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**COMMISSION STAFF WORKING DOCUMENT**

**ACTION PLAN**

**for Review of the Community legislation on marketing of seed and plant propagating material and related issues**

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### **for Review of the Community legislation on marketing of seed and plant propagating material and related issues**

#### **Background**

The implementation of the marketing legislation on seed and propagating material (S&PM) was evaluated by an external consultant in 2007-2008 with a view to paving the way for revision of the legislation. The Council having acknowledged the conclusions of the evaluation has welcomed the Commission's commitment to carry out an impact assessment on the possible changes to the legal framework and to present an appropriate proposal that leads to a significant simplification of the legislation and a reduction of the administrative burden for all stakeholders.<sup>1</sup>

Based on the evaluation results and the stakeholder consultations, the Commission services developed an S&PM Action Plan. Overall, the Action Plan encompasses a challenging review of the legislation and considers legislative as well as non-legislative measures aimed at providing a modern, more harmonized framework for the marketing of S&PM which will be easier to understand and to implement

The timetable for the preparation of Commission proposals is laid out in the Annex to this document. However, the timetable for the final delivery of all the specific actions included in this action plan will depend on the position of the Council and most likely Parliament subject to the ratification of the Lisbon Treaty.

#### **Evaluation results**

According to the evaluation results, the legislation has served a good purpose in achieving its objectives of ensuring the free movement throughout the Community of healthy and good quality S&PM in a sufficiently wide range of varieties and still remains useful. Internal free market in S&PM is perceived as being well established, but the following problems, which interfere with the principle of a level-playing field, have been identified:

- non-harmonised implementation of the Community legislation,
- additional national implementing measures,
- a non-harmonised framework for costs and responsibility sharing,
- the lack of organised circuits for the exchange of information between MS,
- complexity of community legislation.

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<sup>1</sup> Council Conclusions on better regulation in the plant variety and seeds sectors- Doc 16918/08 Adopted 8 December 2008.

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.

## **Conference**

A conference on Seed Availability in the 21<sup>st</sup> Century was organised on 18 March 2009 to present and discuss the evaluation results with various stakeholders. Overall, stakeholders supported the Commission's intention to revise the legislation.

## **Action plan**

The Action Plan presented below encompasses a challenging 2.5 year work programme aimed towards clear outcomes:

- Single horizontal legal framework for marketing S&PM – Seed Law
- Harmonised implementation of legislation in the Member States – audits and training
- Overall reduction of administrative burden and costs – effective, efficient, and flexible procedures
- Consistency with the other EU policies: Agriculture, Environment, GMOs, Plant Protection Products, Plant Health and Human Health/Food Safety – action at the beginning of the production chain
- Possible extension of the role of the CPVO (Community Plant Variety Office) to the S&PM sector – true Community Plant Variety Office
- Enhancing the role of the Common Catalogues – source of information
- Strengthening the Community role/influence on international standards – EU key role
- Setting structures for stakeholder involvement – partnership and communication

The Action Plan sets out some challenging objectives, not just for the EU institutions but also for the Member States and finally for the private sector stakeholders: breeders, farmers, gardeners, foresters and nurserymen.

Overall objective – Seed Law

The overall objective of the Action Plan is the development of an EU Seed Law that would lead to a modernisation and a significant simplification of the current legislation with the aim:

- to ensure the availability of qualitative and healthy S&PM, and by this way to promote plant health and to support agriculture, horticulture and forestry,
- to ensure that S&PM meets the expectations of users,

- to contribute to halt the loss of biodiversity,
- to achieve a harmonised implementation of the legislation throughout the Community,
- to improve economic competitiveness by ensuring free circulation of S&PM in the Community.

#### More detailed objectives

1. Simplify the current Community legislation and introduce flexibility within the regulatory framework

The Commission services aim at replacing the 12 Council Directives by a single legal framework, the EU Seed Law. The use of a Regulation as a legal instrument should lead to gains in simplification as well as in efficiency considering that it is directly applicable at the same time in all the Member States. Flexibility and faster updating following new developments should be achieved by providing that the non-essential elements of the legislation, in particular of scientific and technical nature, are adopted and modified by the Commission. For the crops of minor importance, of niche or emerging markets it is foreseen to explore in an impact assessment whether the current requirements for testing of seeds are proportionate to their market size in order to ensure an appropriate approach.

2. Harmonised implementation of legislation in the Member States - audits and training

The harmonised implementation of the legislation in the Member States can be improved by introducing instruments that are already used in other sectors of the food and feed chain. In addition to using the legal approach of a Regulation, the Commission services intend to implement the Feed and Food Control Regulation ((EC) No 882/2004)<sup>2</sup> to introduce harmonised control systems and, where appropriate, involve the Food and Veterinary Office for carrying out audits. At the same time, the organisation of specific training for inspectors of S&PM in the framework of the programme of "Better training for safer food" and the development of current comparative trials will be considered.

