

**OPTIONS AND ANALYSIS OF POSSIBLE SCENARIOS FOR  
THE REVIEW OF THE EU LEGISLATION ON THE  
MARKETING OF SEED AND PLANT PROPAGATING  
MATERIAL**

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## Glossary

CA: certifying agency

CPHR: Community Plant Health Regime

CPVO: Community Plant Variety Office

DG: Directorate General

DUS: distinctness, uniformity, stability

EU: European Union

FVO: Food and Veterinary Office

GMO: genetically modified organism

HO: harmful organisms

OECD: Organisation for Economic Co-operation and Development

SME: small and medium-sized enterprises

SPS: sanitary and phytosanitary measures

S&PM: seed and plant propagating material

UPOV: International Union for the protection of new varieties of plants

VCU: value for cultivation and use

## 1. Introduction

Seed and propagating material (S&PM) is a cornerstone input for agricultural production. Therefore, ensuring the availability of seed and propagating material of sufficient quality is crucial for the production of food and feed. This fact has been recognised by public authorities of the Member States who had set up national legislation on seed marketing even before the EU was founded. Legislation has to evolve to keep abreast of new developments in agricultural production and societal expectations. An evaluation of the EU legislation on the marketing of S&PM was carried out in 2008. An action plan for the review of the legislation on marketing of S&PM was adopted in 2009. The respective documents can be found on the DG SANCO website at:

[http://ec.europa.eu/food/plant/propagation/evaluation/index\\_en.htm](http://ec.europa.eu/food/plant/propagation/evaluation/index_en.htm).

This publication on the SANCO website seeks for the input of stakeholders and the public at large, each from their viewpoint. It also gives the possibility to stakeholders for providing additional data and information that they wish to bring to the attention of the Commission, to ensure that all elements which deserve being taken into account are brought forward and can be considered. This should allow the Commission services to elaborate a well-founded proposal for a comprehensive review of the legislation, in view of discussion and adoption by the European Parliament and the Council.

## 2. Problem definition

### 2.1 Background

The EU legislation on S&PM is based on two main pillars, namely the registration of varieties/material<sup>1</sup> and the certification/inspection<sup>2</sup> of individual S&PM lots. It consists of 12 basic Council Directives and is structured into one horizontal Directive on the Common Catalogue of varieties of agricultural plant species and 11 vertical Marketing Directives, among which 5 seed Directives (fodder plant seed, cereal seed, beet seed, seed of oil and fibre plants and vegetable seed), 3 plant propagating material Directives (vine propagating material, seed potatoes, vegetable reproductive material other than seed) and 3 Directives that cover both seed and propagating material (fruit plant propagating material, ornamental plants and forest reproductive material).

At the time when the S&PM EU legislation was first developed, its objective was to improve the productivity of agriculture in order to ensure food security in the EU, to improve the

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<sup>1</sup> Depending on the plant species, the term variety or material is used in the basic Directives. For the ease of reading, in this document the term variety is used for both cases.

<sup>2</sup> Certification refers to intervention of official services which includes visual inspections on growing field and lots, including sampling and testing, while inspection could be work done by official services or by the supplier. For the ease of reading, in this document the term certification is used to cover both cases.

competitiveness of the related sectors and to contribute to the harmonisation of the legislation at EU level, leading to more open markets. Most of the stakeholders consider that the S&PM EU legislation has been effective in achieving these objectives and that free marketing of S&PM is observed in the EU.

The general principles of the EU legislation with some variations on plant species basis are:

1. Plant varieties should be listed in a national and then in the EU (Common) catalogues (for agricultural and vegetable crops) to be marketed. The purpose was to ensure that the characteristics of the varieties are clearly identified. In order to be listed, it should be demonstrated that varieties are Distinct, Uniform and Stable (DUS) and that variety denomination rules are observed. Moreover, varieties of agricultural crop species must be tested for their Value for Cultivation and Use (VCU).

2. Individual lots of seed and plant propagating material are subject to a pre-market certification system on the basis of official testing or testing under official supervision. The above general principles are not applicable to ornamentals, while for fruit plants EU mandatory rules will only apply as from 2012.

3. The more recent Directives require the registration of suppliers, in particular because most of the S&PM concerned is brought to the market carrying a suppliers' label.

## **2.2 What are the issues or problems that may require action?**

Whilst the regime works well in achieving its initial objectives, the evaluation of the legislation highlighted key problems regarding the application of the legislation in practice. The key problems identified were related to the complexity of the legislation, the degree of resources that need to be dedicated to its implementation and its non-harmonised application among Member States. Moreover, the link of agriculture to sustainable development needs to be reflected more strongly given the needs of the society that have emerged over the last two decades.

### **Complexity and fragmentation of legislation**

The legislation is composed of 12 basic Directives and approximately 90 other legal acts. Currently, there are different requirements and tests depending on the crop (DUS, VCU), three levels of variety catalogues (EU, national, recommended varieties) and various inspection bodies. The Directives have been developed at different times and with different approaches so that understanding the requirements in their entirety is not simple, neither for competent authorities who have to implement the legislation nor for businesses that have to comply with it. It seems therefore reasonable to envisage a recast of the S&PM legislation with a view to its simplification and increased consistency with itself and with other legal acts. However, more fundamental changes may need to be considered.

### **High level of administrative burden in particular for public authorities**

Public competent authorities are to a high degree involved in variety registration and in the certification of S&PM lots brought to the market, as the required tests and examinations are currently carried out by the authorities or under their supervision. As Member State national budgets are shrinking and the need to prioritise resources is becoming more and more

demanding, it seems appropriate to consider the possibility to reduce the level of public resources required by the S&PM legislation.

The system therefore needs to become more rational and less burdensome. It should be examined whether, and if so to what extent, certain tasks could or should be assigned to the private sector while ensuring that the quality of the marketed seeds remains at least as high as under the current regime.

### **Distortions in the internal market**

The evaluation of the current regime highlighted that there is a non-harmonised implementation of the legislation in the Member States and that there are various drivers that cause market distortions in the internal market. There are no rules for fees at EU level, and therefore there is no harmonised framework for costs and responsibility sharing. Some Member States recover the whole cost of testing of seed varieties and of certification from the producer, some only recover a part. The variety testing procedures can vary from Member State to Member State. For certification, additional or stricter national requirements are applied in several Member States, which leads to a non-harmonised implementation of the EU legislation.

### **Room to strengthen sustainability issues**

Under the current system the main focus of testing is on improving productivity. The results of the evaluation highlighted that whilst productivity is still an important factor for the development of new varieties, other factors have also emerged, such as a focus on developing varieties that need fewer treatments with pesticides, less fertilisers or less water, to allow an improved sustainability of farming. Protection of the environment has become more important and specific markets, such as for organic crops, are increasing their share of the market.

## **2.3 Who is affected, in what way and to what extent?**

- breeders of varieties, as changes in the legislation may affect their right to commercialise the products of their breeding activity and the cost of doing so;
- seed suppliers, if quality requirements for lots brought to the market would be altered or if costs of seed certification would be transferred more systematically to the private sector operators;
- seed users (e.g. farmers, horticulturalists, foresters and nurserymen), as a revision of the legal framework with regard to minimum conditions for seed marketing could affect the availability, quality and the cost of seed brought to the market;
- consumers of produced commodities, because seed and propagating material is a primary input of any agricultural or horticultural production and as such the changes felt by the farmers, horticulturalists, foresters or nurserymen will be reflected in the availability, quality and costs of the commodities offered to the final consumers,
- farmers and consumers outside the EU, because, as the EU is the world leader in seed production and export, changes to the EU S&PM marketing legislation will have consequences worldwide. EU has an important role to play in global food security and thus in avoiding food crises.

## **2.4 How would the problems evolve, all things being equal?**

The current legislation already caters for a certain possibility to transfer part of the work related to certification of lots of S&PM to the industry through a system of certification under official supervision. This, however, is not widely used. Although it can be expected that Member States will gradually make better use of the opportunities to move from an active role to a more supervisory role in registering and certifying seeds by transferring certain tasks to the industry, a “no changes” scenario would mean that most of the identified shortcomings of the system persist and even could get detrimental for the sector of S&PM in particular and for agriculture in the EU as a whole.

The provisions contained in the EU S&PM marketing legislation on registration of varieties and on certification of individual S&PM lots are strict and time-consuming. This could become more problematic in today's global market particularly with ever faster means of communication and a need for operators to react quickly to market opportunities. The relative inflexibility of the current variety registration system does not help innovation ensuring access to the market for new varieties giving a higher yield on a same land surface with less need for irrigation, fertilisers or pesticides.

Furthermore, certain discrepancies with regard to registration and certification tests would continue to exist across the Member States. This would prove disadvantageous to some operators and may distort competition and the functioning of the internal market.

Finally, the complexity and fragmentation of the existing legislation would perpetuate existing uncertainties and discrepancies in its implementation. This would further maintain or aggravate the existing difficulties of national authorities and operators.

