



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.

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.)

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.

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

ANNEX I

ESA_10.0720.2

Regulation on Plant variety listing and seed marketing

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 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 annexes and should take into account the needs of suppliers and direct customers, specific agricultural practices, environmental issues, product quality and consumer information.

ANNEX II

ESA_10.0923

Species eligible for listing under seed marketing legislation – sugar beet

Background:

During the discussion of the evaluation of the seed marketing legislation (Better Regulation initiative) it has frequently been mentioned that one option for reducing the administrative burden for both operators and authorities would be to reduce the number of species eligible for listing, respectively for which listing is mandatory.

Most recently, Germany voiced the opinion that the listing obligation could be deleted for sugar beet and for ornamentals.

The following criteria have been used to argue against a general listing obligation (and with that against the consequent obligations as regards DUS/VCU/certification etc. for such species):

- Limited economic importance
- Defined markets: local markets (no cross-border marketing)
- Defined markets: no export from the EU to third countries
- Defined markets: closed production cycles (industrial crops)

These arguments were also frequently used in the discussions on the legislative package for conservation varieties, amateur varieties and seed mixtures.

ESA Position:

In its answers to the BR evaluator, the Commission as well as Member States, ESA based its position on this point on the input received from the different ESA crop Sections including the Working Group Sugar Beet. All Sections had been asked if they could define species that could be taken off the list and all answered to the contrary with some adding further species for which such a listing obligation should be introduced.

Case sugar beet:

1. Sugar beet continues to be an important species for breeders, farmers and numerous subsequent operators in the agri-food chain.
2. No closed production system (contrary to assumption put forward by (German) authorities):
 - Sugar factories offer a range of varieties; no farmer is forced to take them
 - Farmers choose freely and may add other varieties (and do that more often than in the past)
 - These additional varieties are advertised for explicitly by breeders in their catalogues
 - Seed of the chosen variety is delivered through the breeder directly in more and more cases
3. New markets emerge which are not closed at all (e.g. biogas)
4. Official seed certification is crucial for exports, especially to Russia
5. Sugar beet breeding should continue to follow sugar industry's needs as well as farmers' needs (including sustainability etc.)

ANNEX III

ESA_08.0720

Position on the definition of “marketing” under the EU legislation on seed marketing

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."

ANNEX IV

A)

ESA_08.0116.7 AGR

SECTION 2: VARIETY/MATERIAL REGISTRATION

2.1. DUS TESTING

2.1.1. LESSONS FROM THE PAST

2.1.1.1. Have the Community provisions for DUS testing been effective in ensuring that no new variety has been marketed unless it is distinct, uniform and stable? (Only one answer possible per line of the table)

	Not at all effective	Not much effective	Partly effective	Fully effective	Don't know	Not applicable
Community provisions for:						
Distinctness	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uniformity	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stability	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem: Persisting problems are e.g. incomplete reference collections against which DUS tests are performed and, generally speaking, a lack of uniform implementation and interpretation of the protocols.

2.1.1.2. Have some DUS requirements limited the marketing of varieties of interest to users? (Only one answer possible)

Yes X No Don't know Not applicable

If your answer is 'yes', please specify which requirements:

Identity of a variety / crop is crucial for quality assurance to both farmers and growers as well as increasingly to commodity trade, processors and final food producers. All actors of the food/feed chain become increasingly more demanding as regards product identity and quality assurance; the DUS requirements are the very baseline for ensuring this.

2.1.1.3. To what extent are the costs involved in fulfilling the obligations imposed by the Community provisions for DUS testing reasonable and proportionate? (Only one answer possible)

Not at all Not much X Partly Fully Don't know Not applicable

Please comment on your answer:

Generally, these costs could be considered as proportionate but still shortcomings persist, e.g. as regards the management of reference collections. As regards fulfilling DUS requirements, it should be sufficient to have one set of respective data to be used for both listing and PBR purposes (one key for several doors).

2.1.1.4. To what extent has the public authority transferred the cost of operating the DUS testing to the industry? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer, by specifying the percentage of cost transfer, if any:

This depends on the MS in question and ESA's national association members will comment on their respective national situation accordingly. Generally, it can be stated that some countries have transferred the totality or parts of their costs to breeders. Where such a transfer of costs has taken place, it usually was linked to an increase of the significant input from the industry to the actual organization and management of the testing. This in turn has often resulted in substantial reductions of the total costs of the system.

2.1.1.5. To what extent is the current distribution (between industry and public authorities) of the costs of operating the DUS testing appropriate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

It seems appropriate that an increased transfer of financial responsibility from public authorities to private companies generally is linked to a corresponding increase of industry input to the efficient and cost-effective organisation and management of the system as such.

2.1.2. SUGGESTIONS FOR THE FUTURE

2.1.2.1. What should be done in the future regarding the Community DUS acceptance criteria, without considering the protection aspects? (Only one answer possible per line of the table)

	Maintain	Extend	Reduce	Remove	Don't know	Not applicable
Acceptance criteria for:						
Distinctness	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uniformity	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Stability	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Please comment on your answer:

DUS requirements are crucial for an effective and efficient variety listing and protection system. ESA supports the approach of 'one key, several doors', i.e. of a use of DUS tests for both listing and granting of PBRs. Clearly, such an increased importance of the DUS test then requires not only the maintaining but the further improving and harmonizing of the implementation of the DUS testing provisions.

2.1.2.2. What should be done in the future regarding the operational organisation of DUS testing? (Only one answer possible per line of the table)

Suggestions	In favour	Not in favour	Don't know	Not applicable
Maintain the current organisation of DUS testing	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Organise and coordinate DUS testing at Community level instead of by national or regional authorities	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Organise DUS testing at breeders level, under official supervision	X ¹	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Extend the bilateral and multilateral agreements in order to rationalize the number of DUS testing sites in the EU	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have a same and unique DUS testing for marketing and for the Community Plant Variety Rights system	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the standards to the development of new breeding technologies	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹ As an optional provision, not as a general mandatory rule.

2.1.2.3. If you are in favour of adapting the standards to the development of new breeding technologies, please specify which ones.

Please specify:

New breeding technologies provide opportunities for cheaper and faster testing.

Molecular tools and in particularly DNA markers may help in the grouping of candidate varieties and in the management of reference collections as well as for the identification of genetical links (e.g. for herbicide tolerance, pathogen resistance, quality traits).

However, they are potentially more discriminating than morphology. Totally new standards and statistical robustness of sampling etc. would need to be established to properly implement molecular methods for DUS for some species, especially out-pollinators, which would require a thorough re-examination. Varietal identity and traceability using new methods would also entail a significant increase in molecular testing capability and costs throughout the supply chain and without necessarily bringing respective benefits.

Where useful, new phenotyping methods (pathological tests, chemical analysis and near infra red use, trait analyzers, etc.) could be used in the future to complete the genotyping analysis.

Development, testing and implementation of these supporting tools to the morphological study of DUS should be done in collaboration and consultation with breeders to standardize operating protocols. Here, the seed industry points to respective discussions at the levels of UPOV and the CPVO.

In addition, any change must be internationally accepted as regards the OECD.

2.1.2.4. For each suggestion you support (replies “in favour” under 2.1.2.2), please estimate the expected effects on cost and staff and specify the parties concerned (Commission, the national registration authorities and/or the private operators).

Supported suggestions	% of reduction of costs	% of reduction of staff	Parties concerned		
			Commission	National authorities	Private operators
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For ESA it is impossible to provide estimates of potential cost reductions since the actual cost-levels and the split between industry and national authorities today varies a lot from country to country depending on current organisation. Consequently, the potential impact of a reallocation of costs would differ accordingly.

2.1.2.5. What are the advantages of the suggestions you support (replies “in favour” under 2.1.2.2) and their expected positive effects (for example : on the user, the organisation of the EU S&PM markets, the competitiveness of EU S&PM, the functioning of the internal market, the level of legal requirements, the administrative burden, the rapidity of the decision-making process, etc...)?

Please specify for each suggestion you support:

As the expression of morphological characters varies with respect to factors such as day length along with other environmental effects, there are limits to a concentration of test sites. Still, their number can be reduced and testing be rationalised by the use of bilateral or multilateral agreements wherever agroclimatic conditions permit. In this respect reference is made to the CPVO strategic discussion. ESA is of the opinion that depending on the crop a minimum of 2 testing sites is required.

New technologies may also help to reduce some of the testing costs; at the same time, they may also create new problems of their own which require careful resolution.

Generally, strengthening the possibilities for breeders’ testing can lead to cost efficiencies.

2.1.2.6. What are the disadvantages of suggestions you do not support (replies “not in favour” under 2.1.2.2) and their expected negative effects?

Please specify for each suggestion you do not support:

A single Community level testing would not be appropriate for morphological testing because of regional sensitivities of the expression of morphological characters due to different agroclimatic conditions.

2.2. VCU TESTING

2.2.1. LESSONS FROM THE PAST

2.2.1.1. Have the Community provisions for VCU testing been effective in ensuring that any new variety is an improvement on marketed varieties? (Only one answer possible per line of the table)

	Not effective at all	Not much effective	Partly effective	Fully effective	Don't know	Not applicable
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Community provisions for:						
Value for cultivation	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Value for use	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is 'not at all', 'not much' or 'partly', please comment on your it, by specifying the problem:

This depends to a large extent on the implementation by MS and on the importance attached to the official VCU testing for variety listing in comparison to other non-official systems (e.g. organised by farmers' organisations or other bodies) for recommendation of listed varieties.

2.2.1.2. Have the Community requirements been sufficient and relevant to bring the same guarantee to the users of each Member State? (Only one answer possible)

Not at all Not much X Partly Fully Don't know Not applicable

Please comment on your answer:

This depends to a large extent on the implementation by MS and on the importance attached to the official VCU testing for variety listing in comparison to other non-official systems (e.g. organised by farmers' organisations or other bodies) for recommendation of listed varieties.

2.2.1.3. Have some VCU requirements limited the marketing of varieties of interest to users? (Only one answer possible)

Yes X No Don't know Not applicable

If your answer is 'yes', please specify which requirements :

2.2.1.4. To what extent are the costs involved in fulfilling the obligations for VCU testing reasonable and proportionate? (Only one answer possible)

Not at all Not much X Partly Fully Don't know Not applicable

Please comment on your answer:

Breeders and users of varieties of agricultural crops value the importance of VCU. At the same time, it must be acknowledged that the increasing costs for proper VCU testing risk to become an impediment. Therefore improvements of the organization of VCU testing should be considered to make VCU testing more cost effective. (v. also 2.2.1.5).

2.2.1.5 .To what extent has the public authority transferred the cost of VCU testing to the industry? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer, by specifying the percentage of cost transfer, if any:

The transfer of financial responsibility from public authorities to private companies differs between Member States and is generally linked to a corresponding increase of industry input to the efficient and cost-effective organisation and management of the system as such.

ESA points to the answers of its national associations for the situation in each Member State.

2.2.1.6. To what extent is the current distribution (between industry and public authorities) of the costs of operating the VCU testing appropriate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

The transfer of financial responsibility from public authorities to private companies differs between Member States and is generally linked to a corresponding increase of industry input to the efficient and cost-effective organisation and management of the system as such.

ESA points to the answers of its national associations for the situation in each Member State.

