Crucial amendments from a Seed Savers' perspective

Preliminary remark

This document provides a selection of the most important proposals for amendments that result from the joint work of several seed savers' associations in Europe.

These amendments are presented in 2 parts:

- PART I is composed of amendment proposals concerning 3 articles (article 12, 16 and 56). Together with some other amendments concerning the recitals, welcoming these amendment suggestions would solve most stakeholders' problems. It would fulfill all the objectives of the legislation as stated in recital 2 of the proposal, especially consumers' rights and access to agricultural biodiversity. The aim of these submissions is to shift from a compulsory system of registration and certification to a voluntary one. This would make all exceptions to the legislation not necessary and would therefore shorten and simplify the proposal. This would be the best way to achieve a better regulation.

- PART II is the necessary alternative to a voluntary system of registration and certification. In this case and in order to respect consumers' rights and agricultural biodiversity, the proposal has to be improved to welcome all realities of the seed world. This implies a rethinking of the exemptions to the compulsory system of registration and certification.

PART I

Voluntary Certification **2**

Voluntary Registration **5**

PART II

Scope **6**

Definitions **8**

Niche Markets **9**

Local circulation **13**

Marketing with references to a variety only **14**

Officially Recognised Description **16**

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PART III, TITLE II, CHAPTER I, Article 12

Proposal for a regulation	*Amendment*
1. Plant reproductive material may only be produced and made available on the market, under one of the following categories:	1. Operators take the decision to make available on the market of PRM as standard material or as material undergoing certification. In the case of material undergoing certification, plant reproductive material may only be produced and made available on the market, under one of the following categories: (a) pre-basic material, (b) basic material, (c) certified material.

Disproportionate certification rules

☹ **Problem:** The system of compulsory certification of individual lots means that PRM which do not fulfill the criteria are automatically excluded from the market. This, however, does not mean that they do not bear interesting qualities. This legislation inevitably leads to a further decrease of diversity of PRM available on the market. Europe has suffered a massive loss of agricultural biodiversity already. Transparency of the market, security and quality of the PRM may perfectly be achieved by an operator´s label.

Certification is just a label of quality. In this sense, it shall not be mandatory but just an option offered to the operator to certify that his seeds are of high quality. There are a lot of labels of quality on food in Europe. Shall all food sold in Europe comply only with the organic, the "label rouge" or any other kind of production rules because someone decided that these production rules are better than the others? That is however what any compulsory pre-marketing tool to seeds is doing!

☺ **Solution 1:** An introductive sentence may be introduced. Certification shall not be a barrier to the marketing of PRM.A voluntary certification of seeds would have the advantage to provide the market with seeds of standardized quality, but also other PRM. Last but not least, if the system implemented in this legislation would become voluntary, most exemptions would not be needed anymore and this would achieve a really simpler and better seed legislation for the seed sector.

☺ **Solution 2:** Alternatively, voluntary certification may be implemented by deleting the word "only" from this sentence, as bellow.

Proposal for a regulation	*Amendment*
1. Plant reproductive material may only be produced and made available on the market, under one of the following categories:	1. Plant reproductive material may ~~only~~ be produced and made available on the market, under one of the following categories:

PART III, TITLE II, CHAPTER II, Section 2, Article 16

Proposal for a regulation	*Amendment*
1. Plant reproductive material shall be produced in accordance with the production requirements set out in Part A of Annex II and shall be made available on the market only if it fulfils the quality requirements set out in Part B of Annex II.	1. Plant reproductive material undergoing official certification shall be produced in accordance with the production requirements set out in Part A of Annex II and may be made available on the market only if it fulfils the quality requirements set out in Part B of Annex II.

Disproportionate certification rules

The requirements of Annex II should apply only to material undergoing official certification.

PART III, TITLE II, CHAPTER II, Section 1, Article 14

Proposal for a regulation	*Amendment*
1. Plant reproductive material may be produced and made available on the market only if it belongs to a variety registered in a national variety register referred to in Article 51 or in the Union variety register referred to in Article 52.	1. Plant reproductive material may be produced and made available on the market ~~only~~ if it belongs to a variety registered in a national variety register referred to in Article 51 or in the Union variety register referred to in Article 52 or if a description of the plant reproductive material is available to the purchaser.

