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SEED CO-OPERATIVE The UK's community owned seed company

TAMAR ORGANICS

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## GAIA SEED SOVEREIGNTY PROGRAMME & SMALL PACKAGE INDEPENDENT SEED SUPPLIERS FORUM

### ADVOCACY PAPER FOR INCLUSIVE & PROPORTIONATE SEED LAWS

#### LOCAL SEED SYSTEMS & SMALL PACKAGES

**As The Gaia Foundation's Seed Sovereignty Programme and its Small Package Independent Seed Suppliers Forum\*\*, we advocate for inclusive and proportionate seed laws, which uphold and support local seed systems and all actors engaged in the conservation and sustainable use of plant diversity, through the exchange, sale, or participatory breeding of seeds, plant propagating material and seedlings.**

*\*\* The Small Package Independent Seed Suppliers Forum is an informal forum of associations active in the promotion of crop and seed diversity and diverse seed systems, as well as companies specialised in the sale of seeds in small quantities to non-professional and professional users. The Forum was established in August 2020 to discuss policy and technical issues revolving around seed diversity, particularly in the lead-up to Brexit.*

## WHY DO WE NEED INCLUSIVE SEED LAWS?

### TO MINIMISE THE IMPACTS OF BREXIT ON SMALL OPERATORS & CROP DIVERSITY INITIATIVES

Changes to the seed legislation are urgently needed to palliate the detrimental impacts of Brexit on different actors of seed diversity, more particularly on associations and companies centred on the sale of small seed packages to home gardeners. Indeed, Brexit was accompanied by stringent phytosanitary rules beyond the plant passport system for any movement to and from the EU, along with the loss of legal clarity regarding the marketing of seeds from the many 'varieties with no intrinsic value for commercial crop production' which are referenced in the European Common Catalogue, but the small UK markets of which do not warrant a registration process in the UK Variety List. The lack of clarity of import and export rules for seeds, plant propagating material and seedlings, along with the significant increase in the administrative and financial burden of business operations with the European Union, have indeed had a significant impact on these companies. Depending to a large extent on the entity's customer base, the complete loss of the Northern Ireland and EU markets has led to as much as a 25% of drop in these companies' global sales. The losses remain difficult to currently ascertain in full, due to the compensation effect created by the increased interest in seeds and gardening experienced during the different lockdowns imposed on account of the COVID-19 pandemic, which boosted these companies' sales in the UK territory.

As the effects of Brexit will become clearer in the following year, and will inextricably lead to operational and financial difficulties in this dynamic and diverse market segment, it is of utmost importance to carve out a future-proof seed legislation in the UK, that would allow associations and companies to flourish, contributing to rural and economic development, as well as the conservation and sustainable use of crop diversity, by proposing quality seeds of a wide array of plant varieties for the use and enjoyment of their professional and non-professional customers.

### **MORE DIVERSITY...**

Seed laws allow little room for crop diversity initiatives, as their foundations lie in securing a strong formal seed market for uniform industrial food and feed production. It is however paramount to reverse biodiversity's decline and address upcoming challenges related to climate change<sup>1</sup>. Farmers, community groups and home gardeners play a pivotal role in the conservation, sustainable use, and potential adaptation of crop diversity to the effects of climate change<sup>2</sup>. They thus need to have access to a wide range of diversity, which does not comply with the requirements of distinctness, uniformity and stability that are upheld by seed marketing rules.

*Seed marketing rules need to provide sufficient space for the marketing of non-uniform varieties and populations, thereby ensuring that actors who wish to have access to less uniform plant reproductive material can source it in all legality. Such space should be wider than restrictive derogation regimes, with no limits on market locality or quantity.*

### **REQUIRES TRUE PROPORTIONALITY...**

Just like seed marketing rules have been espoused for the needs of large-scale industrial food and feed production, phytosanitary requirements have been carved out in view of the wider risks that they generate for the spread of pests and diseases. Both legislations thus impose disproportionate burdens to small operators that are more focused on local or regional circulation of seeds, rather than the national or global seed market. Even though seed laws include flexibilities for such operators, these remain unclear, burdensome, and are not always adapted to the size or scale of all seed markets, or the preferences of different users.