2.2.2. SUGGESTIONS FOR THE FUTURE

2.2.2.1. What should be done in the future regarding the Community VCU provisions? (Only one answer possible per line of the table)

Suggestions	In favour	Not in favour	Don't know	Not applicable
Remove the VCU provisions from the EU legislation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reduce the Community VCU provisions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the Community VCU provisions as they currently stand	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the Community VCU provisions for a reduced number of crops/species	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the Community VCU provisions for a limited number of	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

final uses (e.g. use in food or non food sectors)				
Maintain the Community VCU provisions for a limited number of users (e.g. professional users or non professional users)	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Enlarge the Community VCU provisions to criteria such as food and environmental safety aspects where appropriate	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Reinforce the Community VCU provisions criteria for a harmonised use by all Member States	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Other: Please specify :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.2.2.2. If you are in favour of maintaining the Community VCU provisions for a reduced or larger number of crops/species, please specify the criteria that should be used for determining which species should be removed or added.

Please specify:

Not applicable.

2.2.2.3. If you are in favour of maintaining the Community VCU provisions for a limited number of final uses or users, please specify which ones.

Please specify:

Not applicable.

2.2.2.4. What should be done in the future regarding the operational organisation of VCU testing? (Only one answer possible per line of the table)

Suggestions	In favour	Not in favour	Don't know	Not applicable
Organise the official VCU testing at Community level, based on areas of adaptation (European	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>

networks according to agroclimatic areas for national and regional decisions)				
Organise the VCU testing at the level of the breeders, under official supervision	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stimulate the VCU testing at the level of the breeders without official control or supervision	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
Allow recognition of other Member States' VCU data for national listing (bilateral and multilateral agreement)	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allow coordination between Member States of official observations and national decisions possibly under bilateral agreements	x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: <i>Please specify</i> : - ad 5): ESA added the possibility of multilateral agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.2.2.5. If you are in favour of allowing recognition of other Member States' VCU data for national listing, please specify under which condition(s) it should be established.

Please specify:

Where largely similar agroclimatic and phytosanitary conditions (depending on crops) persist.

2.2.2.6. For each suggestion you support (in 2.2.2.4 "in favour"), please estimate the expected effects on cost and staff and specify the parties concerned (Commission, the national registration authorities and/or the private operators).

Supported suggestions	% of reduction of costs	% of reduction of staff	Parties concerned		
			Commission	National authorities	Private operators
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For ESA it is impossible to provide estimates of potential cost reductions since the actual cost-levels and the split between industry and national authorities today varies a lot from country to country depending on current organisation. Consequently, the potential impact of a reallocation of costs would differ accordingly.

2.2.2.7. What are the advantages of the suggestions you support (in 2.2.2.1 and 2.2.2.4 “in favour”) and their expected positive effects (for example, on the user, the organisation of the EU S&PM markets, the competitiveness of EU S&PM, the functioning of the internal market, the level of legal requirements, the administrative burden, the rapidity of the decision-making process, etc...)?

Please specify for each suggestion you support:

ESA is principally in favour of maintaining the current system as it has demonstrated its effectiveness in the past.

However, ESA is also in favour of strengthening the breeders’ involvement in the VCU testing system (e.g. by making use of existing infrastructure, expertise and data) to reduce costs. Similarly, costs may be reduced by avoiding unnecessary duplication of work where conditions are largely similar; respective bilateral as well as multilateral agreements between Member States should be established where this is feasible.

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.

2.2.2.8. What are the disadvantages of suggestions you do not support (in 2.2.2.1 and 2.2.2.4 “not in favour) or their expected negative effects?

Please specify for each suggestion you do not support:

A VCU testing of varieties at Community level would be highly difficult and costly to organize given the number of varieties, amount of data and reference varieties to be used when simulating the totality of the EU. Furthermore, such an approach very often would not reflect the reality of the later use(s) of these varieties in the different agroclimatic and phytosanitary conditions, uses and markets.

ESA therefore recommends to maintain the current approach of a national VCU testing;

but the seed industry advocates to make more and better use of the possibility of cooperation of Member States on VCU testing by bilateral and multilateral agreements to realise the potential of associated cost reductions.

As stated before, the official supervision of VCU tests at the level of breeders is considered crucial by the European seed industry to maintain a credible system and a level playing field for all companies and users.

2.3. VARIETY DENOMINATION

2.3.1. LESSONS FROM THE PAST

2.3.1.1. Have the Community provisions for the variety denomination been effective in ensuring that varieties are designated in all members of the Union by the same variety denomination? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem:

The centralised database recently set up by the CPVO is a precondition to assure a harmonised and consistent implementation of the provisions as regards denomination of varieties in Member States. Consulting and decision making based on this website must become obligatory for both, listing and granting of national and EU PBRs.

2.3.1.2. Have some variety denomination requirements limited the marketing of varieties of interests to users? (Only one answer possible)

Yes No Don't know Not applicable

If your answer is 'yes', please specify which requirements:

2.3.1.3. Does the time required for validation of a variety denomination by the official bodies negatively impact on the marketing of S&PM? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

The centralised database recently set up by the CPVO is a precondition to assure a harmonised and consistent implementation of the provisions as regards denomination of varieties in Member States.

Consulting this website must become obligatory for both, listing and granting of national and EU PBRs.

The responsibility for the management of the database and thus for verification of denominations proposed should be transferred to the CPVO.

The final decision may then be up to the responsible national authority or the CPVO itself (EU PBRs).

ESA considers the time lag of three months (and more in some cases) to be too long.

2.3.2. SUGGESTIONS FOR THE FUTURE

2.3.2.1. Is the current system of variety denomination sustainable in the future? (Only one answer possible)

Yes No Don't know Not applicable

Please comment on your answer:

The centralised database recently set up by the CPVO is a precondition to assure a harmonised and consistent implementation of the provisions as regards denomination of varieties in Member States. Consulting this website must be obligatory for both, listing and granting of national and EU PBRs. Responsibility for the management of the database and thus the verification of the proposed denominations should be transferred to the CPVO. The final decision may then be up to the responsible national authority or the CPVO itself (EU PBRs).

Further detailed suggestions, please see answer to 2.3.2.2

2.3.2.2. What should be done in the future regarding the variety denomination? (Only one answer possible per line of the table)

Suggestions	In favour	Not in favour	Don't know	Not applicable
Maintain the variety denomination Community Regulation as it currently stands	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Revise the system of variety denomination (i.e. in the form of a 'fancy name' or a 'code')	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Remove the variety denomination regulation	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Other: <i>Please specify :</i> ESA is in favour of <u>adding</u> the possibility of using codes as variety denominations <u>for all crops and all varieties</u> . In addition, please see answer to 2.3.2.1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.3.2.3. What are the advantages of the suggestions you support and their expected effects on the marketing of S&PM, the level of legal requirements, the administrative burden, the costs, the rapidity of the decision-making process, etc?

Please specify for each suggestion you support:

Improved clarity, consistency, speed and freedom for breeders.

2.3.2.4. What are the disadvantages of suggestions you do not support or their expected negative effects?

Please specify for each suggestion you do not support:

An unambiguous and efficient variety denomination system is important for a proper functioning of the later marketing of varieties.

ESA therefore is in favour of maintaining and improving the current system as indicated above.

2.4. COMMON CATALOGUES

2.4.1. LESSONS FROM THE PAST

2.4.1.1. Does your organisation use the common catalogues? (Only one answer possible)

X Yes No Don't know Not applicable

If your answer is 'yes', please specify the purpose for which they are used:

The ESA Secretariat uses the CC not for commercial but for political, administrative and general information purposes.

ESA's members use the CC regularly for all purposes listed above.

If your answer is 'yes'

How frequently are they used? (Only one answer possible)

Occasionally X Regularly X Very often Don't know Not applicable

At which level? (Only one answer possible)

All staff X Headquarters only X Other level (please, specify:) Not applicable

Please comment on your answer:

"Regularly" and "Headquarters only" applies to the ESA Secretariat; "very often" and "other levels" (i.e. all levels in commercial seed companies) applies to ESA's members.

2.4.1.2. Does the lapse of time required between the national registration and the publication in the common catalogues negatively impact on the marketing of S&PM? (Only one answer possible)

Not at all Not much X Partly Fully Don't know Not applicable

Please comment on your answer:

The time lapse can adversely affect timely marketing in Members States other than that in which the variety is first nationally listed. National listing and automatic addition to the Common Catalogue should become simultaneous and this should be possible through a centralized Common Catalogue database accessible via the internet.

2.4.2. SUGGESTIONS FOR THE FUTURE

2.4.2.1. What should be done in the future regarding the national and common catalogues? (Only one answer possible per line of the table)

Suggestions	In favour	Not in favour	Don't know	Not applicable
Maintain both the national and common catalogues as they currently stand	X*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stop national catalogues and only work with common catalogues	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Work with common catalogues and allow Member States to have national catalogues on a voluntary basis	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Other: <i>Please specify :</i> * ESA is in favour of an EU Common Catalogue that is a simple automatic (electronic!) compilation of national catalogues. National listing thus would <u>automatically</u> lead to a simultaneous inclusion of these varieties in the CC. Such a system should be very simple to administer and thus be cost effective and quick, in particular if administered by the CPVO.	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.4.2.2. What are the advantages of the suggestions you support and their expected positive effects (for example: on the marketing of S&PM, the level of legal requirements, the administrative burden, the costs, the rapidity of the decision-making process, etc.)?

Please specify for each suggestion you support:

The system as proposed by ESA (v. 2.4.2.1, questions 1 and 4) would bring about cost reductions for both MS and EU, decreasing the time between national listing and final inclusion on the CC (following the consultation of Member States by the COM via the Standing Committee procedure).

With that, it would clearly speed up the access of new varieties to the full EU market.

2.4.2.3. What are the disadvantages of suggestions you do not support or their expected negative effects?

Please specify for each suggestion you do not support:

Any voluntary and non-harmonised system (e.g. leaving the decision to set up a national catalogue to the individual MS) decreases transparency and creates unnecessary confusion and potential for disagreements.

Stopping the use of national catalogues is not in line with ESA's general position of the usefulness of national listing, based on specific national climatological, phytonsaitary etc. conditions and markets.

2.4.2.4. If you are in favour of maintaining the common catalogues, is it desirable to modify them in terms of their accessibility, user-friendliness, number of updates, and elements of information they contain?

Accessibility, i.e. time required to access the common catalogue (Only one answer possible)

X Yes No Don't know Not applicable

User-friendliness, i.e. time required to find the required information (Only one answer possible)

X Yes No Don't know Not applicable

Number of updates (Only one answer possible)

Same X More Less Don't know Not applicable

Elements of technical information they contain (Only one answer possible)

X Same More Less Don't know Not applicable

Please comment on your answer:

Actual, regularly updated and specifically defined information would improve transparency in relation to marketing of varieties in the Common Market.

The seed industry would prefer an on-line system with excel-file based information. This would allow the CC to be permanently maintained at the utmost actual level of information while decreasing costs.

2.4.2.5. What are the advantages or disadvantages of any modification of the common catalogues and their expected effects (negative or positive) on the level of legal requirements, administrative burden, and associated costs? Which are the elements of technical information that you would like to delete or add?

Please specify:

Where legal restrictions on the marketing or use of a variety apply, these should be listed in the CC. In addition, see the ESA answer to 2.4.2.4.

2.5. CONCLUSIONS

2.5.1. What are the most important lessons from the past, if any, concerning the current Community 'acquis' on variety /material registration of S&PM?

Please specify:

DUS: Identity of a variety / crop is crucial for quality assurance to both farmers and growers as well as increasingly to commodity trade, processors and final food producers. All actors of the food/feed chain become increasingly more demanding as regards product identity and quality assurance; the DUS requirements are the very baseline for ensuring this.