Making available on the market only referring to a variety, a very unfair limitation
Denomination, description, botanical/common name

PART III, TITLE IV, CHAPTER III, Article 56

Proposal for a regulation	*Amendment*
1. Varieties may be registered in a national variety register pursuant to Chapter IV, or in the Union variety register pursuant to Chapter V, only if they fulfil the following requirements:	1. <u>An operator may decide to apply for an official or an officially recognised description with respect to this act. In this situation,</u> varieties may be registered in a national variety register pursuant to Chapter IV, or in the Union variety register pursuant to Chapter V, only if they fulfil the following requirements:

Disproportionate registration rules

☹ **Problem:** The system of compulsory registration of varieties means that varieties which do not fulfil the criteria are automatically excluded from the market. The requirements for a variety to be Distinct, Uniform and Stable and the Value for Cultivation and Use tests (VCU) are obstacles to the availability of certain other plant propagating material. This, however, does not mean that these other plants do not bear interesting qualities. There is also a demand from users looking for plants that provide other characterictis than those available on the market now. This legislation would inevitably lead to a further decrease of diversity of PRM available on the market. Europe has suffered a massive loss of agricultural biodiversity already. Transparency of the market, security and quality of the PRM may perfectly be achieved by descriptions and catalogues provided by the operators and product labelling.

No premarket registration is required for other markets like computers, houses or food. Here, official premarket tests would be considered to an undue obstacle to the entry on the market. Why should it be different for the seeds??

☺ **Solution 1:** An introductive sentence shall be added. Registration shall not be a barrier to the marketing of PRM. A voluntary registration would have the advantage to provide the market with varieties of standardized quality, but also other PRM. Last but not least, if the system implemented in this legislation would become voluntary, most exemptions would not be needed anymore and this would achieve a really simpler and better seed legislation for the seed sector.

☺ **Solution 2:** Alternatively the word “only” shall be deleted from this sentence, as bellow.

Proposal for a regulation	*Amendment*
1. Varieties may be registered in a national variety register pursuant to Chapter IV, or in the Union variety register pursuant to Chapter V, only if they fulfil the following requirements:	1. Varieties may be registered in a national variety register pursuant to Chapter IV, or in the Union variety register pursuant to Chapter V, ~~only~~ if they fulfil the following requirements:

PART I, Article 2 (d)

Proposal for a regulation	*Amendment*
(d) exchanged in kind between persons other than professional operators.	(d) exchanged ~~in kind~~ between persons other than professional operators;

Private exchanges of seeds, grafts and other PRM restricted

☹ **Problem:** Article 2 restricts private activities to seed swap *in kind*. Persons other than professional operators who are exchanging PRM for money are presently subject to the provisions for niche markets (article 36). This requires different obligations for them. This legislation will inevitably lead to fraud, most of the time due to a poor knowledge of a commercial legislation, targeting primarily professional operators.

Persons other than professional operators (e.g. private gardeners) contribute to the conservation and the further development of agricultural biodiversity at no cost for the tax payer, providing public services beside their own work. They are the most fragile actors presently concerned by the future legislation. Remember that the private sale of furniture, clothing and other household items is of course possible without restrictions.

☺ **Solution:** For this reason, non-operators should be protected and all exchanges between persons other than professional operators should be let out of the scope of this commercial legislation.

PART I, Article 2 (d)

Proposal for a regulation	*Amendment*
(d) exchanged in kind between persons other than professional operators.	(d) exchanged ~~in kind~~ between persons other than professional operators<u>, or natural persons acting as professional operators engaged in activities outside the scope of their profession or employment</u>;

Private exchanges of seeds, grafts and other PRM restricted

☹ **Problem:** Besides non-professionals as stated in the first amendment proposal, also professional operators, who are engaged in biodiversity conservation outside their profession, may play an important role for the biodiversity. For this reason, they should be excluded from the obligations implemented in this legislation when they are practicing their private engagement.
In order to prevent from any loophole, only natural persons shall benefit from this derogation.

☺ **Solution:** Without specifying operators outside of the scope of their profession, it could prohibit professionals from participating in conservation activities. Therefore, natural professionals acting outside the scope of their work shall also be excluded from the scope of the legislation when they are acting outside the scope of their profession.

PART I, Article 2

Proposal for a regulation	*Amendment*
- (add)	(e) produced by a farmer on his own farm on his own behalf and for own account.