## **2.5 Does the EU have the right to act?**

Article 43 of the Treaty on the Functioning of the European Union<sup>1</sup> (ex Article 37 of the Treaty establishing the European Community) defines the role of the EU and the legislative processes in the field of agriculture.

The Lisbon Treaty qualifies agriculture as being of shared competence between the EU and its Member States. It is obvious, however, that to a very large extent all fields of agricultural activity as well as ancillary activities upstream and downstream, have been regulated at the EU level. This means that legislation is predominantly a role for the institutions of the European Union.

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<sup>1</sup> “the Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in Article 40(1), and for implementing the measures specified in this Title. These proposals shall take account of the interdependence of the agricultural matters mentioned in this Title. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy

As for the "necessity" test, the basic benefit is one legislation against 27 different legislations on marketing S&PM and the creation of an internal market by the EU legislation. Results of the stakeholder consultation as part of the evaluation indicate that a large majority of the respondents believe that the EU rules on marketing of S&PM have had a positive impact on free movement, availability and quality of S&PM on the EU market and have thus facilitated trade within the EU.

In an environment where international standards have been set for plant health (the International Plant Protection Convention and its International Standards for Phytosanitary Measures and the Sanitary and Phytosanitary (SPS) agreement) and for seed quality (Organisation for Economic Cooperation and Development and the United Nations Economic Commission for Europe), credible common rules at the EU level are helpful to ensure that our rules are taken into account at the global level. This is of particular relevance as the EU seed industry heavily depends on its exports to third Countries. A co-ordinated EU position in those meetings gives more weight to the European Union views and approaches for addressing issues of the S&PM. Therefore, on the basis of the subsidiarity principle, the EU level is the most appropriate level to act.

### **Question 1:**

**1.1 Are the problems defined correctly in the context of S&PM marketing?**

**1.2 Have certain problems been overlooked?**

**1.3 Are certain problems underestimated or overly emphasized?**

## **3. Objectives**

### **3.1 General policy objectives**

The general policy objectives of the review of the S&PM marketing legislation are to:

- ensure availability of healthy high quality seed and propagating material;
- secure the functioning of the internal market for seed and propagating material;
- empower users by informing them about seed and propagating material;
- contribute to improve biodiversity, sustainability and favour innovation;
- in this way promote plant health and support agriculture, horticulture and forestry.

### **3.2 Specific objectives**

The specific objectives of the review of the S&PM marketing legislation are to:

- reduce costs and administrative burden for public authorities and operators without compromising the general policy objectives;
- improve farmers' choice and access to a wide diversity of plant varieties;
- foster innovation in plant breeding with a focus on varieties that can be grown in a more sustainable manner;
- improve competitiveness of the S&PM sector on the international market.

### 3.3 Operational objectives

The operational objective is to revise and update the 12 basic Directives on seed and propagating material in the context of Better Regulation with the following outcomes:

- provide a single horizontal legal framework for marketing of S&PM – S&PM Law;
- promote a more harmonised implementation of legislation throughout the EU by audits and training;
- establish more effective, efficient, flexible and proportionate procedures by removing and reducing the administrative burden and costs;
- ensure better consistency with the other EU policies: Agriculture, Environment, GMOs, Plant Protection Products, Plant Variety Rights, Plant Health and Human Health/Food Safety through action at the beginning of the production chain;
- enhance the role of the Common Catalogues by increasing the level of provided information;
- enhance market transparency and improve traceability through the registration of operators;
- strengthen the European Union's role and influence on international standards by ensuring that the EU and its Member States have clear and effective legal provisions and standards that serve as a model for standard-setting at the international level.

It is obvious that the various objectives cannot all be pursued to the same extent and that prioritising is required.

#### Question 2:

- 2.1 Are the objectives defined correctly in the context of S&PM marketing?
- 2.2 Have certain objectives been overlooked?
- 2.3 Are certain objectives inappropriate?
- 2.4 If there is a need to prioritise the objectives, which should be the most important ones?

#### 4. Policy options

The following basic options were identified in the external evaluation carried out in 2007-2008: No change, abolishing the legislation, revision of the legislation. The evaluation report tested three scenarios with regard to the EU legislation as it currently stands: "Status quo", "Suppress" and "Modify". The results from the stakeholder consultation support the "Modify" scenario, which was recommended by the evaluators. The Action Plan laid down the objectives and the work programme of the review of the S&PM legislation. Based on the work referred to above, on internal discussions and on discussions with various groups of stakeholders, a number of possible scenarios are presented.



## **Rationale for the selection of the various scenarios**

In a legal environment with 12 basic Council Directives, 11 of which are addressing specific plant species or groups of plant species, each with their own characteristics in terms of ways of reproduction and structure of the production and marketing, with differentiated marketing categories, with different approaches to the role of the various stakeholders concerned (such as breeders, multipliers, users of S&PM, public authorities), a very wide range of scenarios may be considered.

In order to give a certain structure to the assessment of the possible impacts of changes to the current legislation on minimum conditions for the marketing of S&PM, it was felt that there is a need to be selective and to assemble possible changes into a limited number of scenarios, each with their main focus and their prime objective(s) such as offering more responsibilities for the operators, reducing or eliminating unnecessary requirements or centralising activities in the EU.

Public authorities of the Member States are confronted with pressure on the resources that are put at their disposal. Scenario 1 addresses this issue by proposing a full recovery of costs. It thus also removes a possible source of distortion of competition.

Breeders, suppliers and users of S&PM have an interest in a reduction of administrative burden that often is a source of costs and of a lack of flexibility in their operations (see scenarios 2-4). However, due consideration should be given to the high level of health and quality of S&PM produced and marketed in the EU, so as to avoid possible negative impacts, not only on plant production in the EU but also on exports to third countries .

Scenario 4 aims to cater for wider possibilities to market conservation varieties and, by creating a category of S&PM that can be brought to the market at very low cost, offering opportunities for commercialising new varieties of less exploited crops with limited marketing potential.

Issues such as the protection of the natural environment including biodiversity, development of defence strategies against global warming and concerns about food security and food safety all point at the necessity to move to more sustainable farming practices. Growing more resilient varieties with a better pest resistance profile, that need less pesticides, less chemical fertilisers and less irrigation is part of the solution. Breeding efforts in that direction can be supported by setting minimum requirements with regard to the "environmental performance" of varieties and by developing validated testing methods. Testing varieties for their "value for cultivation" with specific emphasis on these "environmental performance" criteria (VU tests) as referred to in scenarios 3, 4 and 5 should be seen in that context.

Moreover, trade and buyers call for a better harmonisation across the Member States of requirements and procedures, so as to reduce transaction costs and improve transparency of the markets (scenario 5);

While the first scenario only addresses the issue of the pressure on the resources of competent authorities in the Member States and one specific aspect of a lack of harmonisation between the Member States, the scenarios 2, 3 and 4 present an increasing level of flexibility for the operators in the sector and aim at offering opportunities to reduce administrative burden and

the cost of implementing the S&PM marketing legislation. Scenario 5 in the first place seeks to improve harmonisation across the EU which should lead to more efficiency and an increased transparency of the legal requirements for marketing S&PM.

It is stressed that the impact assessment concerning the possible options for addressing harmful organisms mentioned in the S&PM legislation and for import controls for S&PM lots to be carried out according to the principles of Regulation (EC) No 882/2004 on official food and feed controls will be addressed in the impact assessment as is also foreseen for the Plant Health legislation.

The following scenarios are submitted for comments:

- Scenario 1 - Cost recovery: No change to technical provisions but complete recovery of registration and certification costs by public authorities
- Scenario 2 - Co-system: No change to technical provisions but certain tasks performed by industry under official supervision
- Scenario 3 - Low burden Co-system: Variety performance testing and official certification are optional. Harmonised tests are developed. Repartition of tasks is as under scenario 2.
- Scenario 4 - Enhanced flexibility system: Mandatory basic provisions for registration with a voluntary level of higher assurance for registration and certification
- Scenario 5 - Centralisation: Centralised EU registration procedure with CPVO managing and making final decisions, and fully harmonised certification requirements

A graphical presentation of the five scenarios can be found in the Annex.

### **Scenario 1 - Cost recovery: No change to technical provisions but complete recovery of registration and certification costs by public authorities**

The scenario does not foresee any changes to the technical provisions of the current legislation or to the allocation of responsibilities for the implementation and the control on the implementation of the legislation. The registration and certification systems will continue to exist as they are, and for the same plant species. The involvement of public authorities in the management of the system is not changed. The only change consists in a full recovery from the stakeholders of costs incurred by the public authorities in all the Member States. This will be achieved via the introduction of a mandatory fee system or any other way of authorities' compensation. Currently there is a wide divergence in the extent to which this is done in the Member States.

