

## **Discussion paper of the Commission services for consultation of the advisory group on legislation on Seeds and Plant Propagating Material (23-11-2010)**

**This document does not necessarily reflect the position of the Commission**

### **Problem definition and policy options for impact assessment - review of the legislation on marketing seed and plant propagating material (S&PM)**

#### **1. Problem definition**

- Unlevel playing field in the EU: need for more harmonisation and more harmonised implementation in the Member States
- Pressure on resources in the Member States: need for better prioritisation of risks and for simplification of procedures, more flexibility and transfer of tasks to private operators
- Legislation unadapted for the new EU priorities on innovation and sustainability: need for improved market access and for protection of agro-biodiversity

#### **3. Future 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 Community legislation as it currently stands: "Status quo", "Suppress" and "Modify". The results from the stakeholders' consultation support the "Modify" scenario, which is recommended by the evaluators.

On the basis of this work and several stakeholder consultations the following scenarios for the impact assessment have been identified:

- Scenario 1: No changes: High input of official authorities
- Scenario 2: Co-system: Public authorities decide, maximum transfer of practical work to industry
- Scenario 3: Co system derived from scenario 2, but with reduced administrative burden
- Scenario 4: Mandatory basic provisions with voluntary level of higher assurance
- Scenario 5: Harmonisation and simplification through centralisation
- Scenario 6: Abolish the legislation on S&PM in the EU

## **Scenario 1: No changes - Continued high input of official authorities**

No changes to the present Directives would mean keeping the currently applicable main obligations relating to the registration of varieties and the certification of seed lots before they are able to be marketed.

## **Scenario 2: Co-system: Public authorities decide, maximum transfer of practical work to industry**

### *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). However, more responsibilities would be given to the industry in the sense that they would have the possibility to carry out DUS and VCU tests subject to validation and auditing by the competent authorities. Provisions related to variety denomination and the management of the Common Catalogues remain the same. In this scenario all administrative tasks at the EU level would be attributed to the CPVO.

For performance testing (VCU) harmonised and more detailed EU criteria would be developed, on the basis of the requirements set up in the Member States. It would give the possibility to incorporate or give more weight to criteria important for the society: such as sustainability (which includes disease resistance and suitability for low-input farming), risk of presence of mycotoxins or other dangerous substances, nutritional value etc. Some of the criteria would be mandatory (health and adaptation to the physical environment), some optional (yield and value for use aspects).

Member State will be required to make DUS and VCU testing available to SMEs (Small and Medium-sized Enterprises) who might not have the resources for doing the tests themselves. Member States may agree to share this work. They shall ensure that reference collections are maintained and that samples of S&PM material are available for the performance of the said tests.

### *Certification of S&PM*

The certification requirements for lots of S&PM remain the same. However, the control of compliance with the criteria for S&PM marketing is carried out by the supplier under supervision of the national authority or, at the request of the supplier, under official control. Marketing of lots of S&PM covered by a supplier's label equally remains the same. For the sake of transparency, possible stricter requirements of the Member States that apply to their domestic production should be registered in a database at EU level.

There is a general risk-based monitoring for the compliance with legal provisions of lots of S&PM on the market.

### *Registration or listing of breeders and suppliers*

In order to allow for official controls and checks breeders and suppliers will have to be registered with the authorities as a precondition for their possible involvement in the practical work

associated with the description of the characteristics of varieties and the certification of the S&PM lots that they bring to the market.

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

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. However, problematic in the light of the limited current and expected future size of these markets, solutions should be sought for to allow a further lightening of the less stringent requirements.

### **Scenario 3: Co system derived from scenario 2, but with reduced administrative burden**

The "Identity" testing as part of the variety registration continues to be an obligation for the crops regulated by the EU legislation. Performance testing is optional. In this scenario all administrative tasks at the EU level would be attributed to the CPVO. All lots of S&PM are marketed on the basis of a suppliers' label and need to meet certain minimum criteria, which are set at the EU level. The national competent authorities could officially certify S&PM on request. There is a general risk-based monitoring for the compliance with legal provisions of lots of S&PM on the market.

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

The scenario aims at improving flexibility for breeders, suppliers and buyers of S&PM. Under this scenario registration of suppliers is mandatory and basic criteria for production and reproduction could be created thus moving to a situation where there is more process control than product control.

#### *Registration of varieties and material*

Varieties and material of crops covered by the marketing legislation need to be registered, and two levels of identification are created, so that both the suppliers and the users can make their choice. In both levels, variety description should be carried out using criteria complying with CPVO and UPOV rules. Also in this scenario all administrative tasks at the EU level related to variety registration would be attributed to the CPVO.

(1) First level: Mandatory 'light registration' of all varieties of all plant species covered by the EU legislation. The member states register the varieties on the basis of an accepted harmonised description of the variety prepared on the authority of the applicant, including the denomination. Performance testing is not required for this category of S&PM. The Member States notify these varieties/material to the EU for listing in EU catalogues. Basic general rules with regard to health and fitness for purpose, as well as for labelling, continue to apply. Competent authorities would only be responsible for listing and for marketing controls, focussing on labelling in particular. Varieties in this category would not be eligible for certification.

The scope of the marketing legislation will be re-examined and as an example, ornamental species that are not covered by specific provisions of the plant health legislation might be exempted. Exemptions might also be made for specific varieties of certain species if they are only exchanged in closed circuits.

(2) Second level: Voluntary registration as tested varieties

At Member State and at EU level catalogues of "tested varieties" are set up for varieties of all crops covered by the EU marketing legislation. These catalogues would only accept varieties which have been tested officially or under official supervision. Tests include DUS and the mandatory VCU criteria (health and adaptation to the physical environment). The VCU tests for yield and value for use would be optional. Only varieties that are listed in these catalogues would be eligible for certification. Provenances/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.