Diversity farmers face administrative penalties

☹ **Problem:** Any farmer who wants to make available PRM must register as an "operator" (Article 3.6), fulfill requirements for quality management and traceability (Articles 5-8) and must pay yearly fees of unknown amount. No adequate exceptions are foreseen for farmers who want to pass on PRM from their own harvest. Since the very beginning of agriculture, farmers have selected and re-used seeds for the following season. It is absolutely disproportional to marginalise and threaten these activities with administrative burdens and penalties. The revision of the EU PRM marketing law has to be used to better integrate the commitments arising from the ITPGRFA* into EU legislation. It has to ensure that farmers´ activities of on farm biodiversity conservation and dynamic management are not restricted. However, the proposal imposes them to fulfill obligations related to niche markets (article 36). In certain cases they will be obliged to fulfill the same conditions (registration) as the industry (see explanations under article 36).

☺ **Solution:** To legally ensure farmers to continue their activities of exchanging farm saved seeds without any obstacle, they have to remain out of scope of the legislation. Farmers acting under contract with the seed industry are part of the commercial system. For this reason, they should be considered as operators.

* The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) recognises the enormous contribution of farmers to the diversity of crops that feed the world, and affirms the fundamental importance of Farmers' Rights to save, use, exchange and sell farm-saved seed and other propagating material in this context.

Exchanging farm-saved PRMis a very old tradition, a part of our rural culture, and has proofed an effective strategy of labour division in rural communities as well as a meaningful measure for achieving good PRM quality since ages and out of any legislation. These activities of farmers and their communities contribute to the conservation and, by farmers´ breeding activities, the further development of agricultural biodiversity at no cost for the tax payer. They contribute to the adaptation of crops to local conditions and might help improving the resilience of agro-ecosystems in climate change. Furthermore, ensuring local PRM supply and the possibility to rely on local knowledge should be considered an essential part of emergency preparedness and response in any case of disaster.

PART I, Article 3(5)

Proposal for a regulation	*Amendment*
(5) 'making available on the market' means the holding for the purpose of sale within the Union, including offering for sale or for any other form of transfer, and the sale, distribution, import into, and export out of, the Union and other forms of transfer, whether free of charge or not;	(5) 'making available on the market' means the holding for the purpose of sale within the Union, including offering for sale or for any other form of transfer, and the sale, distribution, import into, and export out of, the Union and other forms of transfer, by a professional operator and aimed at commercial exploitation and whether free of charge or not;

The scope of the legislation goes beyond the commercial sector

☹ **Problem:** The deletion of the expression "aimed at commercial exploitation" from the existing definitions of marketing is a real step backwards. The expression "aimed at commercial exploitation" was present in the definition of "commercialisation" of the most recent existing directives[1]. This expression had been introduced in order to keep proportionate the degree of public resources that need to be dedicated to the implementation of the regulation. Tests, controls and other administrative formalities carried out should clearly focus on commercial activities. Exclusions as defined in article 2 are not sufficient (please refer to explanations under article 2). Including non-commercial activities will only lead to increased numbers of frauds by farmers and individuals who do not have the knowledge of this legislation.

Again, it is also important to remember that this legislation, and especially the making available on the market, concerns professionals.

☺ **Solution:** The expression "aimed at commercial exploitation" has to be re-introduced into the regulation, in order to meet the goal of better regulation. It must also be clear that the making available on the market only concerns professionals.

[1] Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed, OJ L 193, 20.7.2002, p. 12–32
Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed, OJ L 193, 20.7.2002, p. 33–59
Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes, OJ L 193, 20.7.2002, p. 60–73
Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants, OJ L 193, 20.7.2002, p. 74–97
Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (Recast version), OJ L 267, 8.10.2008, p. 8–22

PART III, TITLE II, CHAPTER V, Section 1, Article 36, point 1

Proposal for a regulation	*Amendment*
(a) […] in small quantities	- (delete)

The biodiversity niche is too restricted

☹ **Problems:** Article 36 has been presented to the stakeholders, to civil society and the public as a big concession aiming at enhancing agricultural biodiversity. However, the niche opened is being restricted in several ways and will therefore not have a relevant positive effect.

The quantitative restrictions are an unnecessary burden for biodiversity, as the niche is already defined by the size of the operator. Quantitative restrictions cause unnecessary bureaucratic efforts and public costs needed for their monitoring.

☺ **Solutions:** All quantitative restriction shall be removed. The reference to the number of employees should be deleted.

PART III, TITLE II, CHAPTER V, Section 1, Article 36, point 1

Proposal for a regulation	*Amendment*
(a) […] by persons other than professional operators, or by professional operators […]	(a) […]~~by persons other than professional operators,~~ by professional operators […]

The biodiversity niche is too restricted

☹ **Problem:** Article 36 has been presented to the stakeholders, to civil society and the public as a big concession aiming at enhancing agricultural biodiversity. However, the niche opened is being restricted in several ways and will therefore not have a relevant positive effect.