### **Scenario 2 - Co-system: No change to technical provisions but certain tasks performed by industry under official supervision**

#### *1. Registration of varieties and material*

In this scenario, variety registration continues to be an obligation for the crops covered by the EU legislation. This implies testing for identity (DUS) as well as testing for certain performance criteria (VCU). For performance testing (VCU) harmonised and more detailed EU criteria will be developed on the basis of the requirements set up in the Member States.

However, responsibilities will be given to the industry to carry out DUS and VCU tests subject to validation and audit by the competent authorities. Official testing remains possible on request. Provisions related to variety denomination and the management of the Common Catalogues will remain unchanged. In this scenario all administrative tasks at the EU level will be attributed to the Community Plant Variety Office (CPVO).

#### *2. Certification/inspection of S&PM*

The certification requirements for lots of S&PM remain unchanged. However, as a standard procedure, the control of compliance with the criteria for S&PM marketing is carried out by the supplier under supervision of the national authority. On request of the supplier certification under official examination is still possible. Marketing of lots of S&PM covered by a suppliers' label equally remains unchanged.

#### *3. Registration of breeders and suppliers*

In a context where a more important role is given to the industry, all breeders and suppliers are registered allowing a monitoring of their activities and facilitating a tracing back and forward in case of identified problems. Ideally this registration should be valid both for the EU plant health regime and for the S&PM marketing legislation. The concept of risk-based monitoring intensity should apply.

#### *4. Approach to conservation varieties/niche markets*

This approach is not changed. Specific provisions continue to apply for conservation varieties and landraces of agricultural crops, for vegetable varieties, mixtures of fodder plant seed and for forest reproductive material intended for gene conservation purposes.

### **Scenario 3 - Low burden Co-system: Variety performance testing and official certification are optional. Harmonised tests are developed. Repartition of tasks is as under scenario 2.**

Ornamentals will no longer fall within the scope of the S&PM marketing legislation and therefore will be totally deregulated.

#### *1. Registration of varieties and material*

The "Identity" testing as part of the variety registration continues to be an obligation for the crops regulated by the EU legislation, but the verification of compliance with the requirements will be passed to industry.

Performance (VCU for agricultural crops) testing will no longer be a legal requirement. Information on the value of varieties will be provided on the sole responsibilities of plant breeders. For the sake of transparency, harmonised testing methods will be developed at EU level. In this scenario all administrative tasks at the EU level related to variety registration, including the checking of variety denomination, will be attributed to the CPVO.

#### *2. Certification/inspection of S&PM*

All lots of S&PM are marketed solely on the basis of a suppliers' label. Certification of lots will only be done for S&PM lots intended for export. However, lots under suppliers' label will need to meet certain minimum criteria, which are set at the EU level.

### *3. Registration of breeders and suppliers*

In a context where a more important role is given to the industry, all breeders and suppliers are registered allowing a monitoring of their activities and facilitating a tracing back and forward in case of identified problems. Ideally this registration should be valid both for the EU plant health regime and for the S&PM marketing legislation. The concept of risk-based monitoring intensity should apply.

### *4. Approach to conservation varieties/niche markets*

This approach is not changed. Specific provisions continue to apply for conservation varieties and landraces of agricultural crops, for vegetable varieties, mixtures of fodder plant seed and for forest reproductive material intended for gene conservation purposes.

## **Scenario 4 - Enhanced flexibility system: Mandatory basic provisions for registration with a voluntary level of higher assurance for registration and certification**

In this scenario basic general EU criteria with regard to plant health and fitness for purpose, as well as for traceability/labelling, will apply to all S&PM brought to the market.

### *1. Registration of varieties and material*

All varieties and material of specified crops (in principle those covered by the EU marketing Directives with a closed list of species) will be registered in national and subsequently in EU catalogues, which will be composed of two sections. For both sections, the variety description should be based on criteria complying with CPVO and UPOV rules. All administrative tasks at the EU level related to variety registration will be attributed to the CPVO.

Section 1 will comprise "tested" varieties that have been tested officially or under official supervision. Tests will include DUS and the mandatory VCU criteria (health and adaptation to the physical environment). The VCU tests for yield and value for use will be optional. Only varieties that are listed in this part of the catalogues will be eligible for certification. Provenances and clones of forest reproductive material are identified on the basis of the same criteria as currently applicable and have a specific chapter in the catalogues of tested varieties.

Section 2 will comprise "non-tested" varieties that are registered on the basis of an accepted harmonised description of the variety prepared by the applicant, including the denomination. Performance testing is not required for this category of S&PM. Competent authorities will only be responsible for checking the denomination and registration and for controls on material present on the market, focussing on labelling in particular. Varieties in this category will not be eligible for certification because the authorities, in the absence of officially accepted results of identity checking, cannot verify the identity of individual S&PM lots.

### *2. Certification of S&PM*

Official certification of certain species is no longer an obligation, but is converted into a right that only the tested varieties can have. Obligatory certification of S&PM could be maintained for crops that cause specific risks in terms of plant health or other aspects with societal relevance such as possible content of toxic substances. There is a general risk-based monitoring for the compliance with legal provisions of lots of S&PM on the market.

### *3. Registration of breeders and suppliers*

In a context where a more important role is given to the industry, all breeders and suppliers are registered allowing a monitoring of their activities and facilitating a tracing back and forward in case of identified problems. Ideally this registration should be valid both for the EU plant health regime and for the S&PM marketing legislation. The concept of risk-based monitoring intensity should apply.

### *4. Approach on conservation varieties/niche markets*

The marketing of conservation or certain "niche market" varieties is liberalised. As there is no obligatory testing of varieties and no obligatory certification of S&PM, the marketing of conservation varieties or less homogenous "niche market" varieties can take place under the provisions of the regime for non-tested varieties. Suppliers whose S&PM lots hold no particular plant health risk (in line with priorities to be set by a revised EU plant health legislation) and that are marketed only to non-professional users on the local market could be considered for exemption from certain obligations.

## **Scenario 5 - Centralisation: Centralised EU registration procedure with CPVO managing and making final decisions, and fully harmonised certification requirements**

In this scenario, variety registration and certification will remain for crops covered by the existing EU legislation.

### *1. Registration of varieties and material*

In this scenario the CPVO will be mandated to coordinate and decide on variety registration, covering both identity and performance testing as well as variety denomination. Testing will be composed of DUS and VU assessment. Applications for registration of new varieties will be sent directly to CPVO. Physically the reference collections are maintained in entrusted DUS testing stations, located in the Member States. Entrustment of testing stations is done on the basis of audits performed by the CPVO in compliance with certain criteria. CPVO will manage a database of reference collections at EU level and define the list of reference varieties that have to be used when testing the distinctness of candidate varieties.

National catalogues may still coexist alongside the EU (Common) catalogues. They could contain additional VCU information that has been validated at national level or play a role for species that are not covered by the EU marketing legislation.

The EU catalogues will be published on line, and will be continuously updated. To make them more informative, they will contain hyperlinks leading to standardised full descriptions of the registered varieties, including possible relevant data related to food safety aspects.

### *2. Certification of S&PM*

The legislation continues to set out detailed requirements on the process and criteria. However, the control on compliance with the criteria for S&PM marketing is carried out by the supplier under supervision of the national authority. The national competent authorities could officially certify S&PM on request. Possible stricter requirements of the Member States that apply to their domestic production will be subject to approval at EU level. Official controls will have to be in line with the provisions of Regulation 882/2004. This implies an

involvement of EU inspectors to perform audits and the organisation of training at the EU level.

### *3. Registration of breeders and suppliers*

In a context where a more important role is given to the industry, all breeders and suppliers are registered allowing a monitoring of their activities and facilitating a tracing back and forward in case of identified problems. Ideally this registration should be valid both for the EU plant health regime and for the S&PM marketing legislation. The concept of risk-based monitoring intensity should apply.

### *4. Approach on conservation varieties/niche markets*

Conservation varieties have a strong link with their region of origin and should be evaluated in that same region for their contribution to agro-biodiversity. This evaluation should be done on the basis of harmonised criteria. Deviations from the normal regime should be kept to an absolute minimum.

## **Discarded options**

The following policy options were also considered but given their incompatibility with the objectives of the revision they have been excluded at an early stage and therefore they have not been analysed in detail.

No change – No change to technical provisions and continued high input of official authorities. Complete freedom for Member States to decide on possible cost recovery.

No changes to the present Directives would mean keeping the currently applicable main obligations relating to the registration of varieties and the certification of S&PM lots before they are eligible for marketing. The evaluation of 2007-2008 serves as an ex-post impact assessment of the existing legislation, which is taken as the reference situation for possible changes.

Although it is to be expected that Member States would gradually make better use of the opportunities that already exist within the EU legislation for mutual support and for the transfer of certain tasks to the industry, in a “no change” scenario it is expected that the currently existing economic, social and environmental impacts of implementing the EU legislation on the marketing of S&PM would not be altered. It would, therefore, lead to a continuation of the current problems identified and the costs outlined above. In that respect, a “no change” scenario would not seem to be a good solution. Non-harmonised provisions with regard to cost recovery would remain as a possible source of unfair competition between operators established in Member States that have substantially different rules on cost recovery. Consequently no further detailed analysis is made of the various impacts of the “no change” scenario. However, it is from this baseline option that the costs and benefits of other options have been assessed.

