



# Position

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ESA is the voice of the European seed industry, representing those active in research, breeding, production and marketing of seeds of agricultural and ornamental plant species. It represents 37 national seed associations (and with that more than 1000 seed businesses in the EU, most of them SMEs) and 55 direct company members.

ESA's mission is to work for fair and proportionate regulation of the European seed industry, freedom of choice for customers in supplying seeds as a result of innovative, diverse technologies and production methods and for effective protection of intellectual property rights relating to plants and seed.

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## ESA POSITION ON THE FUTURE SEED MARKETING LEGISLATION

### Executive summary

The European common market for seeds as established by the Seed Marketing legislation has allowed breeders to access new markets, has provided the European seed industry with an even level playing field; has provided farmers and growers with increasing quality and choice and has made more biodiversity available to users of seed than ever before. The European seed industry is of the view that the seed marketing legislation has, in principle, been a successful tool in facilitating access of new plant varieties to the EU market and creating a common market for seed.

The following key pillars of the legislation ensure that only varieties of a high quality access the EU market according to standards of fair competition:\*

- The requirement of varieties to be distinct, uniform and stable (DUS) assures that all varieties available on the EU market perform their specific characteristics in a continuous and reliable way. With that these varieties are clearly identifiable and comparable for both farmers and final consumers; an important contribution to freedom of choice and consumer protection.
- The criteria of a variety's value for cultivation and use (VCU) assure that every new variety constitutes a relevant improvement to the comparable existing ones. Thereby the VCU criteria respond to challenges like sustainable agriculture, food security and consumer demand for special products.
- Official seed certification is a guarantee that not only the genetic code of the variety but also the physical quality of the seed corresponds to well-defined criteria to the benefit of farmers. Official seed certification is also an important basis for its international trade.

\* As regards VCU testing and official seed certification the ESA position refers to agricultural species only. Horticultural species (i.e. vegetables and ornamentals) are usually produced under controlled growing conditions (e.g. temperature, soil, irrigation, light). For these reasons there is no need for VCU testing and official seed certification in vegetable and ornamental species and therefore these features should not be introduced for such species.

The European plant breeding industry considers that these key elements should indeed be maintained in the future seed marketing legislation in order for the regime to continue providing a framework allowing the European seed sector to further increase its competitiveness and productivity.

However, important shortcomings of the current system must be acknowledged:

- The doubling-up of DUS examinations for varieties which are applied both for listing and plant variety protection together with the differences in reference collections constitutes an area where important efficiency improvements as well as financial and time savings could be achieved.
- The VCU criteria are implemented in many different ways in the different Member States (need for harmonisation); and often varieties have to undergo tests which are of minor importance to the market while other criteria are not tested at all (need for more flexibility).
- The often significant time lapse between national and EU listing of varieties and the arguable invoking of national safeguard clauses *de facto* hinders the free movement of seeds.
- With regard to seed certification involvement of private industry in seed certification under official supervision is not yet optimal. For the time being authorities are rather obliged to just repeat testing work already done by private bodies than being in a position to accredit and audit private bodies.
- The lack of both the harmonization as regards phytosanitary requirements and of common rules for the marketing of seed treated with plant protection products may act against the harmonizing effect of EU legislation.

The European plant breeding and seed industry is a competitive sector continuously providing new, innovative, ever better plant varieties for the benefit of the whole agriculture from farmers to the end consumers. Fostering this competitiveness and with that also the competitiveness of European farmers and the food chain as well as support for innovation through modern varieties in the interest of sustainability are the main objectives the future seed marketing regime should have in focus. Against that background, ESA is of the opinion that the 'modify' scenario as identified also in the evaluation report presented at the EU Seed Conference in March 2009 should be followed.

By the present paper the European seed industry is wishing to indicate the main areas where improvements would be welcome and to transmit its views on the key elements and important shortcomings of the current seed marketing regime. The present paper is however only indicating the key considerations and is meant to be not more than a reference list which may help the Commission in its legislative drafting exercise. More detailed positions are available in the documents indicated after each point and annexed to the present paper.

## **A. General considerations**

EU crop production is facing the challenges of increasing demands of increasing population, food security, maintaining biodiversity, pressure on land use and natural resources, sustainability and maintaining economic competitiveness of European agriculture with secure markets for EU farmers. Climate change studies indicate that innovation in European agriculture is likely to become even more strategically important on a global scale.

Independent studies indicate that the most important source of innovation and development to satisfy these demands is through the research and genetic improvement delivered through the plant breeding industry. This will require continuous innovation in crop science and plant breeding as a high strategic priority to achieve sustainable increase in agricultural productivity.

Against this background Europe must take its responsibility and continue to contribute to a competitive and productive plant breeding and seed sector. A forward-looking seed marketing legislation is the starting point for enabling enhanced sustainable productivity of European agriculture.