Private persons exchanging PRM for money – even if in small amounts – would fall under article 36, having to fulfil labelling requirements and having to comply with requirements on quality, which has a financial and technical cost. Their voluntary activities of creating, saving and making available biodiversity should not be restricted. In addition, the obligations linked with niche markets and especially the requirements for standard material are very constraining for non-professionals. For these reasons, there is a high risk of fraud if non-professionals are not totally excluded from the legislation and from the requirements linked with niche markets. This article has a strong connection with article 2 – see also explanations there.

☺ **Solution:** Persons other than professional operators should be excluded from the scope of the legislation (see also article 2).

PART III, TITLE II, CHAPTER V, Section 1, Article 36, point 1

Proposal for a regulation	*Amendment*
(a) […] in small quantities by professional operators employing no more than ten persons and whose annual turnover or balance sheet total does not exceed EUR 2 million;	(a) […]~~in small quantities~~ by professional operators ~~employing no more than ten persons and~~ whose annual turnover or balance sheet total does not exceed EUR 2 million;

The biodiversity niche is too restricted

☹ **Problems:** Article 36 has been presented to the stakeholders, to civil society and the public as a big concession aiming at enhancing agricultural biodiversity. However, the niche opened is being restricted in several ways and will therefore not have a relevant positive effect.

The quantitative restrictions are an unnecessary burden for biodiversity, as the niche is already defined by the size of the operator. Quantitative restrictions cause unnecessary bureaucratic efforts and public costs needed for their monitoring.

The definition of niche market varieties linked to the number of employees is not well designed. Especially when concerning rare crops and vegetable and fruit specialities, the work is very labor intensive. The small operators concerned often do not rely on automatized processes, and they often run small manufactures for pasta, bread, marmelades or pickles, that require a lot of manual work. Many small operators run their businesses below EUR 2 million turnover, but with more than 10 employees. Those would be discriminated by the regulation.

☺ **Solutions:** All quantitative restriction shall be removed. The reference to the number of employees should be deleted.

PART III, TITLE II, CHAPTER V, Section 1, Article 36, point 1

Proposal for a regulation	*Amendment*
(a) […]by professional operators employing no more than ten persons and whose annual turnover or balance sheet total does not exceed EUR 2 million;	(a) […] by professional operators employing no more than ten persons ~~and~~ or whose annual turnover or balance sheet total does not exceed EUR 2 million;

The biodiversity niche is too restricted

Alternatively to the previous proposal for amendment, the niche may be defined by a limit of 2 million turnover OR a number of employees of no more than 10.

PART III, TITLE II, CHAPTER V, Section 1, Article 36, point 1

Proposal for a regulation	*Amendment*
(a) […] by professional operators whose annual turnover or balance sheet total does not exceed EUR 2 million;	(a) […] by professional operators whose annual turnover or balance sheet total does not exceed EUR 2 million. Point (a) shall not apply to professional operators only making available on the market plant reproductive material in retail;

The biodiversity niche is too restricted

As an alternative to the first proposal for amendment of page 9, professional operators only making available on the market plant reproductive material in retail might be excluded by adding the above sentence.

PART III, TITLE II, CHAPTER V, Section 1, Article 36, point 1

Proposal for a regulation	*Amendment*
- (add)	(c) it complies with the provisions of Title 3 of this act.

The biodiversity niche is too restricted

☹ **Problem:** Article 36 has been presented to stakeholders, to civil society and the public as a big concession aiming at enhancing agricultural biodiversity. However, the niche opened is being restricted in several ways and will therefore not have a relevant positive effect.

One of the restriction is linked with the obligation of identifying niche market plant reproductive material as standard material. There is a high risk of fraud if small actors – including small farmers or individuals as now proposed – would have to comply with the rules for standard material.

☺ **Solution:** To facilitate the access of biodiversity to the market as well as to help the different actors to comply with the legislation, certification of niche market material shall not refer to standard material rules but to lighter rules, such as defined in Title III on Production and making available on the market of plant reproductive material not belonging to genera or species listed in Annex I.

In addition to the previous proposals for amendments concerning article 36, a point (c) should be added to paragraph 1 of article 36, stating that certification rules for niche market material shall refer to Title III of the present act.

