

## **1. INTRODUCTION**

### **1.1 What is the name of your organisation?**

IFOAM EU Group (International Federation of Organic Agriculture Movements, European Regional Group)

### **1.2 What stakeholder group does your organisation belong to?**

Breeder of S&PM; Supplier of S&PM; User of S&PM; Professional user of raw material produced by agriculture, horticulture or forestry; Consumer; SME company

#### **1.2.1 Please specify**

### **1.3 Please write down the address (postal, e-mail, telephone, fax and web page if available) of your organisation**

Rue du Commerce 124 BE- 1000 Brussels Phone: + 32 2 2806850 Fax: +32 2 7357381  
www.ifoam-eu.org Contact person for this issue: Antje Koelling, Policy Coordinator

## **2. PROBLEM IDENTIFICATION**

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

No

### **2.2 Have certain problems been overlooked?**

Yes

#### **2.2.1 Please state which one(s)**

- the political, cultural, structural and environmental developments that have taken place since the first EU S&PM legislation has been established must be taken into consideration (1. Environmental challenges: loss of biodiversity continues and the loss of agricultural diversity is an important part of this – which is recognised also by the EU Commission Biodiversity strategy of 3rd May 2011; the necessary adaptability of agriculture to the consequences of climate change; 2. Policy developments: commitments to halt the loss of biodiversity on EU and UN level, Treaty on Plant genetic resources; 3. Structural change: Accession of new member states with many small scale farmers and gardeners, concentration on seed market, structural change in farming; 4. Cultural change: After a the development of varieties aimed mainly on higher yields in the middle of the last century, a development has taken place and an increasing number of gardeners, farmers and consumers wish to have access to traditional, old, organic, rare, open pollinating plant varieties for the sake of diversity in taste and environmental considerations. - The description and characterisation of varieties according to DUS/VCU criteria are – amongst other bureaucratic obstacles – a main hurdle to the maintenance and further development of biodiversity on the market for seed and plant propagating material (S&PM). Whereas these criteria perfectly match with uniform varieties bred for use under standardised conditions, they prevent the marketing of S&PM of many varieties that are of potential additional benefit for organic and low input farming: open pollinating varieties, locally adapted varieties and varieties bred for a higher level of adaptability and resilience regarding different environmental conditions and climate change (thus with a higher intra-varietal genetic diversity – the application of the current DUS criteria prevents diversity within the variety and therefore makes varieties less resilient to changing climatic and disease challenges). - The current legislation favours big seed companies and uniform varieties and is disproportionate for small breeding companies, farmer-breeders and small markets. Operators involved in these small scale markets for seed and propagating material face still high costs and bureaucratic burden (on member state level: monitoring requirements) under the new exceptional rules for conservation varieties. Moreover, for arable crops such as cereals and potatoes, new farmer's varieties and new breeders' varieties with high intra-varietal diversity cannot be registered under these rules (exception exists for vegetable varieties) - The use of farm saved seed from protected varieties is not allowed for all crops. Rules for that differ between member states. In the Netherlands for instance, farmers are

only allowed to save “seed” from potatoes and from cereals (for their own use and in exchange of a certain royalty). - Varieties which are not listed in a national or the Common Catalogue or as a conservation variety are officially not allowed to be “marketed” in the EU. Even direct sales (“face-to-face” sale in farm shops or on farmer’s markets) and exchange of small amounts of S&PM of unregistered and registered but unprotected varieties are considered “marketing” and therefore prohibited in some member states. These restrictions cannot be argued for with consumer protection as no immediate threat for public health or general plant health can be expected from seed or plant propagating material of vegetable, fruit and grain species in general. The restrictive rules are moreover a barrier for consumer’s choice, for the development of genetic diversity and hinder the development of the full innovation potential of farmers, breeders and gardeners. - Some novel (GM) breeding techniques and methods are not defined as GM (yet) under EU legislation or are excluded from the regulation (mutagenesis, cell-fusion) and therefore not labelled. This lack of transparency is a big concern for breeders, farmers and consumers who reject the use of these techniques. This is also the case concerning the intellectual plant property rights: it is very difficult to get information on patents (on genes or process) and Plant Variety Rights (in particular for national protections). It is therefore necessary that the variety description indicates all breeding methods used during the breeding process as well as the basic varieties, their origin and if it is the case, the plant variety right protection and/or patents. - A differentiation between varieties that are likely to be grown on large scale and those only interesting for smaller scale use (and therefore bearing less risks in terms of plant health and harvest prospect ability) is missing. This distinction would be helpful in order to establish proportionate rules also for small and medium scale use.

