

**Draft working paper of the Commission services Nr 8,
does not necessarily reflect the position of the Commission,
for consultation of experts of Working Party on legislation on Seeds and
Plant Propagating Material only**

**Review of legislation on marketing seed and plant propagating material,
11 April 2011**

Issue: Scope and definitions of Regulation on plant reproductive material

1. Article 1(1) and 2(p. a-c): The new Regulation will repeal and replace 12 Directives covering production and marketing of various categories of seeds, propagating material, fruit plants and forest reproductive material. It should therefore be necessary to define the scope in such a way as to include all species regulated by the current legislation. For this reason, the new legislation should cover "*the placing on the market and the production, with a view to placing on the market, of plant reproductive material*" (hereinafter: "reproductive material").

In order to cover all species currently regulated by the legislation, it would be necessary to define 'plant reproductive material' in the most comprehensive possible manner ('plants for planting'). For this purpose it would be appropriate to use the terms of 'plant' and 'planting' as currently defined in Dir. 2000/29/EC (plant health law) in order to ensure consistency between the two pieces of legislation. Such a term would indeed cover seeds, fruit plants, forest reproductive material and other propagating material.

2. Article 2(3)(d): The production of certain species of reproductive material takes place in close systems and is intended directly for processing in specific industrial facilities (e.g. potatoes for starch production or beet for sugar). It should thus be considered whether this kind of production should be excluded from the scope of the current legislation.

3. Article 2 (e): It should be considered whether the term 'supplier' should be kept or replaced by terms used in other legal acts (e.g. 'operators').

4. Article 2(h): For the definition of 'variety' it would be consistent to select the UPOV definition. It would not be necessary to define material not belonging to varieties, such as 'landraces', as they would be subject to the general requirements.

5. Article 2 (i-l): Four categories of material should be introduced: pre-basic, basic, certified and standard ('standard' should replace 'CAC' or 'commercial'). The definitions of the draft text are based on existing legislation.

6. Article 2 (p-q): It is important to define 'official description' and 'officially recognised description', in order to make a differentiation between the official description of the identity of a variety subject to DUS test and 'officially recognised description' of varieties or other material without an up to date DUS test.

7. Article 2(r): Specific definitions should apply for forest reproductive material.

Annex
Chapter X of the draft Regulation on plant reproductive material

CHAPTER X
GENERAL PROVISIONS

Article 1
Subject matter, purpose and scope

1. This Regulation lays down rules for the placing on the market and the production, with a view to placing on the market, of plant reproductive material (hereinafter 'reproductive material') within the Union.
2. The purpose of this Regulation is to:
 - a) provide the basis for the assurance of qualitative and healthy reproductive material;
 - b) provide information to the users of reproductive material to facilitate them in making informed choices;
 - c) ensure the effective functioning of the internal market;
 - d) support a wide offer of material for planting;
 - e) contribute to the sustainable development of agricultural, horticultural and forest production, and to halting the loss of biodiversity.
3. This Regulation shall apply to the placing on the market and the production, with a view to placing on the market, of all reproductive material.

It shall not apply to:

- a) reproductive material intended for exporting to third countries;
- b) small quantities of reproductive material of generations prior to pre-basic material;
- c) testing of reproductive material for scientific purposes;
- d) reproductive material intended for cultivation directly for processing..

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- a) 'plants' means (*reference to definition of new plant health law, which will include parts of plants and planting material*)¹

¹ For the purposes of this Directive [Council Directive 2000/29/EC]:

(a) *plants* shall be considered to mean: living plants and specified living parts thereof, including seeds;

living parts of plants shall be considered to include:

- fruit, in the botanical sense, other than that preserved by deep freezing,
- vegetables, other than those preserved by deep freezing,
- tubers, corms, bulbs, rhizomes,

- b) 'planting' means (*reference to definition of new plant health law*)²;
- c) 'plant reproductive material' means plants for planting, including seeds and rootstocks;
- d) 'placing on the market' means the holding for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves, but not the return to the previous seller;
- e) 'supplier' means any natural or legal person carrying out professionally at least one of the following activities with regard to reproductive material: reproducing, producing, preserving, treating and placing on the market;
- f) 'competent authority' (definition to be aligned with the one indicated under the Regulation amending Reg. 882/2001);
- g) 'official/inspection body' (same as for (f));
- h) 'variety' means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, can be
- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
 - distinguished from any other plant grouping by the expression of at least one of the said characteristics and
 - considered as a unit with regard to its suitability for being propagated unchanged;
- x) clones for fruit plants and vine?
- i) 'pre-basic material' means plant reproductive material which:
- (i) has been produced, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant characteristics and for the prevention of diseases;
 - (ii) is intended for the production of basic material or certified material; and
 - (iii) satisfies the specific requirements for pre-basic material established pursuant to Article x (specific requirements for marketing of pre-basic, basic and certified material);
- j) 'basic material' means plant reproductive material which:

