



RIGHT TO FOOD AND NUTRITION WATCH

2014

Ten Years of the Right
to Food Guidelines:
Gains, Concerns and
Struggles

IMPRESSUM

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IS THERE STILL A FUTURE FOR THE NEW EUROPEAN SEED REGULATION?

Philippe Catinaud and Guy Kastler¹

What will happen following the European Parliament's 11 March rejection of the European Commission's proposal for a new regulation on the commercialization of seeds, better known as the PRM (Plant Reproductive Material) regulation?² To answer this question, one must consider the political context of this vote, which is dominated by two factors: first, the negotiation of bilateral free trade agreements with Canada³ and the United States,⁴ and regional agreements between the European Union and North American⁵ countries; and second, until May 2014, the electoral campaign for the European Parliament.

NEGOTIATIONS ON THE NEW SEED REGULATION GO BEYOND EUROPE

Current European directives reserve access to the seed market for professional agriculture solely to varieties registered in the catalogue according to the standards of the Plant Variety Certificate (COV).⁶ These standards ensure the monopoly of industrial seeds by including requirements that, by design, exclude peasant seed varieties. They also require phenotypic branding that distinguishes each seed variety from those of their competitors, a process that can take up to ten years of breeding work for breeders to standardize and stabilize all phenotypic traits. However, these burdensome identification standards can now be bypassed through the use of genetic technologies to create patented molecular or biochemical markers. These markers are deemed sufficient to identify a firm's property throughout the food chain, from the seeds to the consumer's plate, without the need to standardize and stabilize other phenotypic traits of genetically modified plants.

In the proposed PRM regulation that was rejected by the Parliament and referred back to the Council, the European Commission (EC) had sought to challenge the COV monopoly by expanding the exemptions in the catalogue currently reserved for amateur gardeners and farmers. Contrary to the Commission's claims, the defense of agricultural biodiversity is not the primary reason for this proposed change, as it would also bring the European regulations more in line with those of Canada, which has considerably relaxed the standards of its catalogue, and with those of the United States, which considers the current standards as a non-tariff barrier to international trade.⁷

The roadmap that was entrusted to TAFTA negotiators, however, only accepts one restriction on freedom of trade, "standards based on science".⁸ Whether they are sanitary, phytosanitary, environmental, related to biosecurity or other issues, these standards all define patentable characteristics. Given that only the monopoly granted by patents can absorb the cost of marketing authorization, this constitutes an 'elegant' way of invoking free trade in order to restrict market access solely to patented products. Conflicts of interest, which plague the European and U.S. agencies responsible for food safety (the European Food Safety Authority, EFSA, and the Food and Drug Administration, FDA) in their management of GMO and pesticide authorization, coupled with patented seeds' total domination of the markets for major U.S.

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This article was originally drafted in French.

2 "Production and making available on the market of plant reproductive material (plant reproductive material law)." European Parliament Strasbourg. 11 March, 2014. www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0185+0+DOC+XML+V0//EN

3 The European Union and Canada reached a political agreement on 18 October 2013 on the key elements of a trade agreement, the Canada-European Union Comprehensive Economic and Trade Agreement (CETA). For further reading, see: ec.europa.eu/trade/policy/countries-and-regions/countries/canada/

4 The Transatlantic Trade and Investment Partnership (TTIP) is a trade agreement that is currently under negotiation between the European Union and the United States. For further reading, see: ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/

5 Trans-Atlantic Free Trade Agreement (TAFTA) bringing together North American Free Trade Agreement and European Free Trade Association (EFTA).

6 "COMMISSION DIRECTIVE 2009/97/EC of 3 August 2009 amending Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directives 2002/53/EC and 2002/55/EC respectively, as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species and vegetable species." See: Document 32009L0097, EU law and publications. eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0097

crops (corn, soybeans, cotton, rapeseed, etc.), reveal the real purpose of such “standards based on science,” namely to promote patent ownership over the food chain.

On 15 April 2014, one month after rejecting the proposed PRM regulation,⁹ Members of the European Parliament (MEPs) had to rule on several other proposed regulations on the health of plants and animals that were included in the same legislative package (*Better Regulation package*) as the PRM Regulation. They did not reject them. They simply removed any reference to the PRM regulation and eliminated a few measures that allowed for obvious conflicts of interest. However, these three other regulations extended the regulatory scope of “self-checking under official control” to the entire food chain, an extension designed to enable large companies to further determine the standards and procedures to which they and other producers must adhere to. Yet these standards and procedures, tailored by and for multinationals, are inapplicable to small businesses, smallholder farmers and practitioners of peasant agroecology, who will thereby be locked in the current ‘niches’ that prohibit them from stepping on the multinationals’ turf. The European Coordination *Via Campesina* and the French Peasant Seed Network (*Réseau Semences Paysannes*) were the only civil society organizations (CSOs) to demand the rejection of these regulations and the restoration of food chain oversight as a public service based on the collective participation of operators as well as transparency, rather than the privatization of market control and secrecy of industrial confidentiality. These organizations also warn against the serious threats to the right to adequate, healthy, nutritious and culturally appropriate food, since the legislative package grants multinational corporations the capacity to set their own standards for market access and ‘control’.