Persisting problems are e.g. incomplete reference collections against which DUS tests are performed and, generally speaking, a lack of uniform implementation and interpretation of the protocols.

VCU: Breeders and users of varieties of agricultural crops value the importance of VCU and ESA is therefore principally in favour of maintaining the current system that has demonstrated its value in the past. At the same time, it must be acknowledged that the increasing costs for proper VCU testing risk to become an impediment. Therefore improvements of the organization of VCU testing should be considered to make VCU testing more cost effective.

Variety denomination: An unambiguous and efficient variety denomination system is important for a proper functioning of the later marketing of varieties.

ESA therefore is in favour of maintaining and improving the current system as indicated above.

Common Catalogue: Finally, actual, regularly updated and specifically defined information in relation to marketing of properly listed varieties is essential for both the European seed industry and farmers to fully exploit the benefits of a true Common Market for seed.

2.5.2. Which are the most important suggestions, if any, you would formulate for the future Community 'acquis' on variety/material registration of S&PM?

Please specify:

DUS: ESA supports the approach of 'one key, several doors', i.e. of a use of DUS tests for both listing and granting of PBRs. Clearly, such an increased importance of the DUS test then requires not only the maintaining but the further improving and harmonizing of the implementation of the DUS testing provisions.

Increasing bilateral and multilateral agreements where possible, allowing for respective reduction of testing sites, improving the quality of reference collections and inclusion of new technologies where appropriate and subject to the development, testing and implementation of these new technologies as supporting tools in collaboration with breeders would allow for efficiency gains and cost reductions of the current DUS testing.

VCU: ESA is in favour of strengthening the breeders' involvement in the VCU testing system (e.g. by making use of existing infrastructure, expertise and data) to reduce costs. Similarly, costs may be reduced by avoiding unnecessary duplication of work where conditions are largely similar; respective bilateral as well as multilateral agreements between Member States should be established where this is feasible.

Variety denomination: The centralised database recently set up by the CPVO is a precondition to assure a harmonised and consistent implementation of the provisions as regards denomination of varieties in Member States. Consulting this website must be obligatory for both, listing and granting of national and EU PBRs. Responsibility for the management of the database and thus the verification of the proposed denominations should be transferred to the CPVO. The final decision may then be up to the responsible national authority or the CPVO itself (EU PBRs). ESA is convinced that by this, significant efficiency gains and reduction of costs can be achieved.

Common Catalogue: ESA is in favour of an EU Common Catalogue that is a simple automatic (electronic!) compilation of national catalogues. National listing thus would automatically lead to a simultaneous inclusion of these varieties in the CC. Such a system should be very simple to administer and thus be cost effective and quick, in particular if administered by the CPVO. It would also end the current delays in Common Catalogue publications.

2.5.3. Which are the most important suggestions, if any, you would formulate to reduce the costs incurred by the public authorities and the private operators for the variety/material registration of S&PM, while guaranteeing the same level of quality?

Please specify:

See answers above.

3.1. LESSONS FROM THE PAST

3.1.1. Have the Community provisions for the certification of S&PM been effective in ensuring S&PM lots of sufficient quality? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem:

3.1.2. Have the Community provisions for the certification of S&PM been effective in facilitating the free marketing of the S&PM in the EU? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem:

3.1.3. Are the current quality standards relevant for the purpose of certification? (Only one answer possible per line of the table)

Quality standard	Not relevant at all	Not much relevant	Partly relevant	Fully relevant	Don't know	Not applicable
Identity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Varietal Purity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Germination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Other: <i>Please specify:</i>						
Identification of species for certification of commercial seed in forage crops.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on your answer, by specifying the problem if 'not at all', 'not much' or 'partly':

Germination may depend on harvest conditions and therefore, exemptions have to be and are regularly granted via the relevant procedure (Standing Committee Seeds). While this flexibility is required, high levels of germination as set by the SMDs set the minimum standard seed companies work to achieve.

At present the EU provisions for seed potatoes are significantly lower than set at Member State level, partly due to specific conditions in Member States. ESA members active in potato breeding are of the opinion that the possibility for MS to set more stringent requirements should remain unchanged in order to reflect these differences in Member States.

As regards plant health, ESA points out that principal provisions of the plant health Directive to prevent the spread of pests and disease are undermined by the extensive and uncontrolled (no information to holder of the IPRs and thus no traceability) use of farm saved seed (in particular as regards seed potatoes).

3.1.4. To what extent are the costs involved in fulfilling the obligations imposed by the Community provisions for certification reasonable and proportionate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

The seed certification could be made more efficient and thus cost effective. For details, see the respective proposals of the seed industry in this questionnaire.

3.1.5. To what extent is the current distribution (between industry and public authorities) of the costs of operating certification appropriate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

It seems appropriate that an increased transfer of financial responsibility from public authorities to private companies generally is linked to a corresponding increase of industry input to the efficient and cost-effective organization and management of the system as such.

3.1.6. Did the organisation of certification in your country move from an official system (official examination) to a system of certification under official supervision? (Only one answer possible)

Yes No Don't know Not applicable FOR ESA AS A EU LEVEL ORG.

If 'yes', what have been the impacts of such modification (for example on costs, planning, logistics, flexibility, responsibility, etc)?

Please comment on your answer, by specifying the percentage of cost transfer, if any:

3.1.7. Are the EC standards for the certification of S&PM coherent with OECD standards? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

The EC standards are fully in line with OECD standards where these focus on varietal identity and purity. However, OECD standards do not exist for all the general standards set by the EU certification provisions and some standards are neither applicable nor important for some crops.

3.1.8. Are the EC standards for the certification of S&PM coherent with UN-ECE standards (seed potatoes)? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

The EC standards are fully in line with UN-ECE standards. However, UN-ECE standards do not exist for all the general standards set by the EU certification provisions and some standards are neither applicable nor important for potatoes.

3.1.9. Are Community comparative trials an appropriate tool for ensuring harmonization of inspection practices contributing to S&PM lots of sufficient quality?
(Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

Community trials provide a welcomed, useful and important possibility to foster the further harmonisation between Member States.

3.2. SUGGESTIONS FOR THE FUTURE

3.2.1. What should be done in the future regarding certification? (Only one answer possible per line of the table)

Suggestions	In favour	Not in favour	Don't know	Not applicable
STATUS QUO				
Maintain the certification standards as they currently stand	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the certification structures as they currently stand	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
REVISE THE CERTIFICATION BY:				
Revise the requirements				
Decrease the number of species covered by the Seed Marketing Directives (by e.g. removing those of minor economic importance)	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Increase the number of species covered by the Seed Marketing Directives	X ²	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decrease the number of standards	<input type="checkbox"/>	X ³	<input type="checkbox"/>	<input type="checkbox"/>
Increase the number of standards	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Revise the levels set in the quality standards (e.g. germination %)	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Extend the field inspection "under official	X ⁴	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

² See comment next page !

³ Generally, the standards are appropriate. However, in some defined cases, e.g. as regards side size for potato, there is no need for such a standard.

supervision” to pre-basic and basic crops				
In the case of certification “under official supervision”, revise the minimum 5% check testing, check inspection and check sampling	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In the case of certification “under official supervision”, leave the level of check testing, check inspection and check samples to Member States’ discretion, based on their own assessments of the risk to seed quality.	X ⁵	X ¹²	<input type="checkbox"/>	<input type="checkbox"/>
In the case of certification “under official supervision”, target inspection on the basis of risk (taking into consideration the higher voluntary standards in place, industry inspections, track records, etc.)	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Apply controls/certification standards to final generation S&PM only and leave companies to decide how to manage parental generation S&PM production to meet the quality standards of final generation certified lots of the category under which the S&PM is marketed	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Apply controls/certification to parental generations only and leave companies to decide how to manage commercial S&PM production to meet the quality standards of final generation certified lots of the category under which the S&PM is marketed	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Other: <i>Please specify:</i> Harmonizing and simplifying the rules in the seed marketing Directives concerning marketing and labelling of "Small Packages".	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Revise the operational organisation				
Integrate the inspection regimes for certification and for plant health	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

⁴ For seed potatoes there is at present no provision for field inspection under official supervision. However, ESA members active in breeding of seed potatoes would welcome this possibility for pre-basic, basic and certified seed potatoes.

⁵ Potato seed companies have a preference to leave the level of check testing, inspection and sampling to MS discretion based on their own risk assessment. ESA members active in breeding of cereals (including maize) and pulses, forage plants and grasses are not in favour of such an approach.

Set up a certification with a system of an accredited third party private body approved by the Member State	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Set up a certification with a system of a S&PM company accreditation.	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Limit the official certification scheme to a basic level defined in the legislation and have extra quality requirements left up to private companies	X ⁶	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Set up a voluntary certification scheme to national, or international (i.e. OECD) standards	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Remove the official certification system and pass on the full producer's liability	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Other : <i>Please specify :</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3.2.2. If you are in favour of decreasing or increasing the number of species covered by the Seed Marketing Directives, please specify which ones.

Please specify:

Generally, seed companies active in a specific crop are in favour an inclusion of their crop in the scope of the respective SMD.

ESA is in favour of SMDs covering all crops of which seed is commercially traded.

3.2.3. If you are in favour of increasing or decreasing the number of standards, please specify which ones

Please specify:

Generally, the standards are appropriate. However, in some defined cases, e.g. as regards side size for potato, there is no need for such a standard.

3.2.4. If you are in favour of revising the levels set in the quality standards, please specify how and for which standard?

Please specify:

3.2.5. For each suggestion you support (in 3.2.1., “in favour”), please estimate the expected positive effects on cost and staff and specify the parties concerned (Commission, the national certification authorities and/or the private operators).

⁶ ESA interprets the term ‘basic level’ to define a sufficiently HIGH level appropriate for high value, high technology products supplied by a professional industry. Should the term ‘basic’ have been used here with the meaning of rather ‘low’ or ‘minimal’ level, ESA’s answer would be ‘Not in favour’.

Supported suggestions	% of reduction of costs	% of reduction of staff	Parties concerned		
			Commission	National authorities	Private operators
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For ESA it is impossible to provide estimates of potential cost reductions since the actual cost-levels and the split between industry and national authorities today varies a lot from country to country depending on current organisation. Consequently, the potential impact of a reallocation of costs would differ accordingly.

3.2.6. What are the advantages of the suggestions you support (in 3.2.1. “in favour”) and their expected positive effects (for example on the user, the organisation of the EU S&PM markets, the competitiveness of EU S&PM, the functioning of the internal market, the level of legal requirements, the administrative burden, the rapidity of the decision-making process, etc)?

Please specify for each suggestion you do not support:

The compliance with international requirements and the acceptance of international standards such as the OECD seed schemes are crucial for the practical value and use of EU legislation by the European seed companies.

Any possible changes at EU level therefore depend on their compatibility with these international standards (OECD , UN-ECE).

Still, the seed certification could be made more efficient and thus cost effective by making use of a certification under official supervision and by dropping standards that are not required in view of international compatibility and that are not required. For details, see the respective proposals of the seed industry in this questionnaire.

3.2.7. What are the disadvantages of the different options you do not support (in 3.2.1. “not in favour”) or their expected negative effects?

Please specify for each suggestion you do not support:

See answers above.

3.3. CONCLUSIONS

3.3.1. What are the most important lessons from the past, if any, concerning the current Community 'acquis' on certification of S&PM?