PART III, TITLE II, CHAPTER V, Section 1, Article 36, point 3

Proposal for a regulation	*Amendment*
The Commission shall be empowered to adopt delegated acts, in accordance with article 140, setting out with regard to the production and making available on the market of niche material belonging to particular genera or species, one or more of the following: a) the maximum size of packages, containers or bundles; b)requirements concerning traceability, lots and labelling of the niche market material concerned; c) modalities of making available on the market.	-(delete)

☹ **Problem:** Article 36 is a very important tool for the biodiversity. It is supposed to be the article where the operators who were oppressed by the present legislation shall find a place to survive the big seed industry and this legislation. However, niche market materials can be completely transformed into something worthless via delegated acts.

☺ **Solution:** Article 36 may be very useful for some operators. For this reason, no stricter rules shall be put in place regarding niche market materials. For this reason, the Commission shall not be allowed to empty article 36. The possibility to take delegated act shall therefore be refused to the Commission.

PART III, TITLE II, CHAPTER V, Section 4

Proposal for a regulation	*Amendment*
- (add)	Article 42a Local circulation Small producers making available on the market plant propagating material only on the local market (local circulation) shall be excluded from the obligations of this legislation.

Local circulation shall be excluded from the scope of the regulation

☹ **Problem:** One of the aims of this legislation is to ensure traceability of PRM. While traceability may be difficult to reach on a European/international market, it can easily achieved at local scale, where the producer is directly selling its PRM (e.g. a farmer selling directly vegetables, fruits and plants from his farm on a local market is often well known and is a regular of the market, or to his neighbour farmer).

For this reason, a derogation was provided for local circulation of PRM in the most recent directive (2008/90 on fruit reproductive material). This derogation is not to be found anymore in this proposal.

One of the general principles for a valid European Regulation is that it must be proportional. To be proportional, measures must be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them[2]. Imposing the same rules for the making available on the market of PRM aiming at local circulation as for seeds spread worldwide or Europe wide goes beyond what is necessary to achieve the different objectives of the legislation, such as traceability or PRM quality. It's not in farmers' interests to sell PRM of bad quality at a local scale because this might lead to bad press or losing customers.

☺ **Solution:** Local circulation must be excluded from the scope of the PRM Law and shall be integrated in an article concerning the derogations to the system. Alternatively, Local circulation might also be excluded by Article 2.

[2] Joined Cases C 453/03, C 11/04, C 12/04 and C 194/04 ABNA and Others [2005] ECR I 10423, paragraph 68; Case C 558/07 S.P.C.M. and Others [2009] ECR I 5783, paragraph 41; and Case C 58/08 Vodafone and Others [2010] ECR I 4999, paragraph 51.

PART III, TITLE III, Article 50

Proposal for a regulation	*Amendment*
Article 50 Making available on the market with reference to varieties 1. Plant reproductive material shall be made available on the market with reference to a variety only in one or more of the following cases: (a) the variety is legally protected by a plant variety right in accordance with the provisions of Regulation (EC) No 2100/94 or in accordance with national provisions; (b) the variety is registered in a national variety register as referred to in Article 51 or in the Union variety register as referred to in Article 52; (c) the variety has been entered in any other public or private list with an official or officially recognised description and a denomination. 2. Plant reproductive material made available on the market pursuant to points (a) and (b) of paragraph 1 shall bear the same variety denomination in all Member States. Where the variety is not protected by a plant variety right or registered pursuant to Title IV, as referred to in points (a) and (b) of paragraph 1, but has been entered in a public or private list with an official or officially recognised description and a denomination as referred to in points (b) and (c) of that paragraph, the professional operator may request the advice of the Agency concerning the suitability of the denomination pursuant to the provisions of Article 64. Following that request, the Agency shall submit to the applicant a recommendation on the suitability of the variety denomination, as requested by the applicant, taking into account the requirements set out in Article 64.	- (delete)

Marketing only with reference to a variety: a severe limit

☹ **Problem:** This article mentions that only PRM which has been registered may be made available on the market with reference to a variety denomination. This means that PRM of

non-annex-I-listed species cannot bare a denomination to be sold, unless they are registered. However, this Title III concerns species, which by definition are rare or endangered. The fact that they are rare does not mean that there is no intra-specific diversity, but they should not be subject to registration. On the other hand, consumers must have some benchmarks: without names identifying the different botanical races, how would it be possible for the consumer to recognise between the different botanical races of the same specie and to buy again what he already enjoyed in the past? This requirement is not necessary because in the real life, a seed user which enjoyed PRM of a rare species will very likely try to get it from the same provider.

