

**ESA Position
as to the
possible extension of the 'prior use' exemption
to pay remuneration for farm saved seed
from so-called established varieties**

Brussels, 6th January 2003

Ref.: ESA_03.0034

ESA points out the following:

1. ESA does not see a legal possibility nor a necessity to provide for an extension of the period fixed until 30.June 2001 for the application of the provision Art.116(4),2nd indent.

An extension would only become possible dependant on the result of a report of the Commission to be submitted before this date. This however did not take place.

2. ESA members do not have specific information on individual varieties falling under this provision.

Farmers only indicated the fact of having made use of this legal possibility, but did not indicate the variety denominations.

Breeders do not have control possibilities. This is furthermore the case taking into account the negative position as presented by the representative of the Commission on occasion of the hearings of the European Court of Justice in the Cases C- 305/2000 and C-182/2001 concerning the obligation for farmers to deliver information on the use of farm saved seed.

3. ESA does not have a global estimation as to the percentage of this 'prior use' possibility in comparison to the normal farm saved system.

ESA members got the clear impression, that farmers to a large extent have used this exemption for escaping the obligation to pay remuneration for the use of farm saved seed. Therefore ESA is clearly opposed to any attempt to provide for a new exemption possibility in this respect.