



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

**EXECUTIVE SUMMARY**

**COMMISSION STAFF WORKING DOCUMENT**

**Study on the Union's options to update the existing legislation on the production and marketing of plant reproductive material**

**SWD(2021) 90**

The Council requested under Article 241 of the Treaty on the Functioning of the European Union (TFEU), through Council Decision (EU) 2019/1905 of 8 November 2019<sup>1</sup>, the European Commission (the ‘Commission’) to submit a study on the Union’s options to update the existing legislation on the production and marketing of plant reproductive material (‘PRM study’)<sup>2</sup>, as well as a proposal, if appropriate in view of the outcomes of the study.

The Commission study was supported by the work of an external contractor<sup>3</sup>. The following key elements have emerged from the PRM study:

- 1) The fragmented legislation, developed over several decades, causes lack of coherence between the marketing Directives and leaves room for interpretation. Such interpretation contributes to non-harmonised implementation resulting in a non-level playing field for the operators. Moreover, the legislation offers the possibility of many derogations. Member States have applied these derogations in different ways.
- 2) Complex and rigid procedures, including detailed technical requirements in the marketing Directives, hinder *de facto* technical amendments, create a cumbersome decision-making process, and put a high burden on competent authorities carrying out certification. The basic legislation does not facilitate the introduction of lighter registration requirements for traditional and locally adapted plant varieties and tree species which could contribute to seed diversity and security. Likewise, it does not facilitate the introduction of testing requirements for the development of organic varieties suitable to organic production. In addition, the legislation does not support the conservation and sustainable use of plant genetic resources and forest genetic resources, and biodiversity under the Biodiversity Strategy.
- 3) Lack of clarity of the PRM and FRM legislation and the outdated provisions cause non-harmonised implementation of the legislation. The incorporation of sustainability criteria in all sectors, including the forestry sector, which could ensure seed and food security supporting sustainable agri-food production and resilient forests is impeded. The rigidity of the current legal framework complicates the creation of synergies with other policies. All of this poses difficulties to address policy issues identified in the Green Deal and its related strategies such as the Farm to Fork Strategy, the EU Adaptation Strategy on mitigating the impact of, and adapting to climate change, the new EU Forest Strategy on healthy and resilient forests and the European Digital Strategy.
- 4) The lack of a harmonised and risk-based framework for official controls and IT support systems creates a non-level playing field for official controls within the

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<sup>1</sup> Council Decision (EU) 2019/1905 of 8 November 2019 requesting the Commission to submit a study on the Union’s options to update the existing legislation on the production and marketing of plant reproductive material, and a proposal, if appropriate in view of the outcomes of the study. OJ L 293, 14.11.2019, p. 105-106.

<sup>2</sup> In principle, the term plant reproductive material (PRM) covers all types of PRM including forest reproductive material (FRM). However, to allow distinguishing between PRM and FRM, PRM will be used to identify all PRM other than FRM.

<sup>3</sup> The work of the contractor will be referred to as ‘contractor’s report’ (<https://doi.org/10.2875/406165>).

Union, limiting the ability for competent authorities to enforce risk-based measures, and to ensure an efficient use of control resources.

- 5) The current PRM legal framework (which includes also FRM) does not allow taking account of all technical and scientific developments. The rigidity of the regulatory framework may create barriers for the market access of PRM and FRM and new production processes obtained through scientific and technical progress. The current rules impede the use of scientific and technical developments that could support the production and registration of PRM and FRM and the certification of PRM.

The results of this study confirm that the main findings of the 2007-2008 evaluation and impact assessment, on which a previous Commission proposal was based, remain generally valid.

However, since 2013, there have been new technical developments in the seed production and breeding sector, several research activities on breeding, conservation varieties and organic PRM, an increasing demand for sustainability in agriculture and the increasing need for conservation of agrobiodiversity and adaptation to climate change.

This study has therefore identified new challenges beyond confirming the already existing ones. The possible follow-up to this study should identify the most appropriate policy approach, and elaborate and assess the possible options identified for amending the current legal framework. The legislation should be modernised and comprehensive, reflecting the developments that have occurred in the sector. It should be uniformly applied, efficient and effective, more open to integrate new and future developments, sustainable, more supportive of biodiversity and climate proof.

This study presents the following possible options for updating the legislation on the production and marketing of PRM and FRM.

- **Option 0: Do nothing:** no change in the current situation; focus on implementing the legislation in a way, which takes into account the objectives of the Green Deal and the Farm to Fork Strategy.
- **Option 1: Improve procedures and coherence of the legislation, and introduce *ad hoc* measures to increase sustainability.**

This option would include amendments to the Directives to align their structure and decision-making procedures, as well as to introduce measures in support of sustainability.

- **Option 2: Flexibility to adapt to technological developments, to improve access to genetic resources and to address the sustainability objectives in a coherent way**

This option would introduce amendments to the Directives responding more comprehensively to the need for more sustainability and more biodiversity. It would

contribute to climate change adaptation and mitigation by creating more flexibility in the registration and marketing of varieties and procedures in general. It would finally consider the particularities of exchange of seed between farmers, and allow for an easy adaptation of the legislation to scientific and technical developments. It includes two sub-options, 2A and 2B, which address different policy choices relating to the scope of application of the Directives, the extent of the flexibility afforded to operators and competent authorities, and official controls.