

## Position Paper

### on the Commission's Draft Working Document for a Commission Regulation

laying down rules for the application of the derogation with regard to the use of seeds and vegetative propagating material provided for in Council Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs

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ESA welcomes the European Commission's intention to provide the seed industry as well as potential users of organic seed for organic agricultural production with a clear and transparent legal framework following the ending of the derogation provisions on 31.12.2003 as laid down in the Organic Farming Regulation 2092/91/EC.

This is even more the case as the timely preparation of the plant breeding industry as well as seed producers will be crucial for the quantities of supply of organic seed that especially in the case of bi-annual crops needs a sufficient advance period.

However, ESA is deeply concerned that the current DRAFT proposal of the European Commission fails to fulfil the aim of the Organic Farming Regulation which is the consistent and general use of organic seed for any production which is to be labelled 'organic' in order to provide clarity and consistency to all consumers as to the quality of the products they wish to buy. The practical provisions set out do neither meet the practical requirements of seed suppliers nor do they lead to a clear legal framework in line with general EU seed law and the EU seed marketing Directives.

The European seed industry would therefore welcome the opportunity to discuss the issues set out below with the European Commission's responsible services and considers an inter-service consultation between the Unit within SANCO responsible for seed legislation and the one responsible for organic farming crucial for the workability and legal consistency of the envisaged new legislation for organic seed and organic farming.

**In particular, ESA would like to point to the following principal observations and to specific points in view of consistency with existing EU seed Directives:**

- 1) The Commission' proposal is based on the assumption that it is 'already clear that not sufficient organic seed will be available' (v. ...). We consider it premature as well as factually wrong to base a new Regulation on such assumptions as it sends out negative signals to seed producers and seed suppliers as well as to the organic farming Community in suggesting that the situation is similar for almost all or the majority of crops and that in areas where the assumption might be correct for the moment, an increase in organic seed availability would not materialise in the years to come.  
As it is undisputed that the costs for the production of organic seed are higher than costs for the production of conventional seed, the individual decisions of seed enterprises to enter this market will only be taken if this specific production can be based on clear rules for their compulsory use.  
The seed industry already today produces organic seed for a wide range of crops and uses and will do so for even more crops and uses once their future compulsory use is clearly regulated. ESA is currently carrying out internal studies as to the availability of organic seed in specific species by January 2004.  
  
ESA again urges the Commission not to put forward regulations that would lead to a vicious circle of limited availability. General provisions for derogations based on a perceived lack of availability would discourage the economic incentive for the seed industry to engage into this specific area of production.
- 2) In this respect, ESA draws attention to the fact that all assumptions as to the possible market for organic seed and organic production today are based on a situation with almost general derogations. Such 'precautionary derogations' in order to exclude any real or perceived possible shortage of organic seed is counterproductive to the future availability and must not be used to determine the current or future size of these developing markets.
- 3) Any future system for the granting of derogations must be based on clear rules and procedures. They must include a notification and granting procedure at a European level, e.g. similar to the one already known and widely used in case of shortages of seed supply for certain species and a consequent lowering of quality standards and derogations from the usual standards set by EU seed Directives. Such a system must and can be organised in a way that ensures speedy and well-founded decisions but at the same time excludes fraud.
- 4) Where derogations are granted in the light of a determined lack of availability of organic seed and respective demand from the organic farming community, these derogations must be time-limited, must be reviewed on a regular basis and with that should be designed in a way

that encourages, not discourages the future production of organic seed.

- 5) The proposal lacks clarity as regards the level on which derogations shall or may be granted (e.g. species or sub-species level). ESA draws attention to the fact that derogations should not be based on variety level as this will not only lead to a highly complicated and arbitrary system but would also discourage rather than encourage the use of proper organic seed for organic production.  
Moreover, clarification is needed as to the possibility and rules for derogations for such species listed in the Annex of the proposal.
- 6) The expensive and complicated database sys of the Commission's proposal and the detailed requirements of that database will lead the seed supplier not to participate in such a system. ESA is therefore in favour of a market driven approach where supply and demand for organic seeds will be self-regulating and considers the provisions as set out in Article 2 of the draft proposal to be out of proportion.
- 7) As regards the provisions for the use of genetically modified organisms and/or products derived from such organisms is already regulated in the Basic Regulation. ESA considers the provisions as set out in Article 2 to be superfluous.
- 8) ESA strongly urges the Commission to start internal consultation procedures in order to clarify and make consistent all use of seed related terminology (like e.g., seed, varieties, species, sub-species, seed suitable for etc.).

**Conclusion:**

ESA would like to point out that specific and more differentiated rules and measures might be envisaged in order to take care of specific needs of specific crops and the organic production of their seed. However, these differentiated provisions, which ESA would like to discuss in greater detail with the Commission, must be in line with principal requirements and existing legislation in the field of EU seed law and must be designed in view of the overall principal goal to ensure the use of organic seed for any organic production and –finally- labelled consumption.

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