— cut flowers,
 — branches with foliage,
 — cut trees retaining foliage,
 — leaves, foliage,
 — plant tissue cultures,
 — live pollen,
 — bud-wood, cuttings, scions,

— any other part of plants, which may be specified in accordance with the procedure referred to in Article 18(2).
 Seeds shall be considered to mean: seeds in the botanical sense, other than those not intended for planting;

² *planting* shall be considered to mean: any operation for the placing of plants to ensure their subsequent growth, reproduction or propagation

- (i) has been produced either directly or in a known number of stages from pre-basic material, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant characteristics and for the prevention of diseases;
 - (ii) is intended for the production of certified material; and
 - (iii) satisfies the specific requirements for basic material, established pursuant to Article x (specific requirements for marketing of pre-basic, basic and certified material);
- k) 'certified material' means plant reproductive material which:
- (i) has been produced directly from basic material or pre-basic material or, if intended to be used for the production of rootstocks, by certified seeds from basic or certified material of rootstocks;
 - (ii) is intended for the production of plants;
 - (iii) satisfies the specific requirements for certified material, established pursuant to Article x (specific requirements for marketing of pre-basic, basic and certified material);
- l) 'standard material' means plant reproductive material which:
- (i) [has been produced directly from certified, basic or pre-basic reproductive material;]
 - (ii) is intended for the production of plant reproductive material and/or the production of plants;
 - (iii) satisfies the specific requirements for standard material established pursuant to Article x (specific requirements for marketing of standard material);
- m) 'official supervision' shall mean the act by which a competent authority (or any other official body?) delegates the tasks provided for in this Regulation to be accomplished under its authority and supervises these within the scope of the particular delegation;
- n) 'official inspection' (*definition to be aligned with Regulation succeeding Reg. 882/2004*);
- o) 'genetically modified organisms' means organisms in which the genetic material has been altered within the meaning of Article 2(2) of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms³;
- p) 'official description' shall mean
- a description, including the denomination, produced by a competent authority or any other official body on the basis of the results of official technical examination or technical examinations under official supervision, covering a sufficient number of characteristics for the variety to be described as regards distinctness, uniformity and stability; or

³ OJ L 106, 17.4.2001, p.1

- for varieties protected by plant variety right, a description verified by a competent authority or any other official body in accordance with provisions on the protection of plant variety rights.
- q) 'officially recognised description' shall mean a description, including the denomination, which:
- has not been produced or verified by any competent authority or any other official body;
 - at the time of first marketing, has been recognised as acceptable by a competent authority or any other official body in compliance with the relevant rules of the Member State or recognised as produced by a scientific/academic body;
 - is supported by the results of previous official inspections, unofficial examinations or knowledge gained from practical experience during cultivation.
- r) In the case of forest reproductive material⁴:
- (i) 'basic material' means:
- (1) Seed source: trees within an area from which seed is collected;
 - (2) Stand: a delineated population of trees possessing sufficient uniformity in composition;
 - (3) Seed orchard: a plantation of selected clones or families which is isolated or managed so as to avoid or reduce pollination from outside sources, and managed to produce frequent, abundant and easily harvested crops of seed;
 - (4) Parents of family: trees used to obtain progeny by controlled or open pollination of one identified parent used as a female, with the pollen of one parent (full-sibling) or a number of identified or unidentified parents (half-sibling);
 - (5) Clone: group of individuals (ramets) derived originally from a single individual (ortet) by vegetative propagation, for example by cuttings, micropropagation, grafts, layers or divisions;
 - (6) Clonal mixture: a mixture of identified clones in defined proportions;
- (ii) 'source identified material' means material derived from basic material which may be either a seed source or stand located within a single region of provenance and which meets the requirements established pursuant to Article x (...);
- (iii) 'selected material' means material derived from basic material which shall be a stand located within a single region of provenance, which has been phenotypically selected at the population level and which meets the requirements established pursuant to Article x (...);
- (iv) 'qualified material' means material derived from basic material which shall be seed orchards, parents of families, clones or clonal mixtures, the components of which have

been phenotypically selected at the individual level, and which meets the requirements established pursuant to Article x (...);

(v) 'tested material' means material derived from basic material which shall consist of stands, seed orchards, parents of families, clones or clonal mixtures, its superiority must have been demonstrated by comparative testing or an estimate of the superiority of the reproductive material calculated from the genetic evaluation of the components of the basic material, and which meets the requirements established pursuant to Article x (...).