

ESA Position
on
Commission Regulation (EC)1768/95
Implementing Rules on the level of remuneration to be paid to
the holder of a Community plant variety Right in the
framework of the 'Agricultural exemption'

Brussels, 28/03/2003

Ref.: ESA_03.0096.1

Regulation (EC) No. 1768/95 under paragraph 7 of Art. 5 stipulates the possible adaptation of paragraph 3 by 01.07.2003 (in the whole or in parts of the Community). To do so, paragraph 7 stipulates: "by 1 January 2003 at the latest, the provisions of paragraph 5, first subparagraph, and of paragraph 6 shall be reviewed in the light of the experiences gained under this Regulation and of developments of the ratio referred to in paragraph 3 with a view to their possible adaptation, by 1 July 2003, as may be necessary to establish or to stabilize the reasonably balanced ratio stipulated in the aforesaid paragraph [...]."

The Commission, recognising that the deadline of 1 January 2003 for the review has already passed, by your letter of 18.03.2003 requested ESA to, nevertheless, put forward a Position on such a possible adaptation.

Having regard to

- the highly political character of setting the level of remunerations which took more than 3 years between 1995 and 1998,
- the possible adoption of a 50% level that would apply only to those cases where no voluntary agreements are concluded,
- the fact that such voluntary agreements on Farm Saved Seed remuneration systems exist in
 - o Belgium
 - o Germany
 - o Denmark
 - o France
 - o Finland
 - o Ireland
 - o The Netherlands
 - o Sweden
 - o United Kingdom
- the fact that even the Polish Breeders Right Law (project) will provide for a 50% remuneration level for such cases where no voluntary agreement exists,

- the fact that in countries with an established FSS agreement, the level of use of certified seed increased whereas in the United Kingdom, a decrease must be stated

ESA takes the following Position:

1. The deadline for reviewing the provision in question has expired since 01.01.2003.
2. ESA does not see a need to proceed for an adaptation of Art. 5, paragraph 7 of Commission Regulation (EC) 1768/95.
3. ESA urgently requests the Commission to follow closely the European Court of Justice cases on the information obligation of farmers and processors (Cases C – 305/2000, C – 182/01 and C – 336/02) and to consider appropriate legislative measures in case of judgements that in practice will render the necessary flow of information impossible.
The judgement in Case C – 305/2000 will be rendered on 10.04.2003.