Please specify:

ESA points out the need for a proper identification of plant varieties and their basic qualities that are precondition for acquiring and enforcing intellectual property rights, for consumer protection (product quality assurance for farmers and industries) and in particular for the exchange with Europe's trade partners. The compliance with such international requirements and the acceptance of international standards such as the OECD seed schemes are therefore crucial for the practical value and use of EU legislation by the European seed companies.

3.3.2. Which are the most important suggestions, if any, you would formulate for the future Community 'acquis' on certification of S&PM?

Please specify:

The seed certification could be made more efficient and thus cost effective. For details, see the respective proposals of the seed industry in this questionnaire

3.3.3. Which are the most important suggestions, if any, you would formulate to reduce the costs incurred by the public authorities and the private operators for the certification of S&PM, while guaranteeing the same level of quality?

Please specify:

See answers above.

B)

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SECTION 2. VARIETY/MATERIAL REGISTRATION

2.1. DUS TESTING

2.1.1. LESSONS FROM THE PAST

2.1.1.1. Have the Community provisions for DUS testing been effective in ensuring that no new variety has been marketed unless it is distinct, uniform and stable? (Only one answer possible per line of the table)

	Not at all effective	Not much effective	Partly effective	Fully effective	Don't know	Not applicable
Community provisions for:						
Distinctness	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uniformity	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stability	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem:

In the majority of cases the provisions for DUS are fully effective, but persisting problems are, for example, incomplete reference collections with which DUS tests are performed and, generally speaking, a lack of uniform implementation and interpretation of the protocols. As a result following inconsistencies occur:

- different outcome for the testing of the same variety in Member States A and B
- different approaches to the checking for variety resistance claims
- different approaches to the use of seed company's DUS test results

2.1.1.2. Have some DUS requirements limited the marketing of varieties of interest to users? (Only one answer possible)

Yes X No Don't know Not applicable

If your answer is 'yes', please specify which requirements:

In general DUS requirements are not limiting the marketing of varieties, but for certain categories DUS-criteria need to be adapted to the final use of the varieties. For example varieties targeted to be used as rootstocks for grafting should only be evaluated for the relevant characteristics. DUS-testing is also needed for true 'old' varieties, although specific regimes of requirements may be needed.

For future DUS-testing, presence of new input traits may require additional DUS-criteria and related test-protocols.

2.1.1.3. To what extent are the costs involved in fulfilling the obligations imposed by the Community provisions for DUS testing reasonable and proportionate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

Major differences exist in costs for variety registration from one Member State to another.

The biggest concern however is the unequal quality of DUS-testing between Member States. The ESA demand of a 'one key - several doors' policy whereby application for marketing authorisation and application for granting PBR's can be combined, would lead to substantial cost-savings and efficiency improvements.

Additional cost savings can be achieved by on-line application procedures and administrative follow-up, simplification and standardization of administrative processes, etc..

Cost savings can also be achieved in DUS-examination, if more use could be made of information from tests performed by the applicants under adequate official supervision.

2.1.1.4. To what extent has the public authority transferred the cost of operating the DUS testing to the industry? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer, by specifying the percentage of cost transfer, if any:

This depends on the MS in question and ESA's national association members will comment on their respective national situation accordingly.

Generally, it can be stated that some countries have transferred the totality or parts of their costs to breeders. Where such a transfer of costs has taken place, it usually was linked to a significant increase of the input from the industry to the actual organisation and management of the testing. This in turn has often resulted in substantial reductions of the total costs of the system in these Member States.

For countries with limited number of listings and full allocation of costs to the applicants, cost-levels risk to become prohibitive; this could be changed with the proposals contained in this questionnaire.

2.1.1.5. To what extent is the current distribution (between industry and public authorities) of the costs of operating the DUS testing appropriate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

It seems appropriate that an increased transfer of financial responsibility from public authorities to private companies generally is linked to a corresponding increase of industry input to the efficient and cost-effective organisation and management of the system as such.

Some differences between MS can be allowed, as long as the level playing field for seed companies in different MS is not disturbed.

2.1.2. SUGGESTIONS FOR THE FUTURE

2.1.2.1. What should be done in the future regarding the Community DUS acceptance criteria, without considering the protection aspects? (Only one answer possible per line of the table)

	Maintain	Extend	Reduce	Remove	Don't know	Not applicable
Acceptance criteria for:						
Distinctness	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uniformity	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stability	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on your answer:

DUS requirements are crucial for an efficient and effective variety listing and protection system.

ESA supports the approach of 'one key, several doors', i.e. one DUS report to be used for both listing and PBRs. Clearly, such an increased importance of the DUS test requires not only a maintaining but a further improved and harmonized implementation of the DUS testing provisions. In this respect reference is made to the "Strategic Discussion" in CPVO. It was concluded that reorganization of DUS testing should be based on quality requirements. Only Examination Offices meeting these quality requirements should be entrusted by the CPVO for the carrying out of DUS tests for a certain species.

New legislation should allow use of new phenotyping techniques as a supportive tool for efficient DUS-testing. This technology may also be useful to support verification of variety identity.

2.1.2.2. What should be done in the future regarding the operational organization of DUS testing? (Only one answer possible per line of the table)

Suggestions	In favor	Not in favor	Don't know	Not applicable
Maintain the current organization of DUS testing	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Organize and coordinate DUS testing at Community level instead of by national or regional	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>

authorities				
Organize DUS testing at breeders level, under official supervision	X *	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Extend the bilateral <u>and/or</u> <u>multilateral</u> agreements in order to rationalize the number of DUS testing sites in the EU	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have a same and unique DUS testing for marketing and for the Community Plant Variety Rights system	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the standards to the development of new breeding technologies	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: ESA supports the approach of 'one key, several doors', i.e. one DUS report to be used for both listing and PBRs. Clearly, such an increased importance of the DUS test requires not only a maintaining but a further improved and harmonized implementation of the DUS testing provisions. In this respect reference is made to the "Strategic Discussion" in CPVO. It was concluded that reorganization of DUS testing should be based on quality requirements, including the use of a proper reference collection. Only Examination Offices meeting these quality requirements should be entrusted by the CPVO for the carrying out of DUS tests for a certain species.	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* As an option and not on a mandatory basis.

2.1.2.3. If you are in favor of adapting the standards to the development of new breeding technologies, please specify which ones.

Please specify:

Molecular tools and in particularly DNA markers may help in the grouping of candidate varieties and in the management of reference collections as well as for the identification of genetical links (e.g. for herbicide tolerance, pathogen resistance, quality traits).

Where useful, new phenotyping methods (pathological tests, chemical analysis and near infra red use, trait analyzers, etc.) could be used in the future to complete the genotyping analysis.

Development, testing and implementation of these supporting tools to the morphological study of DUS should be done in collaboration and consultation with breeders to standardize operating protocols.

2.1.2.4. For each suggestion you support (replies “in favor” under 2.1.2.2), please estimate the expected effects on cost and staff and specify the parties concerned (Commission, the national registration authorities and/or the private operators).

Supported suggestions	% of reduction of costs	% of reduction of staff	Parties concerned		
			Commission	National authorities	Private operators
Organize and coordinate DUS testing at Community level instead of by national or regional authorities			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Extend the bilateral agreements in order to rationalize the number of DUS testing sites in the EU			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have a same and unique DUS testing for marketing and for the Community Plant Variety Rights system			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapt the standards to the development of new breeding technologies			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For ESA it is impossible to provide estimates of cost potential cost reductions, since the actual cost-levels and the split between industry and national authorities today varies a lot from country to country depending on current organization. Consequently, the potential impact of a reallocation of costs would differ accordingly.

2.1.2.5. What are the advantages of the suggestions you support (replies “in favor” under 2.1.2.2) and their expected positive effects (for example : on the user, the organization of the EU S&PM markets, the competitiveness of EU S&PM, the functioning of the internal market, the level of legal requirements, the administrative burden, the rapidity of the decision-making process, etc...)?

Please specify for each suggestion you support:

In all cases the “in favor” suggestions are leading to a more uniform high quality system with clearer and faster decision making processes:

- ad 1) Greatest possibility to achieve a common DUS-process for (Common) Catalogue Listing and for PBR.
- ad 2) Harmonization of technical protocols, duration of DUS-testing (1 year wherever technically feasible, 2 years only where biologically required) and decision criteria.
- ad 3) Reduction in the number of accredited examination offices per species. ESA supports the approach of ‘one key, several doors’, i.e. one DUS report to be used for both listing and PBRs. Clearly, such an increased importance of the DUS test requires not only a maintaining but a further improved and harmonized implementation of the DUS testing provisions. In this respect reference is made to the “Strategic Discussion” in CPVO. It was concluded that reorganization of DUS testing should be based on quality requirements, including the use of a proper reference collection. Only Examination Offices meeting these quality requirements should be entrusted by the CPVO for the carrying out of DUS tests for a certain species.

A concentration on fewer EO's would allow for an optimization of phenotyping evaluation (having a critical mass and excellent reference collections) with technical equipments (greenhouses, pathology laboratory facilities, molecular markers, data management, etc.) and with an harmonization of protocols and testing provisions; this gain of effectiveness could lead to a reduction of the number of cycles of examination and speed up the access to the market.

The delegation of execution of DUS-examinations to private testing stations could also be an option, provided this is carried out under adequate official supervision. Maintenance of reference collections requires special attention in this scenario.

2.1.2.6. What are the disadvantages of suggestions you do not support (replies “not in favor” under 2.1.2.2) and their expected negative effects?

Please specify for each suggestion you do not support:

Maintaining the current system would result in a continuation of lack of harmonization and quality in the implementation of the requirements from the Directives.

2.2. VCU TESTING

The existing Directive 2002/55/EC does not provide a VCU requirement for vegetable varieties. This is due to the fact that such a requirement would be much too complex and costly to set up for the highly specialized and differentiated vegetable seed/crop markets. Vegetable seed companies have established their own highly efficient systems of variety

trials, where new varieties are assessed in close cooperation with users in various climatological zones.

The European vegetable seed industry does not wish to see a change to this successful and well-established system by the introduction of any form of VCU requirement for vegetable varieties.

2.2.1. LESSONS FROM THE PAST

2.2.1.1. Have the Community provisions for VCU testing been effective in ensuring that any new variety is an improvement on marketed varieties? (Only one answer possible per line of the table)

	Not effective at all	Not much effective	Partly effective	Fully effective	Don't know	Not applicable
Community provisions for:						
Value for cultivation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Value for use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem:

2.2.1.2. Have the Community requirements been sufficient and relevant to bring the same guarantee to the users of each Member State? (Only one answer possible)

Not at all Not much Partly Fully Don't know X Not applicable

Please comment on your answer:

2.2.1.3. Have some VCU requirements limited the marketing of varieties of interest to users? (Only one answer possible)

Yes No Don't know X Not applicable

If your answer is 'yes', please specify which requirements:

2.2.1.4. To what extent are the costs involved in fulfilling the obligations for VCU testing reasonable and proportionate? (Only one answer possible)

Not at all Not much Partly Fully Don't know X Not applicable

Please comment on your answer:

2.2.1.5 .To what extent has the public authority transferred the cost of VCU testing to the industry? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer, by specifying the percentage of cost transfer, if any:

2.2.1.6. To what extent is the current distribution (between industry and public authorities) of the costs of operating the VCU testing appropriate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

2.2.2. SUGGESTIONS FOR THE FUTURE

2.2.2.1. What should be done in the future regarding the Community VCU provisions? (Only one answer possible per line of the table)

Suggestions	In favor	Not in favor	Don't know	Not applicable
Remove the VCU provisions from the EU legislation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X*
Reduce the Community VCU provisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Maintain the Community VCU provisions as they currently stand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Maintain the Community VCU provisions for a reduced number of crops/species	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Maintain the Community VCU provisions for a limited number of final uses (e.g. use in food or non food sectors)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Maintain the Community VCU provisions for a limited number of users (e.g. professional users or non professional users)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Enlarge the Community VCU provisions to criteria such as food and environmental safety aspects where appropriate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Reinforce the Community VCU provisions criteria for a harmonized use by all Member States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Other: <i>Please specify :</i> * see further explanation and suggestion under 2.2.2.2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.2.2.2. If you are in favor of maintaining the Community VCU provisions for a reduced or larger number of crops/species, please specify the criteria that should be used for determining which species should be removed or added.