## Abolishing the EU legislation on S&PM marketing

In the absence of an EU level regulating S&PM marketing, the principle of free movement of goods has to be respected. At intra-EU level, competing private sector certification schemes would most likely be established. This would lead to a lack of transparency, making choice for farmers more difficult. As the S&PM industry would have to take account of diverging rules and required specifications depending on the customer to whom and the Member State in which they sell their products, this would have a strong negative impact on the administrative burden for the industry and consequently, on its competitiveness. In the absence of mandatory minimum standards, part of the operators may seek to gain a part of the market through low prices based on the reduction of production costs at various levels. This could ultimately affect agriculture production and productivity. This option could also increase the risk of spreading plant pests. Overall, it is considered that this scenario will not contribute to the achievement of the overall objectives.

For export to third Countries, the Member States will have to maintain a system of certification, for example in line with the OECD rules for seed moving in international trade.

### Discarded "modify" options

It might be so that the most favourable means of addressing the various issues in a balanced manner, taking account of the specificities of the various S&PM sectors might lay in bringing together elements of the five scenarios into one or more additional scenarios. However, for the sake of clarity the five scenarios are presented in a general manner while avoiding direct reference to specific sectors within the wide range of S&PM. In addition, for the purpose of the methodology of the impact assessment and with a view to arriving at clear conclusions, it was chosen not to blend the features of the different scenarios.

Because of the underlying objective of reducing cost and administrative burden, possible scenarios that would lay down stricter rules were discarded, such as centralising certification or a full VCU testing for all groups of plant species.

### **Question 3:**

**3.1 Are the scenarios defined correctly in the context of S&PM marketing?**

**3.2 Have certain scenarios been overlooked?**

**3.3 Are certain scenarios unrealistic, and if so, why?**

**3.4 Do you agree with the reasoning leading to the discard of the "no-changes" and the "abolishment" scenarios?**

**3.5 How do you rate the proportionality of a generalised traceability/labelling and fit-for-purpose requirement (as set out in scenario 4)?**

## 5. Analysis of impacts

### Main costs of the regime

Based on feedback from the Member States, the current cost of implementing the variety registration provisions is estimated at 55 to 60 Mio € per year<sup>1</sup>, whereby the DUS and VCU account for 45 and 55 % of the cost respectively.

The cost of certification is more difficult to estimate because in a number of Member States staff involved in certification is also involved in plant health inspections, and it is not easy to allocate costs. Based on feedback from the Member States (evaluation of 2007/2008 and certification questionnaire) it is estimated that the expenditure by Member States' authorities on certification of S&PM should be in the range of 73-79 Mio €. <sup>2</sup> For the sectors of agricultural and vegetable crops the 2007/2008 evaluation calculated an estimated combined cost for variety registration and certification incurred by competent authorities of just under 120 Mio €.

The above figures are used as a basis for the analysis of the costs in the other scenarios.

Controls for the possible presence of harmful organisms (HO) at growing stage and in lots of S&PM brought to the market is an important cost factor. In the context of the ongoing review of the EU Plant Health Regime (CPHR) a study will examine the costs and benefits of inclusion of HOs in the S&PM marketing or in the Plant Health legislation. The final results of this study are expected late in the first semester of 2011. At least the interim results will have to be considered when assessing the cost of S&PM certification as a component for the impacts of the various scenarios in terms of cost and administrative burden.

To help comparisons between options the impacts have been rated:

-	No or neutral impact	-	No or neutral impact
✓	Small positive impact	×	Small negative impact
✓✓	Medium positive impact	××	Medium negative impact
✓✓✓	Large positive impact	×××	Large negative impact

### Scenario 1 - Cost recovery: No change to technical provisions but complete recovery of registration and certification costs by public authorities

The introduction of the principle of cost recovery should have a direct impact only in those Member States who have not fully transferred costs of registration and certification of S&PM lots to the private sector stakeholders. This change should only impact directly on the stakeholders in Member States where such transfer is not or only partially made. As for registration costs for agricultural seed, out of 27 Member States 6 do not transfer costs, 13

<sup>1</sup> Extrapolation of data obtained in the 2010 S&PM testing and registration study. It concerns all species for which registration is mandatory under EU legislation.

<sup>2</sup> This figure includes the additional cost flowing from stricter national provisions. Also, it should be stressed that part of the expenditure is compensated by incoming fees.



transfer partially and 7 transfer fully, while 1 Member State gave no reply to the question. The variety registration study of 2010 arrived at an estimated mean recovery level across Member States of slightly above 60% of the costs incurred by the public authorities. For certification, 2 Member States do not transfer costs, 14 transfer partially and 7 transfer fully, while 4 Member States gave no reply to the question.

With an estimated cost for variety registration and certification of up to 3% of the market value of the agricultural seed crops, such a change could have a clear impact on competition between seed companies of the Member States. Transfer of registration costs is made to a lesser extent in the new Member States, which would mean that changes in this respect would have a more significant effect in the new Member States. It is not expected that transfer of costs would be to the detriment of SMEs.

Innovation and research could be negatively affected in those Member States where the competent authorities acted as a low-cost prolongation of variety testing. This effect should be only transitional.

No impacts are expected on plant health and quality, on the environment or on administrative burden as such.

The major positive impact consists in a removal of the distortion of the markets flowing from the lack of harmonisation in respect of cost recovery. This should improve competitiveness and trade in the EU.

*Summary of the key impacts under scenario 1*

<b>Areas</b>	<b>Impacts</b>
Impact on plant health and quality of S&PM	-
Impact on employment and jobs	-
Impact on administrative burden and costs for authorities	✓✓
Impact on administrative burden and costs for private sector operators	xx
Impact on competitiveness, markets, trade and investment flows	x
Impact on innovation and research	x
Environmental impact	-

## **Scenario 2 - Co-system: No change to technical provisions but certain tasks performed by industry under official supervision**

### **1. Impact on plant health and quality of S&PM**

It is considered that transferring the legal requirements for registration to industry should not have a major negative impact on plant health. With regard to the certification of S&PM Member States that are already using certification under official supervision (11 Member States in 2007) did not consider that widening the possibility to certify seed “under official supervision” to all categories of S&PM and to all agricultural species, including seed potatoes, would lead to a general reduction of the health and quality of S&PM lots of agricultural crops on the market. It is considered that propagating material and forestry material will run the highest plant health risk, rather than on true seeds, because this technique of reproduction may transfer possible pests and diseases to the daughter generations.

### **2. Impact on employment and jobs**

At EU level the total number of staff that is employed by public authorities to perform tasks related to variety testing and registration and control of crops and lots of S&PM in view of certification, including post-controls is not precisely known.

On the basis of the variety registration study it is estimated that between 1300 and 1500 staff work on variety registration in official bodies in the EU. The results of the variety registration study indicate that 60% of the registration costs are in fact labour costs. If the practical work for variety registration were fully transferred to the private sector stakeholders, it could result in a substantive percentage of redundancies in Member States' competent authorities. Testing the identity of varieties would then be limited to the work done in the framework of a percentage of varieties checked in the system of official supervision of variety testing activities and in the context of post-controls on lots of S&PM present on the market. A rough estimate could be that expenditure by the public sector for variety testing might be reduced to only a few Mio €. In terms of jobs, nearly all those related to variety testing in the public sector would disappear, but part of the staff could potentially be recruited by private companies, to take advantage of their very specialised expertise.

As for the certification of individual lots of S&PM, in the current system of examination under official supervision the authorities have to inspect only 5 % of the fields and lots, meaning that there could be a significant reduction in staff numbers. Some major S&PM producing Member States already implement examination under official supervision for agricultural crops other than seed potatoes, and there the number of jobs lost in the public sector would probably be fairly limited. As more than half of S&PM produced in the EU is intended for export to third countries, official certification will still have to be carried out for these lots of S&PM. A rough estimate could be that not more than 600/700 public jobs might be lost.

Part of the redundant staff may be recruited by the private sector, as it will have to do the survey of their crops more meticulously, being the final responsible of the S&PM lots brought to the market.

### **3. Impact on administrative burden for authorities and private sector operators**

The administrative burden related to the registration of varieties is estimated to be 55 to 60 Mio € per year, while the cost of the certification regime is estimated to be 73-79 Mio €. <sup>1</sup> As explained earlier, moving the inspection task to the private sector should reduce this burden significantly. The industry, however, will be required to maintain records of their variety and certification procedures. Already at this time the industry performs a lot of inspections as part of their quality assurance schemes and, according to the variety registration study, private companies could do the work at lower cost. It is therefore expected that the majority of these costs can be absorbed by businesses under normal business practices (business as usual) and that the additional cost will not be significant. Therefore, passing the task of inspections from the Member State authorities to the sector will lead to only a limited increase of workload for the private sector. Moreover the sector has pointed at the importance of enhanced flexibility offered by examination under official supervision.