## **B. Key concepts of the future seed legislation**

### **1. Scope**

The scope of the future seed legislation should set the framework for plant variety listing and seed marketing. ESA understands that such a scope would widely cover issues such as variety identification, evaluation and seed quality assurance with specific regard to the degree of both official supervision and private involvement.

The scope of the legislation should cover at least the same crop groups as the current seed marketing regime covers.

The species falling under the regime and the respective quality standards, focused on commercial practice should be addressed in specific annexes and should take into account the needs of suppliers and direct customers, specific agricultural practices, environmental issues, product quality and consumer information.

(For more details please consult Annexes I and II.)

### **2. Definitions**

#### *2.1 Marketing*

The current definition of “marketing” does not cover the issue of direct import. However, seed acquired outside the Community and imported for use in the Community should be subject to Community rules on seed marketing. These rules should however not apply to seed only imported for processing, packaging and registration purposes and to imported seed shown to be intended for re-export. (For more details please consult Annex III.)

#### *2.2 Official supervision*

As it is stated on several occasions in this paper ESA, in general, is in favour of more involvement of the private sector in both testing and seed certification however the system can only keep its credibility and wide acceptance also outside the EU if such an involvement is carried out under official supervision. As regards the meaning of “involvement under official supervision” ESA is of the view that such an involvement – besides the practical carrying out of some or all tasks related to testing or certification – could also encompass the delegation of government power (such as taking the decisions or participating thereof) to private entities. All these activities should however be supervised by the competent national or EU offices (such as national PVP offices, certification agencies or the CPVO).

#### *2.3 Seed*

The current definition of seed under the EU seed marketing regime is convenient and meets the needs of the seed industry. Also, on the basis of Directive 98/95 which created the legal base to adopt specific marketing conditions for treated seed, it is clear that treated seed falls under the scope of the seed marketing regime and is not a plant protection product. However, the specific provisions on the marketing and labelling of such seeds set out in

Article 49 of Regulation (EC) No. 1107/2009 on plant protection products creates some confusion in this regards. A clarification in this respect would be helpful.

### 3. Variety listing

#### 3.1 *Distinctness, uniformity, stability (DUS)*

The DUS requirement is enshrined in both OECD and UPOV and is the base of assuring that farmers and growers have a choice between clearly identifiable varieties with distinct characteristics that are uniformly present in any given bag of (certified) seed of that variety. DUS requirements are thus crucial for an effective and efficient system for both variety listing and protection.

As regards fulfilling DUS requirements, it should be sufficient to have one set of respective data to be used for both variety listing and protection purposes ('one key several doors'). In this context ESA sees an important future role for the CPVO which should be responsible for the assessment and for the accreditation of DUS testing offices in Member States.

Generally, strengthening the possibilities for breeders' involvement in testing can lead to cost efficiencies; however, not least against the background of the 'one key, several doors' approach and the crucial role of DUS for the attribution of IP rights, ESA considers it imperative that final DUS testing is done under official supervision.

(For more details please consult Annex IV A and B section 2 and Annex V point IV.1.)

#### 3.2 *Value for cultivation and use (VCU)\*\**

The VCU requirement for the (national) listing of agricultural plant varieties is the expression of the importance that legislator, society, seed industry and farmers attribute to assuring the ever improved performance of agricultural plant varieties brought to the market. ESA is strongly in favour of maintaining the requirements for VCU for the species where they currently apply as this system has demonstrated its effectiveness in the past. ESA is also in favour of strengthening breeders' involvement in the VCU testing system to achieve cost efficiencies. However, in any case, the official supervision of any future system is considered crucial by the European seed industry to maintain credibility and a level playing field for all companies and users.

(For more details please consult Annex IV A and B section 2 and Annex V points IV.1 and IV.2.)

#### 3.3 *Variety denomination*

In order to assure the legal certainty of breeders and a proper functioning of the marketing of varieties an unambiguous and efficient variety denomination system is indispensable.

(For more details please consult Annex IV A and B section 2.)

\*\* Please see footnote on page 1.

### 3.4 *Establishment of the Common catalogue*

The time lapse between inclusion of a new variety on a national variety list and its listing on the Common Catalogue can adversely affect EU wide timely marketing. The Common Catalogue should become a simple automatic compilation of national lists without any time delay. However it should be noted that, according to general principles of EU law, free marketing within the EU of a variety listed on a national catalogue should be possible even in the absence of a Common catalogue.

(For more details please consult Annex IV A and B section 2.)

## 4. Seed certification\*\*\*

### 4.1 *Official Seed certification*

Seed certification of agricultural species assures high quality seed and is a precondition for the mutual recognition and acceptance of certified seed in European and international trade. The trust of farmers in seed certificates to a very large extent depends on the fact that these certificates are issued officially. Official seed certification should therefore be maintained in the future. Private bodies should play an important role in official seed certification. ESA is, however, of the opinion that in case of involvement of private bodies for the general acceptance of the results of the European system, official supervision of seed certification is indispensable.