Please specify:

ESA draws attention to the anomalous situation where vegetable swedes are forced to have VCU tests as if they are agricultural swedes. Vegetable swedes should not require VCU; they should be subject to the same approach as e.g. vining/vegetable peas: these do not require VCU whereas agricultural peas do.

2.2.2.3. If you are in favor of maintaining the Community VCU provisions for a limited number of final uses or users, please specify which ones.

Please specify:

2.2.2.4. What should be done in the future regarding the operational organization of VCU testing? (Only one answer possible per line of the table)

Suggestions	In favor	Not in favor	Don't know	Not applicable
Organize the official VCU testing at Community level, based on areas of adaptation (European networks according to agro climatic areas for national and regional decisions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Organize the VCU testing at the level of the breeders, under official supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Stimulate the VCU testing at the level of the breeders without official control or supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Allow recognition of other Member States' VCU data for national listing (bilateral agreement)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Allow coordination between Member States of official observations and national decisions possibly under bilateral agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Other: <i>Please specify :</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

2.2.2.5. If you are in favor of allowing recognition of other Member States' VCU data for national listing, please specify under which condition(s) it should be established.

Please specify:

2.2.2.6. For each suggestion you support (in 2.2.2.4 “in favor”), please estimate the expected effects on cost and staff and specify the parties concerned (Commission, the national registration authorities and/or the private operators).

Supported suggestions	% of reduction of costs	% of reduction of staff	Parties concerned		
			Commission	National authorities	Private operators
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For ESA it is impossible to provide estimates of potential cost reductions, since the actual cost-levels and the split between industry and national authorities today varies a lot from country to country depending on current organisation. Consequently, the potential impact of a reallocation of costs would differ accordingly.

2.2.2.7. What are the advantages of the suggestions you support (in 2.2.2.1 and 2.2.2.4 “in favor”) and their expected positive effects (for example, on the user, the

organization of the EU S&PM markets, the competitiveness of EU S&PM, the functioning of the internal market, the level of legal requirements, the administrative burden, the rapidity of the decision-making process, etc...)?

Please specify for each suggestion you support:

2.2.2.8. What are the disadvantages of suggestions you do not support (in 2.2.2.1 and 2.2.2.4 “not in favor) or their expected negative effects?

Please specify for each suggestion you do not support:

2.3. VARIETY DENOMINATION

2.3.1. LESSONS FROM THE PAST

2.3.1.1. Have the Community provisions for the variety denomination been effective in ensuring that varieties are designated in all members of the Union by the same variety denomination? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

If your answer is ‘not at all’, ‘not much’ or ‘partly’, please comment on it, by specifying the problem:

ESA considers that the following principle has to apply for variety denominations:

one denomination for one plant variety, except for some exceptional cases where official synonyms (translations) are needed.

In general there is a lack of harmonization between Member States regarding implementing rules, for instance as regards the use of geographical denominations. This situation should be deeply improved.

The centralized database recently set up by the CPVO is a precondition to assure a harmonized and consistent implementation of the provisions as regards denomination of varieties in Member States. Consulting and decision making based on this website must become obligatory for both, (EU) listing and granting of national and EU PBR.

2.3.1.2. Have some variety denomination requirements limited the marketing of varieties of interests to users? (Only one answer possible)

Yes No Don't know Not applicable

If your answer is ‘yes’, please specify which requirements:

v. also above under 2.3.1.1;

It is proposed to review the current restrictions and to bring them into line with the rules applied in other parts of the world (Americas, APACs) to facilitate the global movement of vegetable varieties under a single denomination.

Some variety names are difficult to pronounce or considered offensive in some (EU) languages; here, an official translation should be allowed (e.g. Leek blauwgroene winter)

2.3.1.3. Does the time required for validation of a variety denomination by the official bodies negatively impact on the marketing of S&PM? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

Acceptance of the variety denomination should be faster and more efficient: a denomination granted by a National authority can be refused a few years later in another Member State because of a specific National situation. Thus, legal certainty of breeders is not improved by this situation. Once again a reliable and robust centralized database is crucial to provide breeders a consistent decision regarding its variety denomination on EU territory for both listing and Plant Breeder's Rights. Responsibility for the management of the database and thus the verification of the proposed denominations should be transferred to the CPVO. It is emphasized that CPVO should take care of a quick and efficient variety denomination verification and approval process.

2.3.2. SUGGESTIONS FOR THE FUTURE

2.3.2.1. Is the current system of variety denomination sustainable in the future? (Only one answer possible)

Yes No Don't know Not applicable

Please comment on your answer:

The system should be improved with a centralized database containing all variety denominations presently used in EU territory at all levels of national listing and Plant breeder's Rights.

This database could also keep a record of "old" variety denominations after their deletion from variety listing and/or termination of their protection. This could allow for a proper handling of re-use of 'ancient' variety denominations.

The CPVO database is a big step forward in this respect and its use should become mandatory.

2.3.2.2. What should be done in the future regarding the variety denomination? (Only one answer possible per line of the table)

Suggestions	In favor	Not in favor	Don't know	Not applicable
Maintain the variety denomination Community Regulation as it currently stands	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Revise the system of variety denomination (i.e. in the form of a 'fancy name' or a 'code')	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Remove the variety denomination	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

regulation				
Other: <i>Please specify:</i> The text of the rules for variety denomination should be the same as the one in the Guidelines of CPVO, explaining article 63 of Regulation 2100/94 regarding Plant Variety Rights.	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.3.2.3. What are the advantages of the suggestions you support and their expected effects on the marketing of S&PM, the level of legal requirements, the administrative burden, the costs, the rapidity of the decision-making process, etc?

Please specify for each suggestion you support:

Improved clarity, consistency, speed and freedom for breeders.

2.3.2.4. What are the disadvantages of suggestions you do not support or their expected negative effects?

Please specify for each suggestion you do not support:

An unambiguous and efficient variety denomination system is important for a proper functioning of the later marketing of varieties.

2.4. COMMON CATALOGUES

2.4.1. LESSONS FROM THE PAST

2.4.1.1. Does your organization use the common catalogues? (Only one answer possible)

X Yes No Don't know Not applicable

If your answer is 'yes', please specify the purpose for which they are used:

ESA members use the EU Common Catalogue as an essential reference source of information for different operations such as research, development, marketing or commercialization. National Catalogues are hardly used.

If your answer is 'yes'

How frequently are they used? (Only one answer possible)

Occasionally Regularly X Very often Don't know Not applicable

At which level? (Only one answer possible)

X All staff Headquarters only Other level (please, specify:) Not applicable

Please comment on your answer:

2.4.1.2. Does the lapse of time required between the national registration and the publication in the common catalogues negatively impact on the marketing of S&PM?
(Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

Registration and publication in EU Common Catalogue has to be quicker and automatic as soon as national registration has been granted. Today, this is not the case and this has a negative impact on S&PM marketing.

For example, some Member States refuse the marketing of varieties already listed in another Member State but not yet published in the printed version of the EU Common Catalogue. A quick and automatic on-line EU Listing as soon as a registration has been granted by a national authority would avoid any potential differences and conflicts between national catalogue(s) and the Common Catalogue.

It would also facilitate listing in non-EU countries that are prepared to 'take over' EU DUS reports.

2.4.2. SUGGESTIONS FOR THE FUTURE

2.4.2.1. What should be done in the future regarding the national and common catalogues? (Only one answer possible per line of the table)

Suggestions	In favor	Not in favor	Don't know	Not applicable
Maintain both the national and common catalogues as they currently stand	X*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stop national catalogues and only work with common catalogues	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Work with common catalogues and allow Member States to have national catalogues on a voluntary basis	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
Other: <i>Please specify :</i> * ESA is in favour of an EU Common Catalogue that is a simple automatic (electronic!) compilation of national catalogues. National listing thus would <u>automatically</u> lead to a simultaneous inclusion of these	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

varieties in the CC. Such a system should be very simple to administer and thus be cost effective and quick, in particular if administered by the CPVO.				
---	--	--	--	--

2.4.2.2. What are the advantages of the suggestions you support and their expected positive effects (for example: on the marketing of S&PM, the level of legal requirements, the administrative burden, the costs, the rapidity of the decision-making process, etc.)?

Please specify for each suggestion you support:

The proposed solution of on line real-time updating of the EU Common Catalogue would better support free movement of seeds within the EU and would also support listing of varieties in some non-EU countries.

Additionally this would lead to efficiency gains and cost reductions.

2.4.2.3. What are the disadvantages of suggestions you do not support or their expected negative effects?

Please specify for each suggestion you do not support:

Maintaining the current situation would continue the current administrative burden, costs and delays in the listing of vegetable varieties on the EU Common Catalogue.

2.4.2.4. If you are in favor of maintaining the common catalogues, is it desirable to modify them in terms of their accessibility, user-friendliness, number of updates, and elements of information they contain?

Accessibility, i.e. time required to access the common catalogue (Only one answer possible)

X Yes No Don't know Not applicable

User-friendliness, i.e. time required to find the required information (Only one answer possible)

X Yes No Don't know Not applicable

Number of updates (Only one answer possible)

Same X More Less Don't know Not applicable

Elements of technical information they contain (Only one answer possible)

Same X More Less Don't know Not applicable

Please comment on your answer:

The Common Catalogue should be managed using the newest technologies:

- access via internet,

- using html technology with continuous daily updates,
- addition of more information such as variety descriptions (if variety descriptions get an official status and can be downloaded, this can be used to support variety listings outside the EU and at no additional cost);
- daily e-mail service of changes/additions/deletions to interested persons

2.4.2.5. What are the advantages or disadvantages of any modification of the common catalogues and their expected effects (negative or positive) on the level of legal requirements, administrative burden, and associated costs? Which are the elements of technical information that you would like to delete or add?

Please specify:

See above.

2.5. CONCLUSIONS

2.5.1. What are the most important lessons from the past, if any, concerning the current Community 'acquis' on variety /material registration of S&PM?

Please specify:

For vegetable seeds, the 'acquis' has allowed an increase of quality of the identification of plant varieties (identity), and of the quality of the varieties themselves.

For vegetable varieties, the essential part of the 'acquis' is the DUS provision of Directive 2002/55/EC. The 'acquis' has supported the European seed industry to become a world leader with a continuum of new and improved varieties. Consumers also appreciate the benefits of the 'acquis' in ensuring quality and traceability of products.

For the years to come DUS, variety identity and traceability will remain the main issues to be regulated to enable a positive further development of a competitive EU vegetable seed industry and its support for a high quality food chain.

Several improvements of the legislation are suggested to achieve even more harmonization, more efficiency and to adapt to the developments in markets and in products.