### **4. Impact on competitiveness, markets, trade and investment flows**

Due to a need for a high level of specialised technical skills it is not unlikely that only a small part of the breeding industry would be interested in performing registration tests themselves, namely the bigger companies (10 % of companies) that breed several crops and that can afford specialising their staff, and some smaller companies who have become the true specialists in a very limited number of crops. As already nowadays the big companies are doing variety testing work themselves, in particular for big volume crops, such a shift would enhance their competitiveness. A significant number of companies are SMEs that not necessarily have the facilities to do the necessary testing. These companies would need to outsource this work anyway. Therefore the cost impact on SMEs in countries where the costs of testing are currently not recovered could be significant, although in the long run it cannot be excluded that some businesses specialised in variety testing will develop.

The currently available opportunities for performing certification under official supervision are not widely taken up in the Member States, in part because in many Member States the cost of certification is not transferred to the private sector. In Member States where already now the costs are fully transferred, the reduction of costs for producers of S&PM will be limited, but it will result in a definite improvement of flexibility in their operations, and therefore most of them would benefit from a widened certification under official supervision, regardless of the size of their enterprise.

### **5. Impact on innovation and research**

A transfer of tasks related to testing for variety registration will surely improve the general efficiency at the level of the breeders of the varieties with the best commercial potential. As such it should have a positive impact on innovation and research.

However, a full transfer of the work and the associated costs of variety registration could have negative impacts on breeding activities in minor crops, which are normally only produced by small companies for national or regional markets. Testing requirements differ according to species and so does size of the markets. For example the testing of fodder plants is 3 to 4 times more expensive than testing cereal varieties and less money is made with fodder plant seed. There is a risk that this scenario would benefit more to the breeding of major crops

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<sup>1</sup> This figure includes the additional cost flowing from stricter national provisions. It should also be stressed that part of the expenditure is compensated by incoming fees.

which generate higher income. This could in the end result in less breeding activities for less profitable varieties such as fodder plants and other minor crops. Breeding of too small crops could be abandoned.

## 6. Environmental impact

Under this regime, other possible impacts such as a shift to or away from varieties that can be grown in a more sustainable manner with less inputs (mainly pesticides, fertilisers and irrigation) are minor because the regime does not contain decisive elements to steer such evolutions. As outlined above, for the small crops there is a risk of less breeding of new varieties and a gradual abandoning of such crops by the farmers, thus reducing biodiversity.

### *Summary of the key impacts under scenario 2*

Areas	Impacts
Impact on plant health and quality of S&PM	x
Impact on employment and jobs in the public sector	xx
Impact on administrative burden and costs for authorities	✓✓✓
Impact on administrative burden and costs for private sector operators	x
Impact on competitiveness, markets, trade and investment flows	✓
Impact on innovation and research	-
Environmental impact	x

### **Scenario 3 - Low burden Co-system: Variety performance testing and official certification are optional. Harmonised tests are developed. Repartition of tasks is as under scenario 2.**

#### **1. Impact on plant health and quality of S&PM**

In this scenario, performance testing would no longer be an obligation. In the short term no significant effect thereof is expected. In the long term, however, the abandoning of the obligatory health testing for variety registration of agricultural crops could potentially lead to varieties with lower disease resistance. Moreover, proper verification of the health status will entirely depend on the quality of the inspection work done by the supplier. To the extent that the official authorities maintain a credible system of general monitoring this should not lead to increased risks for plant health in the Union.

## **2. Impact on employment and jobs**

The variety registration study learned that between 1300 and 1500 staff work in official bodies on variety registration in the EU. It is assumed that half of this staff works on VCU (performance) testing, posts that would become redundant. Moreover, identity testing would pass to the private sector and the role of the public authorities would be to test a fraction of the varieties submitted for registration, together with identity tests and samples drawn from the market in the context of general monitoring. As a consequence up to 1300 public authority posts for variety testing could be lost. Companies might have additional testing work on the performance of their varieties but it is unlikely that it would absorb more than a few hundred posts.

Certification costs in EU are estimated at 73-79 Mio € which corresponds with roughly 2000 jobs<sup>1</sup> which potentially could be lost. However, there will be a continued need for certification of S&PM lots intended for export to third countries. As more than half of the S&PM is intended for export (evaluation report 2007-2008), half of the S&PM lots will have to be certified. If this is done under official supervision only 5% (currently applied percentage) need official examination. Anyway, a generalised shift to certification under official supervision could make redundant up to 1500 or even 1600 posts. Seed certification duplicates to a good extent work done by the S&PM suppliers, and hence the transfer of practical inspection work to the suppliers will not create a lot of new jobs.

At EU level, in total up to 2900 jobs might be lost in public services that are competent for variety registration and S&PM certification.

## **3. Impact on administrative burden for authorities and private sector operators**

According to the variety registration study, removing official performance (VCU) testing for agricultural crops in the EU would save about € 23 Mio.

However the study also indicated that most Member States would like to continue having VCU on a voluntary basis on their territory, and therefore abandoning VCU as a mandatory element of the EU legislation would only save between € 2.3 to 11.5 Mio as a direct impact (10 to 50% of actual VCU cost) depending on the cost recovery in Member States.

In practice, companies will continue with a type of performance testing in their breeding programs as this provides basic information needed during their breeding and selection cycle. In addition, voluntary post registration networks exist in a number of Member States. However, information on the cost thereof (which does not flow from obligations in the EU legislation) could not be obtained.

## **4. Impact on competitiveness, markets, trade and investment flows**

The costs saved by abandoning VCU testing and official certification could lower the production costs of S&PM, and hence have a positive impact on competitiveness, markets, trade and investment flows, especially vis-à-vis other parts in the world where VCU is not a statutory requirement (e.g. USA, New Zealand, Australia). In addition, more varieties would enter the market, as fewer varieties would be eliminated by VCU testing (currently up to 50 or 60% e.g. in Denmark). As a consequence, the resources invested in those varieties could be recovered via marketing and would no longer need to be compensated by higher prices for

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<sup>1</sup> Calculation on the basis of roughly equivalent percentage of labour cost for variety registration and for certification, and on the estimated cost for implementing these two elements of the seed marketing legislation.

varieties that make it to the market. This option may therefore increase competition on the EU market which could be to the benefit of farmers (increased choice, less expensive varieties). On the other hand this may imply that less performing plant varieties would be placed on the market.

### **5. Impact on innovation and research**

Money saved on expenses for VCU testing and for official certification could be directed to breeding programmes. Also, more varieties will be brought to the market as none will be eliminated by poor VCU testing. The positive effects from this option are likely to be seen over the long term rather than straight away.

### **6. Environmental impact**

This option could contribute to increasing agricultural biodiversity if more varieties are placed on the market. Abandoning performance testing, and tests for disease resistance which are part of it, could lead to less resistant varieties being marketed that need more interventions with plant protection products.

#### *Summary of the key impacts under scenario 3*

<b>Areas</b>	<b>Impacts</b>
Impact on plant health and quality of S&PM	<b>x</b>
Impact on employment and jobs in the public sector	<b>xx</b>
Impact on administrative burden and costs for authorities	✓✓✓
Impact on administrative burden and costs for private sector operators	✓✓
Impact on competitiveness, markets, trade and investment flows	✓✓
Impact on innovation and research	✓
Environmental impact	-

### **Scenario 4 - Enhanced flexibility system: Mandatory basic provisions for registration with a voluntary level of higher assurance for registration and certification**

#### **1. Impact on plant health and quality of S&PM**

For tested varieties (registration) there is no change, they are tested as it is currently done. For the non-tested varieties, that do not undergo official testing, part of which is for disease resistance, there would be a certain risk in the long term.

As there is no obligatory certification for any of the two groups of varieties, proper verification of the health status of lots that are marketed with a suppliers' label will entirely depend on the quality of the inspection work done by the supplier. To the extent that the

official authorities maintain a credible system of general monitoring, this should not lead to increased risks for plant health in the Union. For certified lots there would not be any impact as compared to the current situation.

## **2. Impact on employment and jobs**

Because there is no obligatory testing for the registration of varieties, theoretically most of the 1500 public sector jobs on variety registration work could be lost if all varieties would in future be marketed as non-tested varieties (some variety identification work would remain in the context of testing of S&PM samples taken on the market). However, based on consultation with stakeholders, this assessment is considered to be an overestimate. On average, the number of varieties with EU variety rights protection is roughly 30-35 % of the number of newly registered varieties in the common catalogues. Right-holders of varieties that seek for variety protection will most likely also make the additional cost of the performance testing in order to have access to the category of tested varieties and to be eligible for certification which is a normal precondition for export of S&PM to third countries. Taking account of the above two elements, this would mean that at least half of the jobs are likely to be maintained. However, if variety testing would be done under official supervision, this would end up in far less jobs being maintained.