(For more details please consult Annex IV A and B Section 3; Annex V point IV.3 and Annex VI.)

### 4.2 *Flexibility for Member States to set more stringent criteria*

ESA is of the view that it is important that Member States can properly reflect also in the certification requirements the differences as regards growing conditions or achievable disease tolerances in the different parts of the EU territory and therefore advocates for sufficient flexibility for Member States to set more stringent criteria to be maintained. (For more details please Annex VII.)

### 4.3 *Derogation regimes under the certification system*

The seed marketing regime provides for a possibility to derogate from the rules regarding the satisfactory germination rate of seed in case there is a shortage of supply with such seeds. The procedure for permitting temporarily the marketing of seed not achieving the satisfactory germination rates as provided in Commission Regulation (EC) No. 217/2006 does not always provide a viable solution to the problem, especially not in winter crops where the deadlines set by the Regulation are too long. Therefore, ESA suggests the introduction of a so-called "emergency procedure" for such winter crops under which the decision would be taken on national level with an obligation to notify the Commission.

\*\*\* Please see footnote on page 1.

## 5. Packaging and consumer information

ESA is of the view that the issues currently included in the legislation relating to rules on sealing and packaging of seed lots and labelling are important to be addressed also in the future regime.

Labelling should primarily aim at informing the farmer / consumer about the identity and specific performance of a variety. Information about the way of production should only be required in case the relevant form of production is regulated in a specific legal framework (e.g.: novel food / GMO).

As regards the labelling of seed treated with plant protection products the new regulation on plant protection products (Regulation (EC) No. 1107/2009) lays down in its article 49 that “Member States shall not prohibit placing on the market and use of seeds treated with plant protection products authorised for that use in at least one Member State”. It also provides for specific labelling obligations regarding treated seed. As treated seed is seed and as such falls under the scope of the seed marketing regime it would be fortunate to bring the provisions currently included in Regulation 1107/2009 into the new seed marketing legislation.

## 6. Specific seed marketing regimes

### 6.1 *Seeds for the production of agricultural raw materials*

As a matter of principle ESA is not in favour of having specific, less strict rules for the marketing of certain categories of varieties as we believe that such specific regimes offer new possibilities to create a ‘grey market’ and constitute a threat to fair competition and consumer protection.

### 6.2 *Seeds for the sustainable use of genetic resources*

Less stringent requirements, e.g. for so called conservation varieties, encourage fraud, e.g. by declaring illegally copied seeds of modern protected varieties as seed of such conservation varieties.

(For more details on the marketing of conservation and ‘amateur’ varieties please consult Annexes VIII and IX; and on the marketing of conservation seed mixtures Annex X.)

## 7. Implementation

ESA underlines the need for new governance of the seed marketing legislation. This new governance should be based on a cooperation and partnership of public and private sector. Such an approach may help to achieve the goals of reduced costs of administration for both operators and authorities; it may contribute to more flexibility and may serve the continuous, forward-looking development of the regulatory requirements for the marketing of seed.

(For more details please consult Annex V point IV.5)

## 8. General outline of the future legislation

ESA is of the view that the new horizontal seed regulation should contain the general provisions pertaining to all crops in its enabling terms (articles) and should have crop(group) specific annexes with crop(group) specific definitions, including the list of crops covered, and crop specific quality requirements.

## ANNEXES

- Annex I: ESA\_10.0720.2 - ESA position on the scope of the future seed law
- Annex II: ESA\_10.0923 - ESA position on species eligible for listing under seed marketing legislation
- Annex III: ESA\_08.0720 - ESA position on the definition of marketing
- Annex IV: A) ESA\_08.0116.7 AGR - ESA reply to the Better Regulation evaluation questionnaire in respect of agricultural crop species, Sections 2 and 3  
B) ESA\_08.0116.7 VEG - ESA reply to the Better regulation evaluation questionnaire in respect of vegetable crop species, Sections 2 and 3
- Annex V: ESA\_10.0433 – ESA position on the '*Reflection document on the problem definition and options for review of the EU legislation on the marketing of Seed and propagating material (S&PM)*', points IV.1, IV.2, IV.3 and IV.5
- Annex VI: ESA\_10.0722.1 – Principles for modern seed certification
- Annex VII: ESA\_10.0466.1 – ESA letter to the Commission on the 'Evaluation of the S&PM legislation – flexibility in quality standards
- Annex VIII: ESA\_10.0298.5 – ESA answer to the '*Study on testing and listing of varieties of seed and plant propagating material in the Member States*'
- Annex IX: ESA\_10.0534.5 – ESA letter to the Commission regarding ESA's comments on Commission Directive 2009/145/EC
- Annex X: ESA\_10.0585.2 – ESA letter to the Commission on the draft directive on fodder plant preservation seed mixtures

**The full text of these Annexes is available with the complete ESA Position ESA\_10.1081**