*Activities primarily aiming at the conservation and local development of crop diversity, for instance in informal seed systems, should not be regulated by rules pertaining to the marketing of seeds. All disproportionate obstacles to the entry of different actors and seeds into the formal seed market, and especially home garden market, should be lifted.*

### **WHILE PRESERVING SEED QUALITY & CONSUMER PROTECTION.**

In the wider European continent, the legal seed marketing framework has been established in the 1960s as an indispensable tool to ensure seed quality and varietal identity of seeds for users, mostly farmers. In the 21<sup>st</sup> century, seed users have changed considerably, including more hobby gardeners and low-input farmers,

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<sup>1</sup> United Nations Convention on Biological Diversity, (more particularly the Aichi Biodiversity Targets and discussions on the upcoming post 2020 framework), International Treat on Plant Genetic Resources for Food and Agriculture (more particularly the work of the Ad hoc technical committee on the conservation and sustainable use of plant genetic resources and the toolbox for sustainable use), IPBES [Global Assessment Report on Biodiversity and Ecosystem Services](#), 2019; IPBES, [The assessment report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on pollinators, pollination and food production](#); 2016; and Jarvis,D.I. et al, [Crop Genetic Diversity in the Field and on the Farm: principles and applications in research practices](#), Bioversity International, Yale University Press, 2016.

<sup>2</sup> Food and Agriculture Organisation of the United Nations, Commission on Genetic Resources for Food and Agriculture Assessments; [The State of the World's Biodiversity for Food and Agriculture](#), 2019.

with higher education levels, different priorities and values than mere productivity, but also with wider access to practical informational technology tools to ensure the flow of information about purchased products. The general premise of seed marketing laws has however not changed and continue to impose the same strict pre-marketing variety registration and official controls to all seed users.

Plant health rules apply to all movement of seeds, rather than their marketing, and users and citizens are today protected from the spread of harmful pests and diseases through rigorous requirements that do not differentiate whether one engages in the marketing of seeds or not. Seed marketing rules thus today only ensure the identity and quality of seeds; elements which could very well be guaranteed through other means than pre-marketing registration based on official controls, especially for newer and more minor seed markets, such as the hobby garden or certified organic sectors, supplying users with information that is valuable for them, whether in a label, QR code or website.

*Seed marketing rules should not solely rely on pre-marketing registration principles based on official controls to ensure seed quality and varietal identity for smaller markets not aimed at industrial agricultural production; but rather adopt the wide range of informational technology tools, and consumer protection rules that have been developed in the past 50 years.*

**Considering these elements, different pathways can be taken by authorities in charge of seed marketing and plant health legislation towards inclusive and proportionate laws.**

#### HOW COULD SEED LAWS BECOME MORE INCLUSIVE?

##### ➤ **MATERIAL SCOPE: Interpretation of “Seed Marketing”**

***Seed laws should only apply to the ‘marketing’ of seeds intended to be used in industrial agricultural or horticultural production.***

- ***Informal seed systems:*** It should be clear that exchanges of seeds should not be viewed as falling within the scope of seed marketing laws, even when they occur between professional operators, or if it involves a monetary transaction aimed at recouping the conservation and services costs. Seed swaps and exchange events between individuals, whether hobby gardeners or farmers, should not fall under the remit of seed laws, since they are the foundation of agrobiodiversity conservation and its sustainable use, are necessary to protect and cherish the socio-cultural heritage that is attached to these predominantly local and heirloom seeds, provide essential mutual aid and assistance within a community of growers, far afield from the notion of commercial exploitation that seed laws aim to regulate.
- ***Non-professional end-users:*** Seed laws should only apply to the ‘marketing’ of seeds to professional users, in line with its original rationale. Hobby gardeners do not seek the same features as professional growers, since they grow mainly for enjoyment and through conviction than for financial support. They therefore seek other characteristics than productivity, uniformity purity, and seed quality; favouring for instance traits linked to aesthetics, taste, historical roots, or ease of growth. The sale of seeds from varieties in the public domain (with no plant variety protection) to non-professional end users should thus not fall under the remit of seed laws, but instead rely on consumer protection rules. Seed quality and varietal identity controls can be achieved through tailored rules that do not impose mandatory pre-marketing registration or seed lot certification.

*To do so, authorities can either publish an informal interpretation of the material scope of the legislation (in parallel to the Danish instructions for non-commercial use of seeds), or alternatively amend the seed laws to further expand on their exact material scope (like the examples from French and Austrian laws). See the Annex of this document for examples of such pathways.*

➤ **DIFFERENTIATED RULES ACCORDING TO MARKET SIZE & NEEDS**

***Seed laws should provide for differentiated rules according to different seed markets, recognising their specific needs, and appreciating their inherent values, through the adoption of rules proportionate to the risks caused by the transactions involved in each market.***

