

## **REASONED OPINION**

**of the European Affairs Committee of the Federal Council  
5 June 2013**

**pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol  
No.2 on the application of the principles of subsidiarity and proportionality**

**COM (2013) 262 final**

**Proposal for a Regulation of the European Parliament and of the Council on the production and  
making available on the market of plant reproductive material (plant reproductive material law)**

### **A. Reasoned Opinion**

The project under consideration is incompatible with the principle of subsidiarity.

### **B. Grounds for Reasoned Opinion**

Currently, the marketing of plant reproductive material at European level is governed by twelve EU Directives, which are being implemented in different ways in the Member States. Since 2008, a comprehensive revision of European legislation on seed and plant material has been in preparation. On 6 May of this year, the European Commission published its proposal, which had already been the subject of media reports prior to its publication.

The aim of the proposal is to harmonise the production of seed and other plant reproductive material. According to the proposal now on the table, the scope of the regulation does not cover the compulsory registration and production of seed for private purposes (hobby gardeners) and the reproduction of seed by farmers for their own use. Moreover, the regulation does not apply to plant reproductive material intended solely for gene banks and for the preservation of genetic resources.

This subject matter has already given rise to a highly emotional public debate, especially relating to the question if and how mandatory approval procedures are to be applied not only to seed varieties for commercial use, as has been the case so far, but also to reproductive material of old and rare fruit, vegetable and cereal varieties. Concern has been expressed that this regulation might be detrimental to biodiversity in Austria in the long run. Given the rising consumer demand for a greater diversity of varieties, the production of such varieties should not be hindered. However, the proposal submitted could impair the dynamic development of new markets in the field of genetic resources. The requirement specifying that – with few exceptions – reproductive material of all important fruit, vegetable and cereal varieties has to undergo complicated test procedures to verify their genetic stability, uniformity and distinctiveness before being made available on the market is excessive. Locally adapted varieties often do not meet these criteria.

Current legislation on the marketing of plant reproductive material only covers material to be placed on the market for commercial use. The scope of the new regulation proposed by the Commission is being extended to cover final consumption and would result in a limitation of consumer choice.

Moreover, based on current legislation as well as the proposed new rules, making available reproductive material of the majority of plant species within the EU is only possible after a registration procedure. The new proposal contains a derogation for niche markets: plant reproductive material intended for niche markets is subject to neither registration nor certification.

In the opinion of the Federal Council, the proposal does not provide sufficient assurance that rare varieties will not be at a disadvantage under the new legislation. Furthermore, the number of delegated acts is excessive and should be restricted to an absolute minimum. Currently, the Commission reserves the right to adopt delegated acts in 39 essential legal matters. Delegating decision-making authority to the Commission in so many essential matters is not in accordance with the principle of democratic control and transparency. Above all, in the interest of ensuring legal certainty in diversity-related issues, adopting delegated acts relating to biodiversity should no longer be possible.

The proposal as a whole needs to be thoroughly reconsidered. The scope of the regulation should be limited to the making available on the market of plant reproductive material for the purpose of commercial use and in quantities above a certain threshold. Excessive provisions relating to the approval and labelling of plant reproductive material must be avoided in the forthcoming negotiations at EU level.

As a matter of principle, the Federal Council notes that the proposal submitted violates the principle of subsidiarity. The European Union should only act if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. As outlined above, the proposal lacks the necessary balance between industrial production and the preservation of seed diversity, a matter which ought to be at the core of any regulation in this field. The proposal in its current form will not result in an improvement of the present situation and, therefore, fails to offer the added value required under the principle of subsidiarity.