Certification costs in EU are estimated at 73-79 Mio € which corresponds with roughly 2000 jobs<sup>1</sup> which potentially could be lost when there is no obligatory certification. Given the expected dominant position of tested varieties and taking account of their potential for export markets, it could be assumed that S&PM lots of these tested varieties will normally be submitted to certification. Moreover, it will be the varieties with the highest commercial potential for which testing is done. This means that per tested variety far bigger quantities will be brought to the market than per non-tested variety. As a consequence, certification would probably be done on far more than 30% of the lots on the market and this means that a good part of the jobs associated with certification would be kept. Here too, a full shift to certification under official supervision could sharply reduce the number of public sector jobs that are saved.

## **3. Impact on administrative burden for authorities and private sector operators**

As there is no obligatory testing for registration, in theory 90% of 55-60 Mio € could be saved, as authorities would only have a light administrative burden in registering or listing varieties. However, again based on the assumption that 30-35 % of the varieties would be tested varieties, the cost savings could be in the order of 40 Mio € per year.

Assuming a comparable situation for certification, if in future about one third of the S&PM lots will be certified, savings on S&PM certification would be roughly 50 Mio €. A higher percentage of lots offered for certification would reduce the amounts saved, but to the extent that certification is done under official supervision this reduction would be less substantial.

Non-tested varieties would constitute a ‘low-burden’ group that could be interesting in particular for conservation varieties and other varieties with limited marketing potential. It should allow access to the market of varieties of interest for conservation and other varieties that are expected to have only a local importance. For such varieties, full testing and

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<sup>1</sup> Calculation on the basis of roughly equivalent percentage of labour cost for variety registration and for certification, and on the estimated cost for implementing these two elements of the seed marketing legislation

certification would be a disproportionate cost when set out against the potential marketing opportunities. At the current stage, these varieties account for about 5% of the market. However, this reduction of administrative burden could lead to an expansion of this market. If breeders and seed suppliers would use this at too large a scale as an outlet for new varieties with less potential, they would risk compromising the profitability of the markets for their top varieties.

#### **4. Impact on competitiveness, markets, trade and investment flows**

As there is no obligatory testing for registration and no official certification, this enhanced flexibility should allow a more rapid access to the market for new non-tested varieties. In particular the operators producing specific S&PM for regional and local markets would benefit of this opportunity. For tested varieties there would not be any significant change to the current situation. Competition between tested varieties and the non-tested varieties may force the suppliers to reduce the price and hence also the margin on the sales they make. Such a reduction could put a halt to the tendency of an increased use of farm saved seed. According to the results of the evaluation, certified seed costs 3% more than seed that have not undergone any testing. If seed makes up 10-15 % of the production costs of agricultural crops, the choice for non certified seed lots of the non-tested varieties could reduce the production costs by 0.4 to 0.45 %. Only if the value of the harvest produced from certified seed is less than 0.4 to 0.45% above the value of the harvest produced with non-tested varieties seed would the farmers opt for this lower category.

#### **5. Impact on innovation and research**

A double effect is anticipated. The enhanced flexibility should allow a more rapid and less costly access to the market for new varieties. The industry will be stimulated to focus its research on the sustainability of the new varieties as under this option sustainability criteria will be a mandatory element of performance testing of tested varieties.

#### **6. Environmental impact**

Non-tested varieties are intended in the first place to serve the interest of the conservation of biodiversity. It should allow access to the market of varieties of interest for conservation and other varieties that are well adapted to local conditions and that are expected to have only a local importance.

Tested varieties should constitute the bulk of the varieties. Here too a positive effect is expected as varieties in this group will have undergone a screening for their sustainability profile. This new approach on performance testing is in line with the Commission's approach to pesticides<sup>1</sup>. Annex III (1) to that Directive recommends to use, where appropriate, resistant/tolerant cultivars and standard/certified seed and planting material. To implement this provision, users of S&PM should possess the proper information. Official or officially supervised sustainability testing would appear to be the best and probably the least costly guarantee that farmers and other users indeed get this information.

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<sup>1</sup> Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides.



*Summary of the key impacts under scenario 4*

<b>Areas</b>	<b>Impacts</b>
Impact on plant health and quality of S&PM	<b>x</b>
Impact on employment and jobs in the public sector	<b>xx</b>
Impact on administrative burden and costs for authorities	✓✓✓
Impact on administrative burden and costs for private sector operators	✓✓✓
Impact on competitiveness, markets, trade and investment flows	✓✓
Impact on innovation and research	✓
Environmental impact	✓

**Scenario 5 - Centralisation: Centralised EU registration procedure with CPVO managing and making final decisions, and fully harmonised certification requirements**

**1. Impact on plant health and quality of S&PM**

As for registration, the assessment of the identity and the performance of varieties will be centralised by CPVO and carried out exclusively in CPVO-entrusted testing stations, following audits carried out by CPVO. In this respect, variety testing would be more uniform which would contribute to a more harmonised implementation of the registration procedure. This should result in an improved reliability of descriptions, including qualifications of the performance criteria of varieties placed on the EU market.

Concerning certification, the reduction of possibilities for national more stringent requirements should result in a better harmonisation and improved transparency.

**2. Impact on employment and jobs**

The effect of centralised variety registration is difficult to calculate as it depends on how many of the currently operating testing stations (just over 500 testing locations) with their 1500 employees would continue their activities under entrustment of CPVO. For jobs on certification no significant impact is expected.

**3. Impact on administrative burden on public authorities and on businesses**

The administrative burden for the industry would be lowered, as repetition of work on variety registration and on protection of plant variety rights will be avoided. There will only be one single EU variety registration system instead of 27 national variety registration organisations, even though the testing work as before will be done in entrusted testing stations across the EU. In addition, a centralised management by CPVO of the collections for variety comparison held in the testing stations (reference collections) could reduce the cost of variety testing significantly as this element accounts for 6 to 30% of the testing costs (based on information provided by 4 Member States). This scenario also reduces the administrative burden for the

Member States and thus saves costs. With an estimated overhead for administrative costs of 10% of the registration costs in the Member States the total savings at Member State level could be around 5.5 to 6 Mio €.

#### **4. Impact on competitiveness, markets, trade and investment flows**

A centralised uniform EU variety registration system for the internal market improves transparency and it ensures a truly level playing field for all operators. Concentration of all variety registration tasks in CPVO facilitates work for breeders. Trade will benefit from increased transparency and harmonisation.

The reduction of the incremental cost associated with variety protection could lead to a higher proportion of varieties for which an application for variety protection is submitted to CPVO. For varieties that are not protected there would be a small increase of costs, especially for breeders in those Member States where competent authorities do not currently transfer their costs to the industry and in Member States where registration is fairly inexpensive due to low labour cost.

#### **5. Impact on innovation and research**

Uniform and harmonised EU rules and systems of variety registration support the access of new varieties to the market, and thus innovation and research.

#### **6. Environmental impact**

As outlined under plant health, new provisions might lead to better reassurance on the intrinsic health profile of varieties. Access to the market for varieties that draw their main interest from their contribution to biodiversity or that have enhanced qualities in respect of sustainability will not change as compared to the current situation.

#### *Summary of the key impacts under scenario 5*

<b>Areas</b>	<b>Impacts</b>
Impact on plant health and quality of S&PM	✓
Impact on employment and jobs in the public sector	x
Impact on administrative burden and costs for authorities	✓✓
Impact on administrative burden and costs for private sector operators	✓
Impact on competitiveness, markets, trade and investment flows	✓✓
Impact on innovation and research	✓
Environmental impact	-

#### Question 4:

4.1 Are the impacts correctly analysed in the context of S&PM marketing?

4.2 Have certain impacts been overlooked?

4.3 Are certain impacts underestimated or overly emphasized? If so, why? Please provide numeric data to support your comments wherever possible.

4.4 What are your views with regard to combining elements from the various scenarios into a new scenario?

## 6. Comparing the scenarios

Any possible revision of the legislation should aim at responding to the objectives as set by the adopted action plan and all options should be checked against their potential to achieve these objectives.

### 6.1 Comparing the options in terms of their impacts

To make the first comparison, the summary tables for each scenario in section 5 have been used.

Areas	Impacts				
	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Impact on plant health and quality of S&PM	-	x	x	-	✓
Impact on employment and jobs in the public sector	-	xx	xx	xx	x
Impact on administrative burden and costs for authorities	✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓
Impact on administrative burden and costs for private sector operators	xx	x	✓✓	✓✓✓	✓
Impact on competitiveness, markets, trade and investment flows	x	✓	✓✓	✓✓	✓✓
Impact on innovation and research	x	-	✓	✓	✓
Environmental impact	-	x	-	✓	-

## 6.2 Comparing the scenarios in light of the objectives

In order to measure their effectiveness each scenario has been rated against the objectives of the review to consider which option best meets the aims of the review.