2.5.2. Which are the most important suggestions, if any, you would formulate for the future Community 'acquis' on variety/material registration of S&PM?

Please specify:

In order to guarantee the traceability and the fairness of the vegetable seed market, it should be compulsory that all varieties of relevant vegetable Species are properly registered. Based on above principle some Species are to be added to the list in the Annex of 2002/55/EC:

- interspecific Species used for rootstocks in Cucurbits, Tomato, Pepper, provided that DUS-criteria are adapted for the specific use as rootstock
- Rucola (*Eruca sativa* and *Diplotaxis tenuifolia*).

Vegetable Swedes should be taken out of the Agricultural Directive and should instead be added to the Vegetables Directive (compare Vegetable turnips).

2.5.3. Which are the most important suggestions, if any, you would formulate to reduce the costs incurred by the public authorities and the private operators for the variety/material registration of S&PM, while guaranteeing the same level of quality?

Please specify:

Variety registration, which has shown its usefulness, has to be improved with the following proposals:

- A unique common catalogue, managed administratively by CPVO, but with direct input from assigned Examination Centers. Activities within CPVO regarding registration and protection purposes have to be kept strictly separated, while all links allowing cost savings have to be developed.

- Reduction in the number of approved Examination Centers per species.

ESA supports the approach of 'one key, several doors', i.e. one DUS report to be used for both listing and PBRs. Clearly, such an increased importance of the DUS test requires not only a maintaining but a further improved and harmonized implementation of the DUS testing provisions. In this respect reference is made to the "Strategic Discussion" in CPVO. It was concluded that reorganization of DUS testing should be based on quality requirements, including the use of a proper reference collection. Only Examination Offices meeting these quality requirements should be entrusted by the CPVO for the carrying out of DUS tests for a certain species.

- National listing following the DUS-testing and examination by an accredited Examination Office should automatically lead to the direct inclusion in the EU Common Catalogue (automatic on-line compilation). A second 'verification' step by CPVO should not be implemented, as it would lead to unnecessary delays and extra costs.

- The possibility of seed certification is provided by Directive 2002/55/EC but not used by the vegetable seed industry; the industry solely markets 'standard seed' and does not wish to see any provisions enforcing a compulsory certification by any future Community legislation.

**SECTION 3. CERTIFICATION
GENERAL COMMENT**

Certification is not used in the vegetable seed sector. This is due to an organization of the seed production and commercialization that differs from that of other crops.

The very high value of the harvested produce leads the market to demand very high levels of quality. Vegetable seed companies have consequently developed complex and highly differentiated internal quality measures in supplying 'standard' seeds that fulfill this demand and efficiently and effectively have replaced an official certification.

This system is successful and accepted by both suppliers and users of vegetable seed.

The European vegetable seed industry therefore does not wish to see any provision in any future legislation enforcing any form of compulsory certification of vegetable seed.

3.1. LESSONS FROM THE PAST

3.1.1. Have the Community provisions for the certification of S&PM been effective in ensuring S&PM lots of sufficient quality? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem:

3.1.2. Have the Community provisions for the certification of S&PM been effective in facilitating the free marketing of the S&PM in the EU? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

If your answer is 'not at all', 'not much' or 'partly', please comment on it, by specifying the problem:

3.1.3. Are the current quality standards relevant for the purpose of certification? (Only one answer possible per line of the table)

Quality standard	Not relevant at all	Not much relevant	Partly relevant	Fully relevant	Don't know	Not applicable
Identity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Varietal Purity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Germination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Other: <i>Please specify:</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please comment on your answer, by specifying the problem if 'not at all', 'not much' or 'partly':

3.1.4. To what extent are the costs involved in fulfilling the obligations imposed by the Community provisions for certification reasonable and proportionate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

3.1.5. To what extent is the current distribution (between industry and public authorities) of the costs of operating certification appropriate? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

3.1.6. Did the organization of certification in your country move from an official system (official examination) to a system of certification under official supervision? (Only one answer possible)

Yes No Don't know Not applicable

If 'yes', what have been the impacts of such modification (for example on costs, planning, logistics, flexibility, responsibility, etc)?

Please comment on your answer, by specifying the percentage of cost transfer, if any:

3.1.7. Are the EC standards for the certification of S&PM coherent with OECD standards? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

3.1.8. Are the EC standards for the certification of S&PM coherent with UN-ECE standards (seed potatoes)? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

3.1.9. Are Community comparative trials an appropriate tool for ensuring harmonization of inspection practices contributing to S&PM lots of sufficient quality? (Only one answer possible)

Not at all Not much Partly Fully Don't know Not applicable

Please comment on your answer:

3.2. SUGGESTIONS FOR THE FUTURE

3.2.1. What should be done in the future regarding certification? (Only one answer possible per line of the table)

Suggestions	In favor	Not in favor	Don't know	Not applicable
STATUS QUO				

Maintain the certification standards as they currently stand	<input type="checkbox"/>	X*	<input type="checkbox"/>	<input type="checkbox"/>
Maintain the certification structures as they currently stand	<input type="checkbox"/>	X*	<input type="checkbox"/>	<input type="checkbox"/>
<p>Revise the requirements</p> <p>* Certification is not used in the vegetable seed sector. This is due to an organization of the seed production and commercialization that differs from that of other crops.</p> <p>The very high value of the harvested produce leads the market to demand very high levels of quality. Vegetable seed companies have consequently developed complex and highly differentiated internal quality measures in supplying 'standard' seeds that fulfill this demand and efficiently and effectively have replaced an official certification.</p> <p>This system is successful and accepted by both suppliers and users of vegetable seed.</p> <p>The European vegetable seed industry therefore does not wish to see any provision in any future legislation enforcing any form of compulsory certification of vegetable seed.</p>				
Decrease the number of species covered by the Seed Marketing Directives (<i>by e.g. removing those of minor economic importance</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Increase the number of species covered by the Seed Marketing Directives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Decrease the number of standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Increase the number of standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Revise the levels set in the quality standards (e.g. germination %)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Extend the field inspection "under official supervision" to pre-basic and basic crops	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
In the case of certification "under official supervision", revise the minimum 5% check testing, check inspection and check sampling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
In the case of certification "under official supervision", leave the level of check testing, check inspection and check samples to Member States' discretion, based on their own assessments of the risk to seed quality.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
In the case of certification "under official supervision", target inspection on the basis of risk (taking into consideration the higher voluntary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

standards in place, industry inspections, track records, etc.)				
Apply controls/certification standards to final generation S&PM only and leave companies to decide how to manage parental generation S&PM production to meet the quality standards of final generation certified lots of the category under which the S&PM is marketed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Apply controls/certification to parental generations only and leave companies to decide how to manage commercial S&PM production to meet the quality standards of final generation certified lots of the category under which the S&PM is marketed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Other: <i>Please specify:</i> Harmonizing and simplifying the provisions in the seed marketing Directive concerning marketing and labelling of "Small Packages".	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Revise the operational organization				
Integrate the inspection regimes for certification and for plant health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Set up a certification with a system of an accredited third party private body approved by the Member State	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Set up a certification with a system of a S&PM company accreditation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Limit the official certification scheme to a basic level defined in the legislation and have extra quality requirements left up to private companies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Set up a voluntary certification scheme to national, or international (i.e. OECD) standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Remove the official certification system and pass on the full producer's liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Other : <i>Please specify :</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

3.2.2. If you are in favor of decreasing or increasing the number of species covered by the Seed Marketing Directives, please specify which ones.

Please specify:

See answer to 2.5.2.

3.2.3. If you are in favor of increasing or decreasing the number of standards, please specify which ones

Please specify:

See answer to 3.1.3

3.2.4. If you are in favor of revising the levels set in the quality standards, please specify how and for which standard?

Please specify:

See answer to 3.1.3

3.2.5. For each suggestion you support (in 3.2.1., “in favor”), please estimate the expected positive effects on cost and staff and specify the parties concerned (Commission, the national certification authorities and/or the private operators).

Supported suggestions	% of reduction of costs	% of reduction of staff	Parties concerned		
			Commission	National authorities	Private operators
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For ESA it is impossible to provide estimates of potential cost reductions since the actual cost-levels and the split between industry and national authorities today varies a lot from country to country depending on current organisation. Consequently, the potential impact of a reallocation of costs would differ accordingly.

3.2.6. What are the advantages of the suggestions you support (in 3.2.1. “in favor”) and their expected positive effects (for example on the user, the organization of the EU S&PM markets, the competitiveness of EU S&PM, the functioning of the internal market, the level of legal requirements, the administrative burden, the rapidity of the decision-making process, etc)?

Please specify for each suggestion you do not support:

Not applicable

3.2.7. What are the disadvantages of the different options you do not support (in 3.2.1. “not in favor”) or their expected negative effects?

Please specify for each suggestion you do not support:

Not applicable

3.3. CONCLUSIONS

3.3.1. What are the most important lessons from the past, if any, concerning the current Community ‘acquis’ on certification of S&PM?

Please specify:

Not applicable

3.3.2. Which are the most important suggestions, if any, you would formulate for the future Community ‘acquis’ on certification of S&PM?

Please specify:

Not applicable

3.3.3. Which are the most important suggestions, if any, you would formulate to reduce the costs incurred by the public authorities and the private operators for the certification of S&PM, while guaranteeing the same level of quality?

Please specify:

Not applicable

ANNEX V

ESA_10.0433

IV. Pillars of the legal framework for seed marketing

The pillars of the EU's legal framework for seed are established in line with the international standards as laid down by the OECD seed schemes. These pillars partly also concern associated legal frameworks such as e.g. the UPOV Convention. For the EU seed industry, it is imperative that these constitutional pillars remain strong and continue to assure the further successful development of the European industry in its highly competitive international environment.

1. DUS – assured identity

The DUS requirement is enshrined in both OECD and UPOV. It 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 variety listing and protection system.

Specifically before the background of a more and more integrated agri-food chain, assuring the specific identity is not only a value as such; it also is the base for traceability and quality assurance.

ESA recommendations:

- ESA supports the approach of 'one key, several doors', i.e. of a use of DUS tests for both listing and granting of PBRs. Clearly, such an increased importance of the DUS test then requires not only the maintaining but the further improving and harmonizing of the implementation of the DUS testing provisions. This specifically includes the improvement of the quality of DUS testing according to an agreed quality standard. Here 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.
- As the expression of morphological characters varies with respect to factors such as day length along with other environmental effects, there are limits to a concentration of test sites. Still, their number can be reduced and testing be rationalised by the use of bilateral or multilateral agreements wherever agroclimatic conditions permit. In this respect reference is made to the CPVO strategic discussion. ESA is of the opinion that depending of the crop a minimum of 2 testing sites, meeting above mentioned quality criteria, is required.
- Generally, strengthening the possibilities for breeders' testing can lead to cost efficiencies; however, not least before 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.

2. VCU – assured performance

In view of the main current and future policy objectives, it is logical and correct for the seed marketing legislation to place a strong emphasis on assuring the performance of new plant varieties. The VCU requirement for the (national) listing of a new plant variety is the expression of the importance that legislator, society, seed industry and farmers attribute to this performance.

ESA is 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.

However, ESA is also in favour of strengthening the breeders' involvement in the VCU testing system (e.g. by making use of existing infrastructure, expertise and data) to reduce costs. Similarly, costs may be reduced by avoiding unnecessary duplication of work where conditions are largely similar; respective bilateral as well as multilateral agreements between Member States should be established where this is feasible.