### **2.3 Are certain problems underestimated or overly emphasized?**

Underestimated

#### **2.3.1 Please indicate the problems that have not been estimated rightly**

- The bureaucratic burden and costs of registration, DUS and VCU testing are underestimated, as it is a problem that hinders the registration of many varieties with a low(er) commercial importance. This has a negative impact on agro-biodiversity. - At the same time we think it is crucial that national authorities must remain in charge of ensuring advise and tests for local breeders; this is necessary to keep SME breeding companies in business and to encourage farmer communities to register their varieties, as the burden to contact national offices are significantly lower (e.g. language problems) than to contact the European CPVO directly; moreover, testing and description must be ensured under conditions the variety is adapted to. For instance: a variety bred in Sweden cannot be tested in a Mediterranean area. - Test protocols and scoring should be harmonized to reduce bureaucratic burden through double-testing. But testing procedures and growing circumstances should be user-oriented diversified with regard to different climatic-areas, intensity-levels and farm-marketing-structures.

#### **2.4 Other suggestions or remarks**

Whereas shortly mentioned, consumer’s right to choose has not been sufficiently addressed in the problem definition. Farmers and gardeners as users of S&PM, as well as the final consumer of a food product, want the freedom of choice - for a diversity of taste, texture, colour and shape of crops - for GMO free products - for open pollinating, local and traditional varieties besides hybrids - for varieties adapted to specific ways of farming (organic and low input farming, High Nature Value farm systems, etc.) or to specific local conditions Characteristics addressed in the VCU and also any additional issues (sustainability characteristics such as reduced water use) cannot be made valid for the use of plant varieties all over Europe and need to be included in the description of varieties on a voluntary basis, instead of being a mandatory criteria and burden to registration. The VCU is now problematic for the registration of many varieties targeted for the use in organic and low input agriculture. Where reference is made to competitiveness, it has not been considered that different kinds of markets exist: Breeders and farmers deliver different qualities of seed and food. Special food qualities and the need for raw materials for specific processed products and the diversity of taste have not been considered.

### 3. OBJECTIVES OF THE REVIEW

#### 3.1 Are the objectives defined correctly in the context of S&PM marketing?

No

#### 3.2 Have certain objectives been overlooked?

Yes

##### 3.2.1 Please state which one(s)

- Freedom of choice for consumers, see preceding questions - The needs of organic and low input agriculture are overlooked as well the importance of the availability on the market of traditional, farmers' and local varieties that meet consumers' needs.

#### 3.3 Are certain objectives inappropriate?

Yes

##### 3.3.1 Please state which one(s)

plant health is addressed as an overall objective here. Varieties (excluding those bred with novel breeding methods) with a small risk of spreading diseases due to their small scale and often local use, should be exempted from a-priori health tests as no major impacts on public health or the economic stability of regions are to be expected from this kind of new plant variety; "a posteriori" controls should apply and if evidence shows that it is necessary, varieties must be quarantined . - innovation and international competitiveness – can be considered in the S&PM marketing legislation but must under no circumstances be an objective that leads to mandatory requirements for all plant varieties, as not all plant varieties need to be innovative or competitive on the world market; instead the innovation potential of farmers, gardeners, farmer groups and small breeders for locally adapted varieties and varieties adapted to particular conditions, as well as for the maintenance of biodiversity must be recognised and promoted.