To help comparisons between options, the expected levels of achievement have been rated:

-	No or neutral impact	-	No or neutral impact
✓	Small positive impact	x	Small negative impact
✓✓	Medium positive impact	xx	Medium negative impact
✓✓✓	Large positive impact	xxx	Large negative impact

Objectives		Level of expected achievement				
		Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
GENERAL	Health and quality of S&PM	-	x	x	-	✓
	Functioning of the internal market	✓✓	✓	x	x	✓✓✓
	Information of users	-	x	xx	-	✓✓
	Sustainability/bio-diversity	-	-	x	✓	-
SPECIFIC	Reduction of costs and administrative burden for public authorities	✓✓	✓✓✓	✓✓✓	✓✓✓	✓✓
	Reduction of costs and administrative burden for the industry	xx	-	✓✓	✓✓✓	✓
	Improve farmers' choice	-	-	✓	✓✓✓	✓
	Innovation	x	x	✓	✓✓	✓
	Improve competitiveness	✓	✓✓	✓✓	✓✓	✓✓
OPERATIONAL	Simplification -remove unnecessary rules and administrative burden	-	✓	✓✓	✓✓	✓
	Harmonisation	✓	-	x	x	✓✓✓
	Flexibility	-	✓✓	✓✓✓	✓✓✓	x
	Consistence with other EU policies	✓	-	-	✓	✓

**Question 5:**

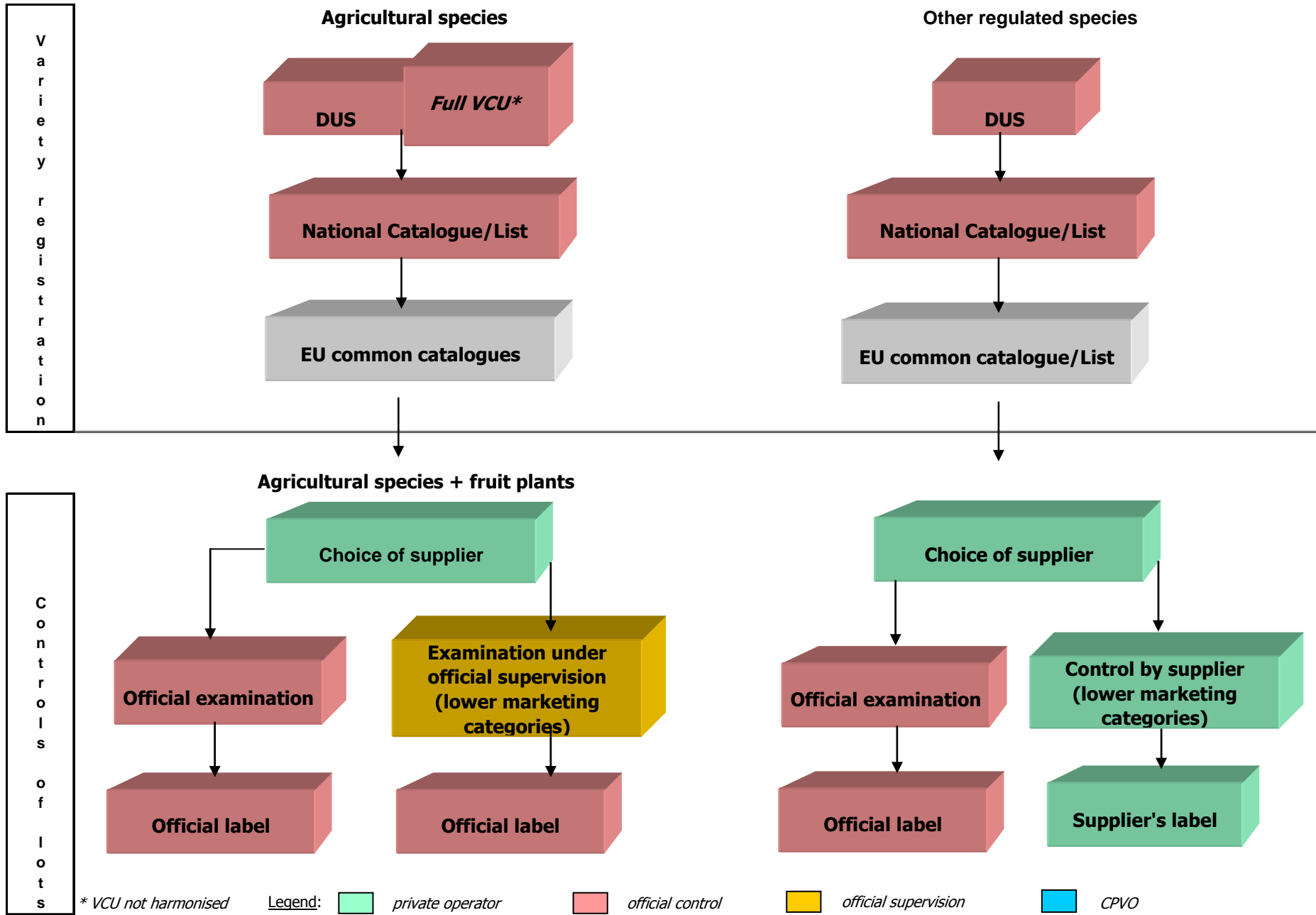
**5.1 Do you agree with the analysis of the potential of the various scenarios to attain the objectives? If not, please justify.**

**5.2 Which scenario or combination of scenarios would best meet the objectives of the review of the legislation. Please justify.**

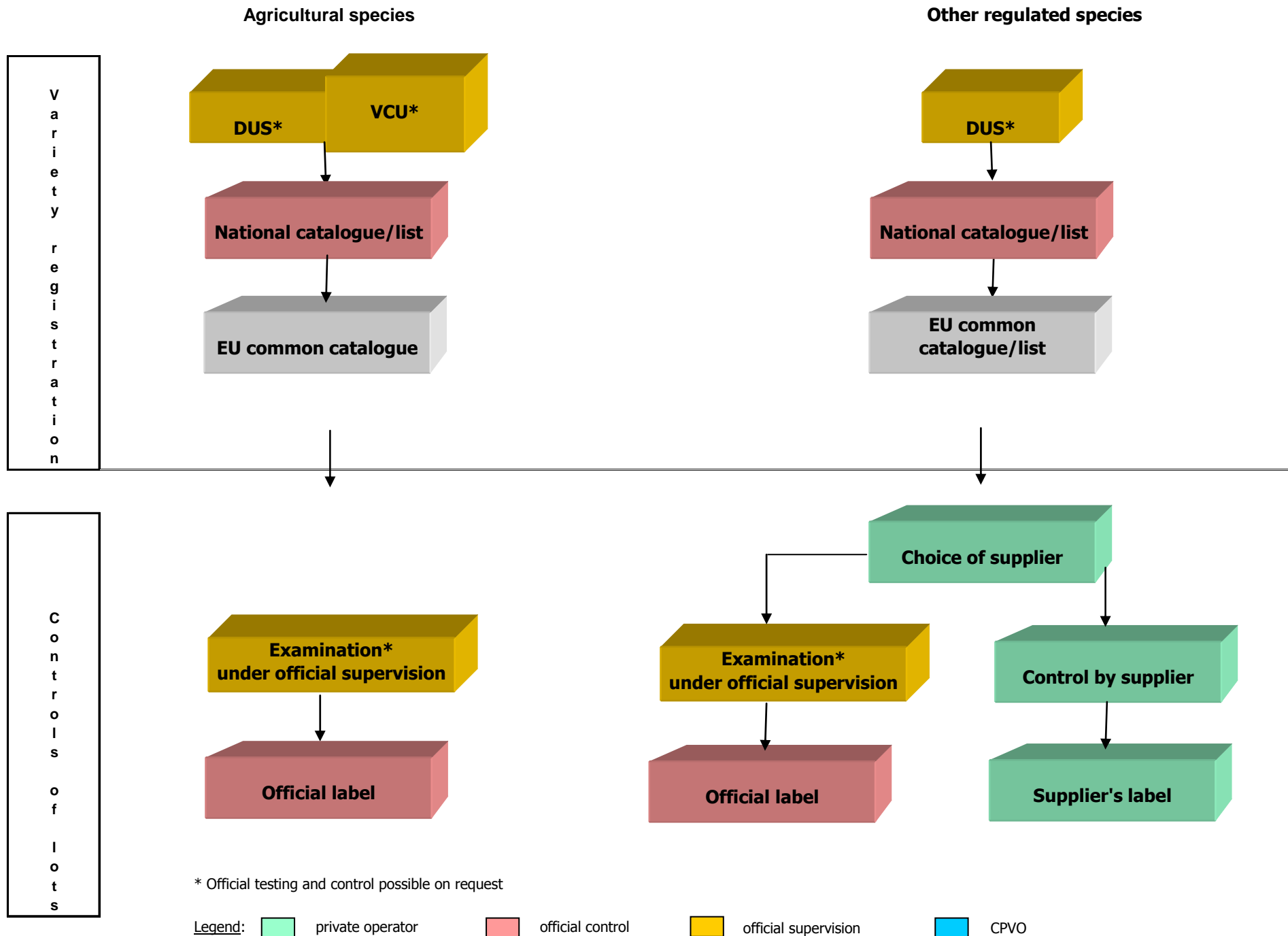
**5.3 Would a regime be conceivable whereby a variety is considered as being automatically registered in an EU catalogue as soon as a variety protection title is granted by CPVO?**

