

## Position

on

### The definition of “marketing” under the EU legislation on seed marketing

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Within the framework of the Better Regulation process aiming at fostering the competitiveness of the EU’s seed sector, ESA takes the opportunity to state its position on the current definition of “marketing” under the Seed Marketing Directives (SMDs), highlight specific points for consideration and propose improvements for more clarity and legal certainty for the seed industry.

#### **Current (harmonised) definition under the SMDs**

For the purposes of this Directive:

(a) ‘marketing’: means the sale, holding with a view to sale, offer for sale and any disposal, supply or transfer aimed at commercial exploitation of seed to third parties, whether or not for consideration.

Trade in seed not aimed at commercial exploitation of the variety, such as the following operations, shall not be regarded as marketing:

- the supply of seed to official testing and inspection bodies,
- the supply of seed to providers of services for processing or packaging, provided the provider of services does not acquire title to seed thus supplied.

The supply of seed under certain conditions to providers of services for the production of certain agricultural raw materials intended for industrial purposes, or seed propagation for that purpose, shall not be regarded as marketing, provided the provider of services does not acquire title to either the seed thus supplied or the product of the harvest. The supplier of seed shall provide the certification authority with a copy of the relevant parts of the contract made with the provider of services and this shall include the standards and conditions currently met by the seed provided.

The conditions for the application of this provision shall be determined in accordance with the procedure laid down in article 25(2)

## Points for consideration

### **Imports of seed from third countries**

ESA would like to highlight specific issues arising from the import of seed from third countries into the Community. As already commented by ESA under item 1.1.8 of the qualitative questionnaire for agricultural crops (ESA\_08.0116.7.AGR), continuous problems persist with the import of seed, notably by import of unlisted varieties (e.g. vegetables) and uncertified seed as false declared products (e.g. grass seed imported as bird feed).

The current definition of “marketing” does not make any reference to import within the Community but merely addresses the handling of seed to third parties, and thus does not cover the issue of direct import (cf. direct use of the seed by the importer). 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 imported seed shown to be intended for re-export to third countries (e.g. seed in transit). Similarly, seed only imported for processing, packaging and registration purposes should remain outside of the scope of the Community legislation on seed marketing.

ESA would also like to express concerns about illegal uses of imported seed (e.g. imported commodity seed used for sowing).

Finally, “marketing” as defined under EU legislation on seed marketing should be without prejudice to Council Regulation 2100/94 on Community plant variety rights.

### **Additional comments**

- Re-wording of “*whether or not for consideration*” (English version) into “*whether in return of payment or free of charge*” or “*whether free of charge or not*” in consistency with other EU laws
- The use of the terms “*seed*” and “*variety*” (cf. possible definition of seed)

## ESA Proposal

Considering the above, ESA proposes to address the issue of import with an additional paragraph on import of seeds to the current definition of “marketing”:

***“Any import of seeds into the Community with a view to use for sowing purposes by the importer or by third parties on whose behalf the seeds have been imported, shall be deemed to constitute marketing.”***