 organisations in Germany, Austria, Luxembourg and Switzerland. As stakeholders in on-farm conservation, we refer to an information sheet "Cultivated plant diversity - a description" for a better understanding of our objectives and activities:

<https://kulturpflanzen-nutztiervielfalt.org/sites/kulturpflanzen-nutztiervielfalt.org/files/Description%20Cultivated%20Plant%20Diversity%20DV-RMRM-SEED%2022.3.2023.pdf> (2 pages)

The EU Commission's aim of exempting the conservation and sustainable use of agricultural plant genetic resources from the new seed legislation is welcome. However, the umbrella organisation criticises planned regulations in the EU Commission's proposal 2023/0227(COD) dated 5th July 2023, that could lead in the opposite direction, namely to a further loss of cultivated plant biodiversity.

Both approaches to preserving this diversity could be affected: In addition to more difficult working conditions for ex-situ conservation in gene banks, our umbrella organisation identifies considerable weaknesses in the Commission's proposal, particularly with regard to on-farm conservation by farmers and gardeners, and thus a fundamental need for improvement of the proposal.

Market rules are inappropriate for preserving cultivated plant diversity

The new EU seed legislation proposed by the European Commission aims, among other things, to preserve plant genetic resources diversity. The International Seed Treaty (ITPGRFA) and UNDROP are decisive here, and their appropriate implementation is a priority. A seed marketing regulation can only make a contribution through suitable exceptions for diversity initiatives, nothing more.

The sale of seeds and seedlings is an integral part of on-farm conservation, as is the exchange of knowledge and experience on cultivated plant diversity. On-farm conservation is culturally and socially recognised as necessary work. It must not be jeopardised by a seed marketing legislation.

The proposed exemptions are not sufficient for on-farm conservation

With regard to the recognised shortcomings in the EU Commission's exemption proposals, the umbrella organisation proposes the following improvements:

1. Exceptions for genebanks, organisations and networks, and also for micro-enterprises and individuals

Gene banks, organisations and networks represent ex-situ conservation and part of in-situ / on-farm conservation. Unfortunately, the term on-farm conservation is not even mentioned in the Commission draft.

- a. In order to adequately cover on-farm conservation, the exemptions for gene banks, organisations and networks should also apply to micro-enterprises and individuals.
- b. Gene banks, organisations and networks count as "professional operators" in the current proposal. However, they would have to be completely excluded from the regulation as actors of diversity conservation, as would micro-enterprises and individuals.
- c. According to the draft, organisations and networks, just like gene banks, should fulfil a list of requirements and obligations that could jeopardise their existence. ECPGR, an EU project to support gene bank cooperation, calls for a complete exemption, referring to the FAO's Second Global Plan of Action for the Conservation of Genetic Resources. This plan, as well as the underlying FAO Seed Treaty, also applies to on-farm conservation.

2. Informal varieties

The sale of seed of unauthorised varieties is already officially permitted in some member states via quantity regulations. In other member states where informal - officially unauthorised - varieties are politically recognised as important, the sale of these seeds has been possible for decades.

However, the Commission proposal now provides for barriers to the sale of seed of informal varieties that jeopardise the progress that has been made:

- a. Anyone who sells informal varieties on a professional basis will in future have to report on species and quantities. This is an unreasonable effort. The purpose is not clear. It likely that micro-enterprises and individuals would give up their professional on-farm conservation or not even start at all. However, plant genetic resources needs on farm-conservation, as the FAO Seed Treaty confirms.
- b. Informal varieties would only be allowed to be sold to end users, without exception. Many small projects, such as Community Supported Agriculture, or commercial nurseries trying out diversity varieties for local markets or restaurants, would only be able to purchase seed of registered varieties. Producers of diversity seed, who primarily produce for hobby gardens, would have to register the informal varieties in advance in order to sell them to commercial nurseries. This effort is also a deterrent. The politically desirable development of value chains for variegated varieties would be nipped in the bud.

If the political will to develop value chains with diversity varieties on regional markets is actually to be realised, then there must be consistent facilitation for their small-scale seed producers and informal varieties, but not new obstacles.

3. Conservation varieties and heterogeneous material

The two proposed variety authorisation windows are intended for commercial cultivation.