**Annex: Graphical presentation of the five scenarios**

# SCENARIO 1 - Cost recovery, no other changes



# SCENARIO 2 - Co-system: More responsibilities for the industry





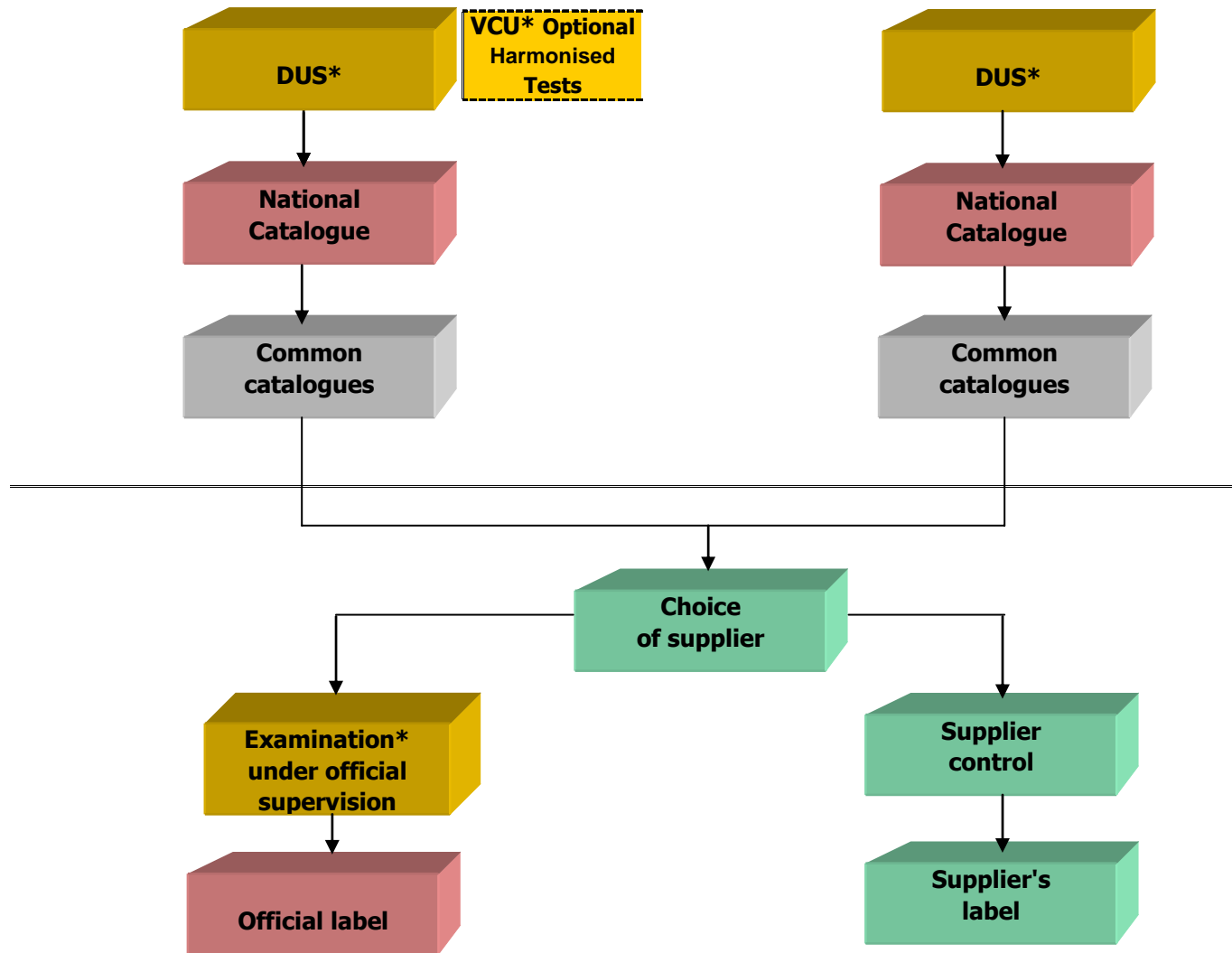
# SCENARIO 3 - Low burden co-system: more responsibilities for industry; official pre-marketing control of lots no longer mandatory

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Agricultural species

Other regulated species\*\*



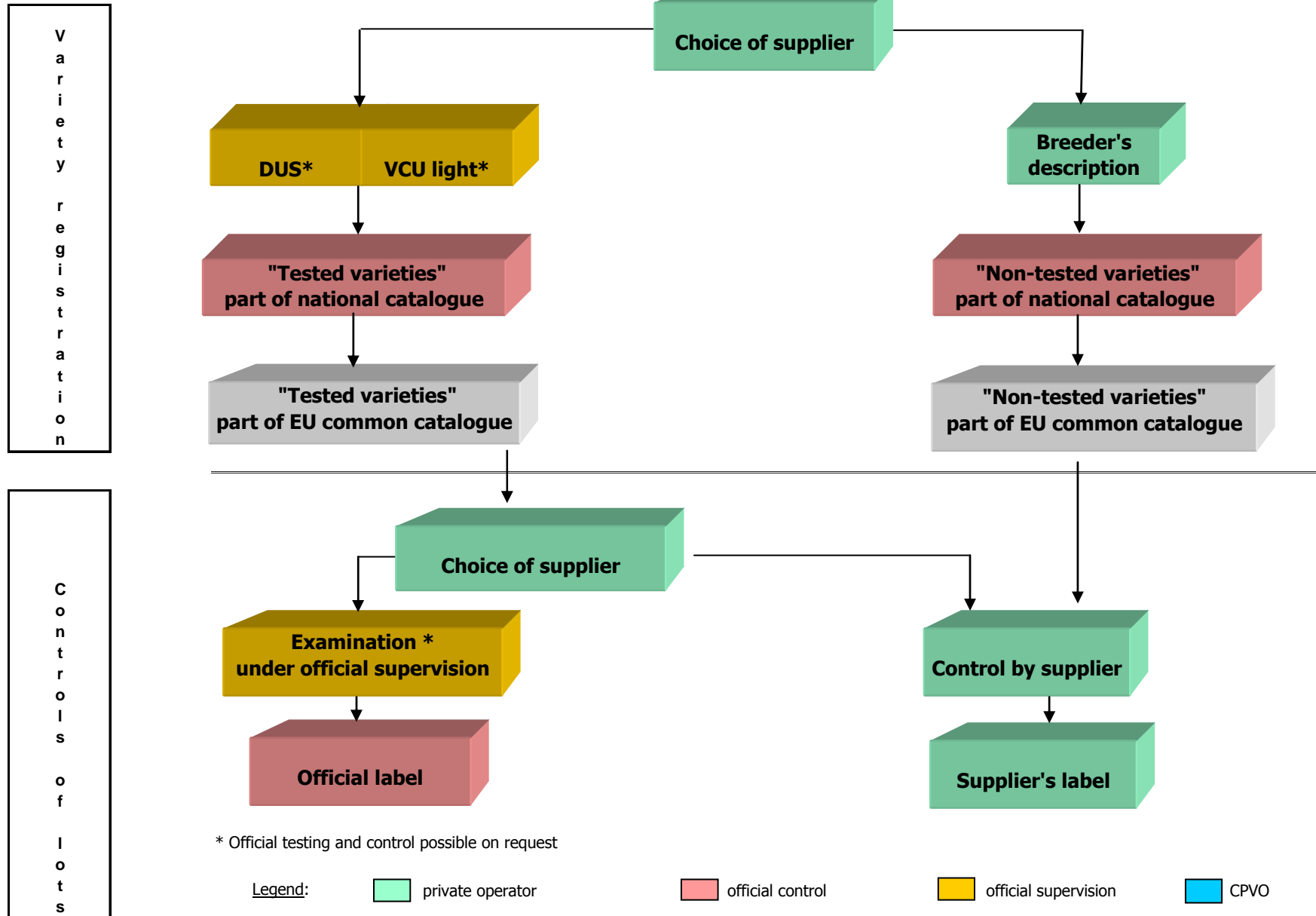
\* Official testing and control possible on request  
 \*\* Ornamentals no longer covered

Legend:

- private operator
- official control
- official supervision
- CPVO

# SCENARIO 4 - Enhanced flexibility: official testing of varieties and pre-marketing controls no longer mandatory

ALL REGULATED SPECIES



# SCENARIO 5 - Centralisation: variety registration fully managed by CPVO, Controls of lots remain national