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.

A VCU testing of varieties at Community level would be highly difficult and costly to organize given the number of varieties, amount of data and reference varieties to be used when simulating the totality of the EU. Furthermore, such an approach very often would not reflect the reality of the later use(s) of these varieties in the different agroclimatic and phytosanitary conditions, uses and markets.

ESA recommendations:

- Include a general requirement for VCU testing on national level as a prerequisite for national listing and subsequent listing on the EU Common Catalogue for agricultural varieties into a new horizontal EU regulation for seed marketing
- Promote collaboration of Member States for VCU testing with mutual acceptance for national listing.
- Specify the VCU requirements on a crop-by-crop basis in Annexes to the new horizontal regulation. These Annexes should set out technical specifications such as detailed quality requirements (varietal purity and germination levels etc.) and should be managed by a new general Standing Committee on Seeds (combination of existing three Committees on Seed, Plant Health and Plant Variety Rights).

3. Certification – assured quality

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 compliance with international requirements and the acceptance of international standards such as the OECD seed schemes and UN-ECE are crucial for the practical value and use of EU legislation by the European seed companies. Any possible changes at EU level therefore must maintain the compatibility with these international.

ESA recommendations:

- ESA is of the opinion that the seed certification could be made more efficient and thus cost effective by making use of a certification under official supervision (for more categories of seed) and by dropping standards that are not required in view of international compatibility.
- ESA considers the official supervision of the seed certification to be an important factor for the general acceptance of its results and thus for the free European and international movement of such seed. This has led to the current situation that has placed more varieties and thus more biodiversity than ever at the disposal of Europe's farmers.

5. Governance

As of the start of the evaluation process, ESA has specifically underlined 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. We have also shown that such an approach may help to achieve the goals of reduced costs of administration (at the well established high level of quality) for both operators and authorities, that it may contribute to more flexibility and may serve the continuous, forward-looking development of the regulatory requirements for the marketing of seed.

While these ESA comments also contained specific ideas for a wider responsibility for the CPVO for the coordination and quality assurance of the system, they were not limited to this and we therefore take the opportunity to underline the seed sector's request for a more structured and formal role in the management of the future annexes (and respective standards) of the new seed Regulation, together with Commission and Member States.

ESA recommendation:

- Introduction of advisory groups made up of defined stakeholder organisations per Annex (i.e. per species) to should support the Commission in developing proposals for adjusting technical protocols for DUS testing, VCU, technical standards etc.

ANNEX VI

ESA_10.0722.1

Principles for Modern Seed Certification

1) Continue Official Seed Certification

Official certification of seeds and planting material of agricultural crops must be continued on all production steps (pre-basic, basic, certified seed).

Seed certification is one of the oldest and most successful quality management and traceability systems; it needs to be adapted to modern requirements such as centralisation, utilization of IT systems, division of workload, co-operation. A withdrawal of public authorities from seed certification would negatively affect seed export opportunities. Non-EU countries often consider official seed certification under EU legislation as a legal prerequisite for import; EU seed certification is generally trusted and has a high reputation. Official seed certification also successfully ensures consumer protection in domestic community seed trade. In case official seed certification would be abolished, this would undermine the quality principle despite its crucial role for a sustainable and competitive agriculture.

2) Include Private Seed Testing Facilities

There should be more and easier access for private seed testing facilities to seed certification under official supervision in order to increase cost efficiency of the process of seed certification and thereby the early availability of seeds to the farmer could be sped up.

a) Seed Testing by Private Companies

As a matter of principle, private companies should be allowed to carry out any inspection and testing required during the seed certification process, provided the companies comply with defined and appropriate quality standards. Regular audits should be carried out to ensure compliance with these quality standards. Quality requirements should not exceed those applicable to public institutions or persons, nor should seed testing by private companies be subject to any requirements beyond these quality criteria.

b) Certification by Private Companies

Basically, private companies should also be permitted to grant official seed certificates. Here again, the private companies should not be subject to more severe requirements than public authorities. Audits and sample control testing should suffice to ensure compliance with the applicable quality criteria.

c) Seed Testing Services by Private Companies

Private companies should not be limited to testing and granting of certificates for seed lots of their own seed multiplication. They should be allowed to offer such services also to third parties, including competitors.

d) Avoiding Duplicate Private and Public Testing

Official supervision of the seed testing activities of accredited privates should not be carried out on a routine basis, but only in form of spot checks in order to avoid duplicate work of private companies and public authorities.

ANNEX VII

ESA_10.0466.1

Subject: Evaluation of the S&PM legislation – flexibility in quality standards

Dear Mrs. Mannerkorpi,

I am writing to you as representative of ESA European Seed Association in order to express the views and concerns of the European seed industry regarding the specific point of Member States' flexibility vis-à-vis the minimum certification requirements foreseen in the annexes of the current seed marketing directives.

According to the current legislation, laid down in several Directives, Member States may, as regards the minimum conditions provided for in the specific annexes, impose additional or more stringent requirements for seed certification in their own territory.⁷ This provision is used by several Member States because it gives the possibility to properly reflect also in the certification requirements the different growing conditions in the different parts of the EU territory.

Keeping this flexibility in the new regime which is being envisaged to be set under a regulation is not evident given that, in principle, a regulation is meant to be an instrument creating uniform rules in all Member States by its very nature. However, members of ESA would like to underline the crucial importance of this flexibility for the European seed industry. In case a uniform minimum requirement needs to be determined in the future regulation for being applicable in all Member States obviously that requirement would need to be determined at a sufficiently low level so that it can be met in every Member State. On the other hand, for instance, in the case of seed potatoes differences in Member States as regards growing conditions or achievable disease tolerances are too big to come to a high level acceptable for all Member States. Lowering the minimum requirements on EU level would jeopardize the quality of production and could also limit export possibilities.

Therefore, by the present letter, I would like to draw your attention to the importance of this issue for the European seed industry and would like to underline that the European seed industry is strongly in favour of keeping this option for Member States to require higher standards in their own territory.

I believe that you will give due assessment to the issues raised in the present letter and I thank you very much for your consideration.

Yours sincerely,

Szonja Csörgő

Manager Intellectual Property and Legal Affairs

⁷ Article 5 of Directives 2002/56, 66/401, 66/402; Article 7 of Directives 2002/54, 2002/57; Article 24 of Directive 2002/55

ANNEX VIII

ESA_10.0298.5

1. STRUCTURE OF THE INDUSTRY SECTOR

1.1. Please describe the evolution of the structure of the S&PM industry (in terms of degree of consolidation) in your country and in the EU in the last 10 years. Attach data and references where available (in Section 10).

Evolution of the structure of the S&PM industry in the EU

ESA is currently collecting and analysing data on the importance and structure of the seed industry in the EU and will be in a position to provide such information at a later stage.

Evolution of the local markets in the EU

Experience shows that agricultural holdings grow continuously. Professional farmers and growers make use of all available marketing channels. Their decisions when choosing the marketing channel to focus on is not based on different quality requirements of the produce to be marketed.

Growing integration and internationalisation of the food chain with contract farming, specification of production methods and of varieties (e.g. malting barley, bread wheat, potatoes, canned and fresh vegetables etc.) as well as the continuous increase of agricultural and vegetable varieties that are benefiting from the free marketing throughout the EU is putting more focus on higher-level markets. S&PM markets also work on a pan-European and international level rather than on a local scale.

The concept of "local market" is difficult to understand being extremely hard to define and by this necessarily dragging along all the risks of creating a situation of disharmonization instead of making a further step in the direction of harmonisation. ESA strongly believes that a limitation of S&PM marketing related to "local markets" would in principle be difficult to concile with basic rules and principles enshrined in the EU Treaty, notably with the free movement of goods.

2. VARIETY SELECTION BY FARMERS

2.1. Please describe the approach most generally used by the farmers in your country to choose the varieties they want to grow:

For agriculture crops:

The following list indicates ESA's estimation of the aims farmers take into account when choosing the varieties they want to grow. The first group of objectives comprises the most important ones and the last group (marked with 4) the least important ones.

1. Productivity
 - Sufficient quality of S&PM (identity, purity etc.)
 - Plant health
 - Information to users (traceability of S&PM lots)
2. Diversity of the varieties
 - Development of new plant breeding technologies (GM, molecular breeding, etc.)
3. Food safety
 - Protection of the environment
4. Suitability of varieties for low-input agriculture

With growing worldwide demand for quality food, a growing use of plant material for non-food uses and limited and decreasing area of production, maintaining and increasing the productivity of European agriculture must remain the focus of the Common Agricultural Policy in general as well of its implementing legislation like e.g. the seed marketing and variety protection legislation.

Directly related to the productivity of both breeders and farmers are issues such as seed quality, seed/plant health, and respective information to users. Clearly, the legislative

framework must not hinder the inclusion of new technologies and it must also be sufficiently flexible to acknowledge the diversity of the biology of crops and the diversity of increasingly differentiated markets.

Important criterions for a sustainable productivity are also questions of food and environmental safety; however, these issues are best dealt with by other legislation than that on seed marketing.

Aspects which are very likely going to determine farmers' variety choice in approximately 10 years from now are aspects such as input efficiency (high productivity with less nutrient intake and lower levels of AI's for crop protection, etc.), climate independency (e.g. drought tolerance), food quality (e.g. health supporting contents), plants as producers of pharmaceutical/chemical components, etc.

For vegetables crops:

The following list indicates ESA's estimation of the aims farmers take into account when choosing the varieties they want to grow. The first group of objectives comprises the most important ones and the last group (marked with 4) the least important ones.

1. Diversity of the varieties
Broad diversity of varieties adapted to the various markets (fresh, canned etc.)
Information to users (traceability of S&PM lots)
2. Productivity
Plant health
Sufficient quality of S&PM (identity, purity etc.)
3. Protection of the environment
Food safety
Development of new plant breeding technologies (GM, molecular breeding, etc.)
4. Suitability of varieties for low-input agriculture

For vegetable crops, in addition to traceability, purity and identity of plant varieties all along the food chain, the following aspects are also very important:

- The respect of variety identity that prevents the use of false varieties.
- A true Common Market market for seed of properly listed vegetable varieties is the basic requirement for the European seed industry as well as for growers.

Others

Ornamentals:

The following list indicates ESA's estimation of the aims farmers take into account when choosing the varieties they want to grow. The first group of objectives comprises the most important ones and the last group (marked with 4) the least important ones.

1. Productivity
Plant health
Diversity of the varieties
2. Sufficient quality of the S&PM (identity, purity etc.)
Suitability of varieties for low-input horticulture (water, energy etc.)
Development of new plant breeding technologies (GM, molecular breeding etc.)
Information to users (traceability of S&PM lots)
3. Protection of the environment

3. SMALL PRODUCER

Article 6 paragraph 7 of Council Directive 2000/29/EC (Plant Health) refers to small producers as follows: 'small producers or processors whose entire production and sale of relevant plants, plant products and other objects are intended for final usage by persons on the local market and who are not professionally involved in plant production (local movement) from official registration'.

3.1. Is the concept of “small producer “as defined in the Council Directive 2000/29/EC implemented in your MS?

Also in the context of the review of the Plant Health regulations ESA has stated that "small producers" should be included into the scope of the new Plant Health regulation and should no longer be exempted from official examination. ESA believes that introducing the concept of "small producers" into the S&PM legislation and exempting "small producers" from registration criteria or applying less stringent criteria to them would be very unfortunate.