As a comparison, there is a diversity of webmail programs in Europe. Shall they all bare the same denomination "Webmail program"? No, because the clients would never be able to recognise between the different programs offered.

☺ **Solution:** The different botanical races of non-annex-I-listed species must be allowed to bare a denomination without being registered. This article shall be deleted!

PART III, TITLE IV, CHAPTER III, Article 57, point 1

Proposal for a regulation	*Amendment*
(a) in case the variety had been previously not registered in a national variety register or in the Union variety register and plant reproductive material belonging to that variety has been made available on the market before the entry into force of this Regulation;	(a) in case the variety had been previously not registered in a national variety register or in the Union variety ~~register and plant reproductive material belonging to that variety has been made available on the market before the entry into force of this Regulation~~;

No reason to introduce an historical limitation

☹ **Problem:** According to article 57 point 1a the simplified admission procedure is ONLY open for varieties that were demonstrably available before the entry into force of the Regulation on the market ("historical limitation"). However, there are many rare plant types that were only used locally and were never available on the market and for which commercialisation would have a positive effect. Those would have to go through the regular registration procedure to be marketed, but in most cases this would economically unviable and biologically either impossible or even unwanted.

In addition to old, but not available local crops, also any new development from old varieties would be excluded from the simplified procedure of ORD - for example, selections of farmers who want to better adapt their plants to their local conditions (which is possible thanks to the fact that these varieties are open pollinating and not too stable, however adaptation of these plants in a new area creates almost new ones, partly different from the first generations).

Note that this limitation did not exist in the first draft of the European Commission in July 2012 – when ORD was open to ALL varieties. On pressure from the industry, this opportunity was restricted again. Now, it has to be reopened!

☺ **Solution:** Any historic, geographic or quantitative restrictions must be deleted. They reduce agricultural diversity into a museum concept, failing to conceive diversity as a dynamic process of uttermost importance for a future sustainable agriculture and global food security. Registration under ORD must be re-opened to all open pollinating plants which are not protected by IPRs.

PART III, TITLE IV, CHAPTER III, Article 57, point 1

Proposal for a regulation	*Amendment*
(b) in case the variety had been previously registered in any national variety register or in the Union variety register on the basis of a technical examination pursuant to Article 71, but has been deleted from those registers more than five years before the submission of the current application and would not fulfil the requirements laid down in Articles 60, 61 and 62 and, where applicable, Article 58(1) and Article 59(1).	(b) in case the variety had been previously registered in any national variety register or in the Union variety register on the basis of a technical examination pursuant to Article 71, but has been deleted from those registers ~~more than five years before the submission of the current application~~ and would not fulfil the requirements laid down in Articles 60, 61 and 62 and, where applicable, Article 58(1) and Article 59(1).

There is no reason of public interest justifying a delay of 5 years to register an already registered variety under ORD

☹ **Problem:** A variety which has been recently deleted from the market may still interest seed users, as can be shown in case studies. There is no reason why a seed user should not be able to obtain these seeds anymore if another provider is ready to put it on the market again. From a biodiversity point of view, a five years delay may lead to the loss of that variety, because of the necessity of maintaining the variety without the possibility of making it available. Even if it may be in the private commercial interest of breeders, there is no public interest and also no legal basis justifying a 5 years delay.

☺ **Solution:** The 5 years gap must be deleted.

PART III, TITLE IV, CHAPTER III, Article 57, point 2

Proposal for a regulation	*Amendment*
(a) it is produced in the region(s) of origin;	- (delete)

The region of origin: banning biodiversity in a museum niche

☹ **Problem:** The obligation that a variety shall be produced in its region of origin implements a diversity-locked-in-a-museum-concept. This concept, based on the argument of biodiversity conservation,
is however wrong from a conservationist point of view*, and creates an obstacle for the preservation of biodiversity.

Many varieties are not anymore cultivated in their region of origin, but are still existing in other regions. In some cases the region of origin is simply not known. Finally there is no environmental reason why a variety shall not be produced in other regions with similar agro-climatic conditions, especially in times of climate change.

* Hardly any major crop originated from Europe, neither wheat nor apple nor tomato. Of course, over the centuries, crops adapted to local conditions. But the dynamic movement of crops around the world throughout centuries has been the motor to unfold diversity. Open pollinating seeds have the ability to adapt to different growing conditions. It makes therefore no sense to restrict their existence to the region of origin, especially in times of climate change.

☺ **Solution:** The limitation to the registration under officially recognised description linked with the region of origin should be deleted from this article.