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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the extension of the term of Community plant variety rights for the species asparagus and the species groups flower bulbs, woody small fruits and woody ornamentals - Outcome of the European Parliament's first reading (Strasbourg, 13 to 16 September 2021)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Agriculture and Rural Development, Norbert LINS (EPP, DE), presented a compromise amendment (amendment number 1) to the abovementioned proposal for a Regulation on behalf of the Committee on Agriculture and Rural Development. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 13 September 2021, the plenary adopted the compromise amendment (amendment number 1) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution of 14 September 2021 as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

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Community plant variety rights: extension of the term for certain varieties *I**

European Parliament legislative resolution of 14 September 2021 on the proposal for a regulation of the European Parliament and of the Council on the extension of the term of Community plant variety rights for the species asparagus and the species groups flower bulbs, woody small fruits and woody ornamentals (COM(2021)0036 – C9-0010/2021 – 2021/0019(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0036),
- having regard to Article 294(2) and the first paragraph of Article 118 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0010/2021),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 24 March 2021³,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 14 July 2021 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the report of the Committee on Agriculture and Rural Development (A9-0171/2021),

³ OJ C 220, 9.6.2021, p. 86

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 14 September 2021 with a view to the adoption of Regulation (EU) 2021/... of the European Parliament and of the Council on the extension of the term of *the* Community plant variety rights for *varieties of* the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 118, first paragraph, thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 220, 9.6.2021, p. 86.

² Position of the European Parliament of 14 September 2021.

Whereas:

- (1) Technical difficulties in breeding, due to complex genetic backgrounds or due to the slow or technically complicated reproduction of the species *Asparagus officinalis* L. and the species groups flower bulbs, woody small fruits and woody ornamentals, need to be addressed by means of investments in research and development activities. Once protection of plant variety rights is granted for that species and those species groups, it takes years to multiply the plants and to build up a stock that is sufficiently large to generate a reasonable income. Accordingly, the time during which the holder of the plant variety rights can generate income based on that protection is limited ■ . To encourage investments in research and development for ■ varieties *of that species and those species groups*, it is necessary to prolong the term of protection of plant variety rights and *incentivise* breeding activities to develop new varieties in order to *meet* the needs of farmers and consumers and to address the impact of climate change. Those investments require *more time* to be profitable than for the overwhelming majority of other species, such as agricultural crops, which often have a shorter life span and a larger and wider range of consumers.
- (2) *The* market introduction and market uptake of a new variety of the species *Asparagus officinalis* L. and the species groups flower bulbs, woody small fruits and woody ornamentals require *more* time in order for that new variety *to be profitable than for other species*, as experience has shown that such a new variety reveals its commercial value only in the long term. For those reasons, an equitable refunding of investments in research and development is only possible at a fairly late stage of the protection of that species and those species groups in comparison with ■ other *species*.

- (3) *Council Regulation (EC) No 2100/94⁴ establishes a system of Community plant variety rights as the sole and exclusive form of Community industrial property rights for plant varieties. In accordance with Article 19(1) of that Regulation, the term of the Community plant variety right is to run until the end of the 25th calendar year or, in the case of varieties of vine and tree species, until the end of the 30th calendar year, following the year of grant.*
- (4) In order to establish a legal environment conducive to achieving an equitable refunding, it is appropriate to extend by *a* further five years the term of the Community plant variety rights *for varieties of* the species *Asparagus officinalis L.* and *of* the species groups flower bulbs, woody small fruits and woody ornamentals. *That extension should apply to rights granted before, on or after the date of entry into force of this Regulation.*
- (5) For reasons of consistency, such extension should apply to all Community plant variety rights *for varieties of* the species *Asparagus officinalis L.* and *of* the species groups flower bulbs, woody small fruits and woody ornamentals.
- (6) The period of extension should be reduced if national property rights *for* those varieties have been effective in a Member State prior to the grant of a Community plant variety right and, accordingly, would already have allowed breeders to exploit their varieties,

HAVE ADOPTED THIS REGULATION:

⁴ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1.9.1994, p. 1).

Article 1

Extension of the term of Community plant variety rights

1. *The term of the Community plant variety rights, as provided for in Article 19(1) of Regulation (EC) No 2100/94, shall, for varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals*, be extended by five years.
2. Paragraph 1 of this Article is without prejudice to Article 116(4), *fourth indent*, of Regulation (EC) No 2100/94.

Article 2

Reduction of the extension

For plant varieties for which one or more national plant variety rights have been granted prior to the grant of a Community plant variety right, but to which Article 116(4), fourth indent, of Regulation (EC) No 2100/94 does not apply, the extension of the term provided for in Article 1 of this Regulation shall be reduced by the longest period in full calendar years during which any national plant variety right or rights granted have been effective in a Member State in respect of the same variety prior to the grant of the Community plant variety rights.

Article 3
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

■

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament

For the Council

The President

The President