The authorisation conditions for conservation varieties have been further developed from the two directives for "amateur varieties" and "conservation varieties". So far, these two directives have been used very little due to the associated procedures, but at least organic varieties are marketed to some extent. The conditions should be further improved.

The authorisation conditions for "heterogeneous material" were developed following the failure in 2014 of the seed law reform, for organic heterogeneous material and laid down in the organic regulation (EU) 2018/848. In the Commission's draft, they are to apply with heavier rules. This would be a step backwards for organic farming.

We refer to the position of the Umbrella organisation for organic plant breeding in Germany Dachverband ökologischer Pflanzenzüchtung in Deutschland e.V.) .

4. Exchange in kind between farmers

The EU Commission's proposal provides for special regulations for farmers. They would only be allowed to exchange their own harvested seed, but not to sell it. This contradicts the FAO Seed Treaty (ITPGRFA) and UNDROP. The traditional right to sell seeds from one's own harvest is internationally recognised as part of farmers' rights.

The objectives of the FAO Seed Treaty (ITPGRFA) and the UN Declaration on the Protection of the Rights of Small Farmers and Other People in Rural Areas (UNDROP) would be thwarted by the EU Commission's proposal.

We refer to the statements of the European Confederation of La Via Campesina (ECVC).

The Plant Protection Regulation is disproportionate in relation to on-farm conservation

Concerns about plant health are cited as an argument against a complete exemption for diversity varieties from the proposed seed and planting material regulation. This should be addressed objectively.

The assumption that individuals and microenterprises who produce and sell seed of diversity varieties could pose substantial risks to plant health is addressed in the preliminary studies of the draft regulation, but facts about outbreaks of pathogens in their gardens or fields are not provided.

The fact that phytosanitary risks are more likely to emanate from large-scale, chemically managed monocultures than from easily manageable, intensively monitored mother plants of rare varieties is also not mentioned.

An obligation for professionally engaged seed savers to register as "professional operators" would imply strict submission to the Plant Health Regulation (2016/2031/EC).

However, the provisions of the Plant Health Regulation pose a risk to on-farm conservation and can even lead to direct losses of genetic resources. Obligations include official operator registration, risk identification plans, plant passports, traceability provisions, reporting and others. This would be neither reasonable nor feasible for biodiversity operators who grow only small quantities of a large number of species and varieties on small plots of land. The planned burden of obligations would not be sustainable for diversity actors and would discourage on-farm conservation of diversity.

The phytosanitary obligations apply to web shops ("distance selling"), but not to events such as seed festivals ("direct selling"). During the corona crisis, the sale of seeds from on-farm conservation focused on online shops. Distance selling increased, but the amounts a single person can produce with artisanal means remained small.

For more information, see our letters to the EU Commission on the occasion of the evaluation of the plant passport: 25 November 2021 [Letter to the EU Commission regarding Evaluation of Article 79 \(Plant Passport\) of the Plant Health Regulation 2016/2031 / EU](#) and 6 May 2021 [Reply of the Umbrella Organisation to the EU Evaluation questionnaire re Plant Health Regulation](#)

Some phytosanitary obligations apply to every EU citizen. Supplemented with targeted information, they would work well and be perfectly adequate, especially for individuals and micro-enterprises that propagate diversity varieties. This would minimise obstacles to their on-farm conservation and even strengthen their own interest in identifying and avoiding phytosanitary risks.

Two petitions in several EU Member States call for farmers of diversity varieties to be exempt from registering and applying for plant passports if they use web shops. One was signed by more than 4,000 citizens, the other by more than 10,000:

<https://www.openpetition.eu/petition/online/making-seed-savers-register-could-slash-the-saving-of-seeds> and <https://www.openpetition.eu/petition/online/free-seed-exchange-for-savers-of-seed-diversity#petition-main>

Our umbrella organisation is convinced that an objective consideration of the risks to plant health on the one hand and the importance of on-farm conservation of cultivated plant diversity on the other is necessary and expedient. In order not to jeopardise on-farm conservation, the Plant Health Regulation should allow sales via web shops without a plant passport by professionally engaged individuals and micro-enterprises for the purpose of on-farm conservation.

The draft seed marketing law is still completely lacking a suitable derogation on this topic.