*Certification of S&PM*

Certification is carried out under official supervision or under official control and will be limited to material in the catalogue of "tested" varieties (see above). Certification is no longer an obligation, but is converted into a right that only the tested varieties could have. As a consequence, obligatory certification of S&PM would have to be reconsidered and could be restricted to crops that cause specific risks in terms of plant health or other aspects with societal relevance. There is a general risk-based monitoring for the compliance with legal provisions of lots of S&PM on the market.

*Registration of breeders and suppliers*

All breeders and suppliers are registered so that a monitoring of their activities is possible. Ideally this registration should be valid both for the EU plant health regime and for the S&PM marketing legislation. It serves the purpose of traceability in the general context of producer/supplier liability. The concept of risk-based monitoring intensity should apply.

*Approach on conservation varieties/niche markets*

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 could take place under the provisions of the level 1 regime. Suppliers whose S&PM lots hold no particular plant health risk and that are marketed only to non-professional users on the local market could be considered for exemption. Small size of a company should not in itself be a criterion for exemption from certain obligations.

## **Scenario 5: Simplification through centralisation**

This scenario comes close to scenario 2, but gives a more prominent role to the CPVO for variety registration and it limits the possibilities for Member States to implement stricter national provisions.

### *Registration of varieties and material*

In this scenario the CPVO would be mandated to coordinate and decide on variety registration, covering DUS testing as well as the sustainability tests; Applications for registration of new varieties would have to be sent directly to CPVO. Physically the reference collections are maintained in selected DUS testing stations, located in the Member States. They have to be entrusted on the basis of audits performed by the CPVO in compliance with strict assessment criteria. CPVO manages a database of reference collections at EU level and defines the list of reference varieties that will have to be used when testing the Distinctness of candidate varieties.

National catalogues could still coexist with the 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 commons catalogues will be published on line, and will be continuously updated. They will contain hyperlinks leading to standardised full descriptions of the registered varieties, including possible relevant data related to food safety aspects.

### *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. There is a general risk-based monitoring for the compliance with legal provisions of lots of S&PM on the market

To achieve better harmonisation, possible stricter requirements of the Member States that apply to their domestic production should be subject to approval at EU level. There is a general risk-based monitoring for the compliance with legal provisions of lots of S&PM on the market.

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 to organise training.

### *Registration of breeders and suppliers*

All breeders and suppliers are registered so that monitoring of their activities is possible. Ideally this registration should be valid both for the EU plant health regime and for the S&PM marketing legislation. It serves the purpose of traceability in the general context of producer/supplier liability. The concept of risk-based monitoring intensity should apply.

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

Conservation varieties have a strong link with their region of origin. A centralised evaluation of such varieties in view of their merits for the conservation of the local agro-biodiversity is difficult to conceive. Implementing specifically tailored regimes would be problematic. Therefore, the no changes scenario would apply to this point.

## **Scenario 6: Abolishing the S&PM legislation in the EU**

Abolishing the EU legislation for only part of the crops, such as ornamentals for instance, is not considered here. It is, however, a possible element of the variety registration regime as discussed in the first level under scenario 3.

### *Registration of varieties and material*

This option would mean that there would not be any legal requirements at EU level and no official testing and registration systems of varieties of agricultural crops and vegetables, fruit plants, vines and forestry plants. Some systems of official testing could be maintained at national level (as under scenario 3) in so far that these systems do not prevent the marketing of varieties non tested varieties

### *Certification of S&PM*

Equally, certification of S&PM under EU provisions would no longer be possible. Some national certification mechanisms could be maintained for seed producers on a voluntary basis.

### *Registration of breeders and suppliers*

Not necessary from a S&PM marketing perspective. Any such registration would have its basis in the plant health regime or other legislation that applies to them.

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

This option would mean that there would not be any legal requirements at EU level or any official variety testing and registration systems.

**ANNEX:1. Flowchart presentation of current EU system for Registration of varieties and certification/inspection of S&PM lots for marketing**  
(terminology not applicable to Forest Reproductive Material)

**Step 1: Registration of varieties**

1.1 Applicant submits an application and a sample to the national competent authority

1.2 Competent authority performs testing:

- distinctness, uniformity, stability for all varieties, (at least over 2 growing seasons)
- value for cultivation and use as additional tests for agricultural crops
- suitability of the proposed variety name



if all criteria are met

1.3 Competent authority registers the variety in its national catalogue or list



For agricultural and vegetable crops, the variety is eligible for marketing in the Member State, for other crops marketing in the entire EU is permitted

1.4 The competent authority notifies the EU of the registration

1.5 The EU inscribes the agricultural and vegetable varieties in a common catalogue



the variety is eligible for marketing throughout the EU

## Step 2: Inspections/certification of lots of S&PM

### Marketing of lots covered by an official certification label

2.1.1 Supplier submits an application to the competent authority

2.1.2 Authority performs inspections on growing seed crop and on lots prepared for marketing, including sampling and laboratory testing. Under certain conditions inspections may be done by the supplier under official supervision

↓ if all criteria<sup>1</sup> are met

2.1.3 Certification label issued

↪ lot eligible for marketing

2.1.4 Competent authority performs random post-control on lots of S&PM on the market

### Marketing covered by a suppliers' label [*not for potatoes, beet and cereal seed, vines*]

2.2.1 Supplier performs inspections on his seed crop and on lots prepared for marketing

↓ if all criteria<sup>2</sup> are met

2.2.2 Suppliers' document issued

↪ lot eligible for marketing throughout EU

2.2.3 Competent authority performs random post-control on lots of S&PM on the market

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<sup>1</sup> Criteria are crop- specific and depend on marketing category