EC AND COUNCIL YET TO MAKE THEIR LAST CALL

If the Council also rejects the PRM regulation proposal, the Commission will be forced to withdraw it. The market will thereby continue to be regulated by the current guidelines that further restrict biodiversity’s access to the market and farmers’ rights to share their seeds. The survival of these guidelines will thus depend on the future of TAFTA, whose roadmap serves the interests of multinational corporations and is already included in the other three regulations that were passed in April.¹⁰

However, the Council may also amend the proposed PRM regulation, which it had already begun to do in the many working meetings that have been held since its publication on 6 May 2013. The Commission, which retains its right of initiative, has already announced that in that case, it would consider requests of the Council and the Parliament to amend its initial proposal. This new text would then be discussed by the newly elected Parliament.¹¹ But, in its second reading, it would have only three months to review the text, which would give it less time to amend than in the first reading. The Parliament could of course reject the proposed regulation a second time, but this seems quite unlikely. Indeed, whatever the Parliament’s new composition, the context that fostered its vote on 11 March will have changed.¹²

- 7 In the United States, recording a variety in the catalogue is not required to commercialize seeds. Therefore, under Food and Drug Administration (FDA) regulations, the only restrictions in commercializing acceptable seeds are health or environmental standards.
- 8 The World Trade Organization (WTO) only accepts health or environmental risks for justifying a country’s refusal to import goods if they are based on scientific studies.
- 9 Draft legislative resolution of the European Parliament on the proposal for a regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material, plant protection products and amending Regulations (EC) No 999/2001, 1829/2003, 1831/2003, 1/2005, 396/2005, 834/2007, 1099/2009, 1069/2009, 1107/2009, Regulations (EU) No 1151/2012, [...]2013 and Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC, 2008/120/EC and 2009/128/EC (Official Controls Regulation) See: www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0162+0+DOC+XML+V0//EN; and “Food safety: MEPs will strengthen measures to tackle animal diseases and pests,” Newsletter, 14–17 April 2014, Plenary Session. Strasbourg. 10 April, 2014. www.europarl.europa.eu/news/en/news-room/plenary/2014-04-14/10
- 10 Two of these regulations define the health standards applicable to agricultural production, while the third defines the details of the delegation to industry of the control of all sanitary, environmental or biosecurity norms aiming to replace all other tariffs or non-tariff barriers to production and trade of products intended for or coming from the food chain.
- 11 Statement by the representative of DG Sanco to the Seeds Advisory Group of the European Commission (*Advisory Group on “Seeds”*) Thursday, March 13, 2014.
- 12 At the beginning of their term, parliamentarians will no longer be under the pressure of election bids and will no longer be able to claim that they do not have enough time to review this proposal.

CIVIL SOCIETY DEMANDS CAUGHT UP IN ELECTION ISSUES

The first reason for rejecting the proposed PRM regulation can be linked to the pressures of the election campaign season, which encouraged all political parties to avoid a public debate on a risky and deeply divisive issue:

- Some MEPs expressed the concerns of civil society regarding the disappearance of agricultural biodiversity. A rumor circulated on social media that all seed exchanges between farmers or gardeners would be prohibited. This rumor was spread to legitimize the complete refusal of the PRM despite the fact that in reality this is the first European legal text to explicitly recognize this right to trade as early as in its first articles. The European Coordination *Via Campesina* and the French Peasant Seed Network asked the Parliament to amend and improve the PRM in order to expand and consolidate the new opportunities it offers to relax the constraints of the catalogue. At the same time, they sought to ensure that these constraints did not further benefit the growing monopoly of patented seeds. Biological associations grouped within IFOAM-EU also proposed amendments aiming to open up the market to organic seeds. But the power of the false rumor overrode their voices.
- Others expressed the demands of industry. Despite industry's fine statements, concern for the defense of biodiversity is not shared by industry or by the majority of the European Parliament. Moreover, the defense of biodiversity alone cannot explain the absence of any efforts to negotiate amendments that preceded the rejection of the PRM regulation on 11 March. Indeed, on the same day, the same Parliament adopted a resolution on horticulture defending the increased use of pesticides and patented technologies of genetic modification of seeds, both of which destroy agricultural biodiversity. In addition, on 25 February, it had already adopted another resolution calling for research on new "plant breeding technologies" and further restrictions on consumers' access to information about the genetic modification of seeds and foods. MEPs who voted for these industry-friendly resolutions at the expense of their constituents' health found themselves caught between two conflicting sets of demands when deciding on the PRM regulation: the demands of the traditional seed industry in support of the requirements of the catalogue that ensures the protection of its COV and the demands of biotechnology multinationals seeking to expand market share for their new patented seeds by using "standards based on science" as the new requirements.

Any negotiation of amendments to the PRM regulation would have revealed these multiple contradictions. Rejecting it has on the contrary allowed all MEPs to tell 'their' constituents or donors that they refused whatever those constituents or donors did not want. This rejection also demonstrates that Members of Parliament were seeking to elicit respect from a Commission that currently tends to show little regard for Parliament, a message frequently used during campaign season. However, this rejection does not meet any of the conflicting demands of civil society and industry. It seems likely that the combined pressure induced by the CETA, TTIP and

TAFTA negotiations as well as multinationals, the Commission and the Council capitulating on GMO approvals, will burst the facade of pre-election unanimity as soon as the elections are over.

WHAT TO DO NOW? SEND A CLEAR MESSAGE AND MOBILIZE

- We demand: farmers' rights to use and exchange seeds and access agricultural biodiversity free of industrial property rights; the relocation of seed production; regulation and public control of the market to ensure food sovereignty and the protection of farmers' seeds against genetic and health contamination and bio-piracy; and adapted standards.
- We oppose: opening the market to patented seeds and to GMOs; a deregulated global seed market; the privatization of control of market placement; industry standards; and the uncontrolled movement of plant pathogens.

Popular mobilization will be the only means to reach our goals in the battle for new seed regulations and the protection of our rights.