3. Overall reduction of administrative burden and costs – efficient and effective procedures

The evaluation report stressed that most of the stakeholders do not consider the cost of the application of the Community S&PM marketing regime as overly high. However, in line with the Commission's Better Regulation strategy, an effort should be made to look for possibilities to reduce administrative burden and costs, increase flexibility and improve co-operation among the Member States as regards the main pillars of the legislation - registration and certification. In order to identify options for decreasing the administrative burden and costs, an impact assessment on variety

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<sup>2</sup> Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

registration, including DUS (Distinctness, Uniformity and Stability) and VCU (Value for Cultivation and Use) testing, and certification will be carried out. It should be analysed which tests are the most relevant and to whom this work could best be attributed (e.g. national authorities, CPVO, third parties, industry). In this analysis attention should also be paid to the possibilities for organising the tests at a region rather than at national level

4. Consistency with the other EU policies: Agriculture, Environment, GMOs, Plant Protection Products, Plant Health and Human Health/Food Safety – action at the beginning of the production chain

In the context of the comprehensive review of the S&PM marketing legislation, approaches will be explored to improve coherence with the agricultural and environmental policies (including biodiversity) as well as with closely related legislations on plant protection products, plant health and GMO's.

The results of the evaluation of the Community legislation on the Plant Health Regime will be taken into account while preparing the Commission proposal for the review of the S&PM marketing legislation. The S&PM marketing legislation states that it applies without prejudice to the requirements of the plant health legislation. It contains provisions that in fact duplicate the plant health provisions and that should be removed. In addition, for any work on harmful organisms in the context of the S&PM legislation a science-based approach should be ensured by involving EFSA.

As regards ‘food safety’, the example in the EU legislation on contaminants in food where maximum levels of mycotoxins in food are being regulated, demonstrates the value of considering plant breeding as one tool of the public health strategy and the potential of integrating such kind of criteria for the registration of varieties. It could be studied to extend such considerations to the analysis of using the seed legislation (plant breeding) as a component of food safety, public health strategy, plant health and environmental protection and to the adaptation to the climate change. The feasibility of this approach should be further explored as part of the impact assessment.

5. Possible extension of role of the CPVO to the S&PM sector – true Community Plant Variety Office

So far CPVO only has an indirect role as regards the legislation on marketing S&PM through the test protocols. However, CPVO is currently developing a database allowing to give advice for the suitability of variety denominations, also for the purpose of registration of varieties. The issue of enhancing the status of this role and of a possible involvement of CPVO in particular in the registration procedure (independently from the variety protection procedures) will be explored, as it opens opportunities to reduce costs and administrative burden. Indeed, the same DUS tests based on international protocols are required both for listing in the Common Catalogues and for protecting varieties of agricultural crops and vegetables.

6. Reinforce provisions dedicated to inform users - enhancing the role of Common Catalogue

Associations of users and suppliers have asked to improve the contents, the accessibility, the use and the management of the Common Catalogues and lists by adding information on origins or defined parameters of interest to the users, organising the data better or making it accessible to all authorised parties via the internet. In the context of the review, the issue of the nature of the information contained in the Common Catalogues, the frequency and the modalities of their publication will be addressed. A regime that would allow more frequent updates which should only be published on-line should be explored. The publication of annual consolidations should however not be abandoned.

#### 7. Strengthening Community influence on international standards and trade - EU key role

The EU legislation is already largely based on international standards/recommendations and guidelines of the OECD Seed Schemes, UN-ECE (United Nations Economic Commission for Europe), ISTA (International Seed Testing Association) and EPPO (European and Mediterranean Plant Protection Organisation). The EU will constantly observe and improve its alignment with international standards. The EU is a key partner in negotiating standards for facilitating the international movement of S&PM.

#### 8. Setting structures for stakeholder involvement – partnership and communication

Two key underlying principles apply to all the work of the Commission: partnership and communication. The involvement of all relevant stakeholders and organisations in the European decision making process is crucial. The action plan can only bring about real change if everyone involved in the S&PM sector works together. The EU should take advantage of existing collaborative efforts, encourage new initiatives and make more use of non-legislative alternatives to regulation if possible.

There is a well established cooperation with Member States governments but there is room to improve consultation with other stakeholders. A working group for the other stakeholders will be created within the framework of the Advisory Group on Food Chain, Animal and Plant Health including representatives from non-governmental organisations spanning the S&PM sector and other relevant parties of the food and feed chain. The group should provide strategic guidance on the appropriate approaches on quality and health of S&PM and on priorities for action and communication. The group will also follow the progress of the action plan. It will be consulted on the impact assessments and advise the Commission on how best to deliver agreed outcomes.

Stakeholders will be able to follow the progress of the different activities through a dedicated website. The Commission services encourage all partners involved to consider how they may contribute to the implementation of the action plan.

Summary of key actions and timetable

Main actions	Indicative date for completion
<b>1. Modern framework for S&amp;PM – 'Seed Law'</b>	
EU S&PM Law (legislative proposal)	2011
Amending CPVO rules (legislative proposal)	2011
Amending Feed and Food Control Regulation ((EC) No 882/2004) (legislative proposal)	2011
<b>2. Common catalogues/lists</b>	
On-line accessibility	2010
On-line application system	2011
<b>3. Stakeholder involvement</b>	
Establishing a SANCO Working Group of S&PM within the framework of the Advisory Group on Food Chain, Animal and Plant Health	2009
Consultation on impact assessment	2010-2011