On one hand, it would be unfortunate because the concept of "small producer" may be difficult to define in a harmonized but fair way which may thus bring along the risks of creating a situation of disharmonization instead of making a further step in the direction of harmonisation. On the other hand, a derogation or exemption in respect of "small producers" would create another level of administration in addition to the regular one and would be difficult to control. This would, at the end, instead of saving costs, entail additional administrative burdens and costs.

The impact of the concept of small producers on plant health can lead to considerable negative consequences for both producers and consumers. Therefore in principle everyone - including potential "small producers" - should comply with seed marketing and plant health regulations. Taking into account the aforementioned potential consequences ESA believes that the principle according to which "small producers" have to comply with seed marketing regulations is an important principle and needs to be upheld.

4. LOCAL MARKET

Article 6 paragraph 7 of Council Directive 2000/29/EC refers to local markets as follows: ‘the local movement of plants, plant products and other objects originating from producers exempted from the official examination’.

4.1. Is the concept of “local market” as defined in the Council Directive 2000/29/EC implemented in your MS?

As a preliminary remark, it needs to be noted that the questions under point 4.1 refer to "local market" as defined in Council Directive 2000/29/EC however, the provision quoted above, besides being difficult to interpret as taken out of its original context, does not define the concept of "local market" and cannot - under any circumstances - be interpreted so. Under these conditions we find it difficult to give a proper answer to question 4.1.

In any event, ESA believes that the introduction of the concept of "local market" into the S&PM legislation would be very unfortunate for several reasons. First of all, already the concept of "local market" is difficult to understand being extremely hard to define and by this necessarily dragging along all the risks of creating a situation of disharmonization instead of making a further step in the direction of harmonisation. Second, limitation of seed marketing related to "local market" would in principle be difficult to concile with basic rules and principles enshrined in the EU Treaty, notably with the free movement of goods. Third, a derogation or exemption in respect of "local markets" would create another level of administration in addition to the regular one and would also necessitate monitoring and control. This would, at the end, entail additional administrative burdens and costs.

5. DUS

5.1. In your opinion, what is the rationale behind the multiple applications to test one variety and its components for DUS in different MS?

ESA supports the approach of ‘one key, several doors’, i.e. of a use of DUS tests for both listing and granting of plant variety rights. Clearly, such an increased importance of the DUS test then requires not only the maintaining but the further improving and harmonizing of the implementation of the DUS testing provisions. Increasing bilateral and multilateral agreements where possible, allowing for respective reduction of testing sites, improving the quality of reference collections and inclusion of new technologies where appropriate and subject to the development, testing and implementation of these new technologies as

supporting tools in collaboration with breeders would allow for efficiency gains and cost reductions of the current DUS testing.

Regarding the statement referring to DUS tests carried out on 'variety components' differentiation needs to be made between agricultural and vegetable crops. As regards vegetable crops there are very few crops where DUS testing is done via the 'components (= parent lines) of the variety'. In almost all vegetable crops DUS testing is done on the variety (open pollinated or hybrid) itself.

5.2. Do additional DUS test exist in your MS for other purposes than variety registration or Plant Variety Rights?

DUS testing is required for variety registration and application for plant breeders' rights.

6. VCU

6.1. In case the VCU was completely optional, would such change lead to a reduction of the number of lists of crop species?

The official VCU tests, which only apply for agricultural crops, are considered crucial by the European seed industry and by users to maintain a credible system and a level playing field for all companies and users. For plant breeders a VCU system is an incentive for innovation, for growers it is a trustworthy assessment.

The VCU requirement for the (national) listing of a new agricultural plant variety is the expression of the importance that legislator, society, seed industry and farmers attribute to this productivity and performance.

Productivity and performance of varieties relate to a wide range of characteristics and the individual importance of these characteristics for breeders, farmers and growers may differ depending on production challenges and potential use and markets (food, feed, energy etc.). Next to yield potential, resistances against specific pests and diseases, adaptation to certain climatic zones or growing circumstances (drought, cold etc.) may be of specific importance for the market value of a new variety.

Consequently, the existing VCU requirement is not assessed on a single but a multitude of criteria which also differ from species to species. In addition, the VCU requirement is being assessed on national level which facilitates the direct comparison of varieties under similar conditions and leaves ample possibilities to take account of the specific future area of production and final use of the varieties. The existing legislation allows for the flexibility needed to assess and value the individual criteria depending on the potential use of the new varieties. VCU tests must be localised nationally or regionally due to their different local conditions and markets but duplication between Member States should be avoided for cost considerations.

8. CONSERVATION VARIETIES

8.1. Do you already have varieties listed as conservation varieties in your country?

As the respective EU implementing measures have just entered into force, ESA considers it very hard to collect relevant and useful data and inappropriate and premature to judge the quality or effect of those measures by any data that may be available at this time.

8.3. Please describe and possibly quantify based on specific examples the administrative burden associated with the listing of conservation varieties in your country, by specifying who does that concern?

See 8.1. Generally, as the requirements for the listing of a conservation variety are considerably lower than for a regular variety, costs and administrative burden are lower as well.

8.4. How do you see the number of the evolution of the conservation varieties in your country for the next 10 years? Please specify per species

See 8.1.

8.5. Please estimate the market value of conservation varieties in your country in 10 years time?

See 8.1.

9. POST REGISTRATION NETWORKS

9.1. In case the VCU was completely optional, what would be the effects on the post registration networks:

The official VCU tests are considered crucial by the European seed industry and by users to maintain a credible system and a level playing field for all companies and users.

In Vegetable Crop Species, where official VCU tests do not exist, some voluntary common marketing trials occur (e.g. organized by a horticultural institute or -private- extension service) and also many breeder-producer collaborations happen to do marketing trials of new varieties.

ANNEX IX

ESA_10.0534.5

Subject: ESA comments on Commission Directive 2009/145/EC

Dear Mrs. Mannerkorpi,

Following adoption of Commission Directive 2009/145/EC providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties⁸ ESA was invited by the Commission to still provide comments on the final text of the Directive.

By the present letter we would like to share with you our views on this Directive. 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. Our concerns regarding the text itself are basically related to two aspects of the Directive: i) the notion of varieties developed for growing under particular conditions; and ii) the quantitative restrictions for the marketing of seed of conservation varieties and for varieties developed for growing under particular conditions as laid down respectively in Annexes I and II to the Directive.

i) Varieties developed for growing under particular conditions

ESA is of the opinion that there is no clarity in the Directive regarding the definition of this notion which, in the end, causes a situation of legal uncertainty. It is true that the notion of 'varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions' comes from the legal base, i.e. Article 44(2) of Council Directive 2002/55/EC, however, the first attempt to give a meaning and application to the notion is contained in Directive 2009/145/EC.

Although Article 22(1) of Directive 2009/145/EC provides a slight "guidance" on what a 'variety developed for growing under particular conditions' may mean, members of ESA consider that that guidance leaves wide room for interpretation. As concerns the concept of 'intrinsic value for commercial crop production' it is not clear according to what benchmark is it going to be decided whether a variety by itself has a value for commercial crop production.

The same concern applies to the concept of 'particular conditions' which are meant to be 'particular agro-technical, climatic or pedological conditions'. ESA is of the view that – in consistency with the aims of the legislation - the particular conditions should in any case be understood as 'non-commercial conditions' such as hobby. This also implies that particular conditions should not be understood as particular growing conditions such as organic production. This aspect should also be clarified on the label. The current labelling requirement "variety developed for growing under particular conditions" (as laid down in

⁸ OJ L 312 of 27.11.2009, p. 44.

Article 30) is misleading for the end user. The label should clearly indicate that such varieties are for hobby purposes.

Article 9 provides for an obligation of maintenance of conservation varieties, however, this important requirement is not provided for as regards "varieties developed for growing under particular conditions". Without maintenance there is no identifiable variety. Therefore, a specific provision stipulating that "Member States shall ensure that varieties developed for growing under particular conditions must be maintained" should be included into the Directive.

ii) Quantitative restrictions in Annexes I and II


As regards the quantitative restrictions for marketing of seed of conservation varieties as provided in Annex I to the Directive ESA considers that the maximum allowed quantities are excessive and not consistent with the purpose of the legislation. To give an example, 40 hectares per Member State per variety for tomato is excessive. Also, it would be advisable to limit the acreage of all types of Cucurbits to the same number of hectares and not have different limitations for different types. ESA proposes to change the classes set out in Annex I as follows:

- 40 hectares to become 10 hectares
- 20 hectares to become 5 hectares
- 10 hectares to become 2,5 hectares

It is understood that in the case of varieties developed for growing under particular conditions the Directive foresees a restriction according to which they can only be marketed in small packages not exceeding the maximum weight determined in Annex II. ESA considers that such a restriction based on small packages is appropriate however the maximum net weight per package as determined in the Directive is generally too high in view of the intended non-commercial nature of such varieties.

ESA is aware of the fact that Directive 2009/145/EC is a piece of legislation which is already in force since November 2009 and which needs to be transposed by Member States into national law by December 31 this year. However the European seed industry still feels the need to draw the Commission's attention to the shortcomings of this piece of legislation and we are confident that you will find the ways to accommodate our comments in future amendments and/or revisions of this Directive.

Yours sincerely,



Garlich von Essen

Secretary General

ANNEX X

ESA_10.0585.2

Subject: ESA comments on the draft Commission Directive providing for certain derogations for marketing of fodder plant seed in mixtures intended for use in the preservation of the natural environment

Dear Mrs. André,

In the course of January 2010 ESA European Seed Association has addressed a letter to DG SANCO commenting on a draft working paper of the Commission services on seed in mixtures in the context of conservation varieties. We understand that this item is going to be presented and discussed in its revised version at the meeting of the SCS on June 25, 2010 and we would like to re-emphasize some of the points we made previously and which we consider important.

In principle the European seed industry is of the opinion that it is essential to assure that the envisaged implementing rules do in no way harm the well-established and successful seed certification and marketing requirements of fodder plant species and the respective seed markets by potentially providing a “back door entry” for low quality varieties for which registration or protection has been rightfully denied. In order to fulfil this objective it is important to have a piece of legislation which properly sets the quantitative and geographical limits for the marketing of preservation seed mixtures and clearly defines the concepts which need to be understood for the appropriate implementation. Bearing this in mind we consider the following points to be crucial:

- We are of the opinion that the combined use of the specific notions determining the area of collection and that of marketing/intended use and the lack of clarity concerning the relationship between them casts some confusion on the text and creates legal uncertainties. Therefore we would welcome if the different concepts used throughout the text were very clearly defined.
- We have been informed that in the most recent version of the draft a differentiation is made between “directly harvested mixture” and “crop-grown mixture”. We are of the opinion that the second category, i.e. the “crop-grown mixture” should not fall within the scope of this draft Commission Directive but should be governed by the general rules of Council Directive 66/401/EEC.
- The multiplication rate of the different varieties which can be components of the preservation seed mixture may be different which can entail that after five years of multiplication a significant genetic drift occurs in the seed mixture resulting in a mixture with a proportion of the component varieties different from the initial proportion. Therefore we consider that multiplication should be allowed for not more than three generations.

- We are of the opinion that the allowed quantities for the marketing of preservation seed mixtures should not exceed 0.5% of the total weight of the fodder plant seed mixtures marketed yearly.

We believe you will give due consideration to our concerns explained in the above comments. We remain at your disposal at any time should you wish to discuss any of the above points more in detail.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'G. von Essen', written in a cursive style.

Garlich von Essen

Secretary General