- ***Sale of seeds in small packages***, notwithstanding the targeted user (whether a professional operator or final consumer), should not require mandatory pre-marketing variety registration, nor mandatory seed certification, but only respect the minimum quality criteria set out in national seed laws, the implementation of which should be controlled through risk-based post-marketing controls. These transactions would be subject to autonomously applied plant health rules, except for the direct physical sale of seeds and plants to non-professional end users.
- ***Light-touch registration for “amateur” and “conservation” varieties***: for larger package sizes (or for those entities wishing to enter the more formalised seed market), or to ensure the conservation of genetic resources, light touch registration regimes should be envisaged to allow the marketing of seeds of non-DUS varieties and populations. These regimes should be based on officially recognised descriptions without pre-marketing official controls of the material and have less restrictive marketing conditions with regards to quantity and/or geography, much like the Swiss niche varieties regime.
- ***Organic seed supply***: To boost the supply and use of organic seeds developed for organic conditions in organic production, specific regimes need to be carved out in seed laws. In parallel to the new EU rules on organic production, a derogatory regime could be imagined for the development, notification, marketing, and control of seeds of organic heterogeneous material, based on a simple notification system to public authorities.

*Seed marketing rules should not apply to the sale of small packages of seeds, notwithstanding the professional or non-professional status of the customer; while light-touch entry mechanisms should be carved into seed laws to allow for the sale of a wider range of varieties catering either to niche markets (like Switzerland), or to different users looking for less uniformity in the material they purchase (like the EU organic heterogeneous material).*

## **ANNEX: Examples of Existing Pathways towards Inclusive & Proportionate Seed Laws**

### **MATERIAL SCOPE OF SEED LAWS**

- **Danish Instructions for amateur breeders, seed savers and companies about rules and practice of trade and transfer of seeds for non-commercial use and conservation, 2014**
  - Seed marketing rules only apply to the marketing of seeds for commercial use, i.e., if you have a business for agricultural and horticultural production.
  - The sale and exchange for example vegetable seed to private individuals are not covered by the rules.
  - Sales to private and gift shops are considered as non-commercial use of seeds (while sale to nurseries and horticulture is considered commercial use).
- **Austrian seed Decree, 2014 amendment**
  - The transmission of seed by farmers or seed users against payment or in kind is allowed if the farmer or the user does not trade in seed, if the variety not registered and in small quantities.
- **French Law on transparency in food chain, modifying the Rural Code upon which seed marketing rules are based (June 2020)**
  - “The assignment, supply or transfer, whether free of charge or against payment of varieties belonging to the public domain to non-professional end-users not aiming at the commercial exploitation of the variety” does not fall under the remit of seed marketing rules.

### **LIGHT TOUCH ENTRY INTO THE FORMAL SEED MARKET**

- **Swiss “niche varieties” regime, Swiss Ordinance on seeds and seedlings, 2010**
  - Article 2: “Niche variety means, with the exception of genetically modified varieties, a domestic variety, an old variety, in the case of fodder plants an ecotype, or any other variety which does not have to meet the requirements for registration in the catalogue of varieties”;
  - Article 29: “Seeds of a niche variety may be put into circulation without the variety being registered in the catalogue and without the seed being certified, if it is put into circulation with an unofficial label of a different colour from those mentioned in Art. 28 and bearing the words “Authorised niche variety, non-certified seed”.
  - Practical considerations:
  - There are no package size limitations in the regime, but the authorities set the limits of the “niche” through maximum quantity limits per kg a-1, only for certain taxons and species, namely *Solanum tuberosum* (from 8000 to 25000 kg), *Triticum aestivum* (16000 kg) and spelta (2000 kg), *Triticale* (2000 kg) and *Zea mays* (500 kg)
  - The registration process sets out different requirements, whether the variety is a “Local variety” (no official investigation but acceptance through description, unofficial test results, knowledge from practice, other information), or an old catalogue variety (official UPOV description), and “another variety” (selection/breeding scheme & UPOV questionnaire)
  - N.B: the Swiss seed law does not apply to the sale of seeds to non-professional final users
- **EU “Organic heterogeneous material” regime, European Commission Delegated Act 2021/1189 of 7th May 2021 (entry into force 1st January 2022)**
  - Stemming from the EU Regulation 2018/848 on Organic production, organic heterogeneous material is defined as a “plant grouping which presents common phenotypic characteristics but characterised by a high level of genetic and phenotypic diversity”.
  - Operators can market seeds from OHM through a notification system based on a dossier which needs to contain the information set out in the Delegated Act (description of the material, breeding or production technique used, on-farm management or selection practice, country of breeding or production).
  - Requirements of the main EU seed marketing rules and the Plant Health Regulation 2016/2031 regarding sanitary quality, analytical purity and germination still apply to seeds from OHM.
  - Risk-based official controls may be carried out after the marketing of OHM seeds, and maintenance rules are set (where possible).