#### 3.4 Is it possible to have a regime whereby a variety is considered as being automatically registered in an EU catalogue as soon as a variety protection title is granted by CPVO?

No

#### 3.5 If there is a need to prioritise the objectives, which should be the most important ones? (Please rank 1 to 5, 1 being first priority)

**Ensure availability of healthy high quality seed and propagating material**

3

**Secure the functioning of the internal market for seed and propagating material**

5

**Empower users by informing them about seed and propagating material**

2

**Contribute to improve biodiversity, sustainability and favour innovation**

1

**Promote plant health and support agriculture, horticulture and forestry**

4

#### 3.6 Other suggestions and remarks

Additional objectives should be: - to enable farmers, gardeners, farmer groups and small breeders to contribute to innovation as well as to the maintenance and further development of agricultural biodiversity by establishing an adapted legal framework - establish exemptions from all registration requirements for small quantities of seed and propagating material sold for special purposes (regional speciality products, direct marketing of non-retail conform but tasteful vegetables, maintenance and identification of fruit varieties and local types) and for varieties

maintained with the aim to maintain biodiversity - establish proportionate rules for different types of S&PM marketing Sustainability in the context of this legislation must not be defined as a set of characteristics one variety shows under standardised growing conditions (e.g. water efficiency), but must also consider the complexity of the agricultural systems in which the variety is likely to be grown (crop rotation, etc.) and the sustainability of this system. Remarks: The objective to "empower users by informing them about seed and propagating material" must include information to users about the breeding methods used in the variety and the parent lines. Genetic modification techniques including several novel breeding techniques such as cis-genesis, reverse breeding, tilling, site-directed mutagenesis, and gene silencing, are rejected as production methods by many end users. It is therefore necessary that the variety description and every seed package at the point of sale indicate the breeding methods by which a variety and his parent-lines have been produced. For instance: This variety has been made with the use of reverse breeding. Cell fusion, including protoplast fusion, is a GMO breeding technique which is excluded from the GMO regulation (EC 2001/18) and therefore not labelled. As a consequence it is very difficult to implement a ban. For the organic sector it is important that the use of protoplast-fusion (to produce CMS varieties) is mentioned on the label. This should be mandatory. Moreover, clear labelling requirements can address the fear that users might not be offered with appropriate qualities if the VCU requirement and the strict DUS criteria would be lifted for the "light" registration of certain varieties. Officially tested varieties (and in the case of cereals VCU tested varieties) would be clearly distinguishable due to a precise labelling system.

#### **4. OPTIONS FOR CHANGE**

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

No

##### **4.2 Have certain scenarios been overlooked?**

Yes

##### **4.2.1 Please state which one(s)**

Whereas scenario 4 seems to open the possibility of section 2 registration for "non-tested" varieties and scenario 5 introduces a "light VCU", we still miss a clear commitment to simplify market access for open pollinating varieties with a higher intra-varietal diversity. We also miss solutions to face the challenge diminishing diversity of the genetic basis for future food security. Moreover we see a lack of ambition to recognize the role of farmers, gardeners, maintainers of old varieties and small breeders in innovation and the maintenance and further development of the "domestic" part of biodiversity: genetic resources shaped by human selection and breeding activities over the last thousands of years. Under current legislation uniform varieties are favoured, exemptions only exist for certain groups of varieties. Especially for cereals and potatoes a framework that allows new development of small farmer or breeder varieties does not exist. Geographic and quantitative restrictions as well as bureaucratic burden and monitoring requirements for member states are an obstacle. The costs of registration of a conservation variety often exceed the profit from S&PM sales. A legal framework that provides for a "light registration" of "multi-line-varieties", "family-varieties" or "populations" must be created. Varieties registered under this section can be labelled as "non-officially tested varieties" to allow farmers and gardeners to distinguish between the standard DUS conform and VCU tested varieties and the more diverse varieties. Registration under this section should be based on the description of frequencies of characteristics. Varieties registered under this section may be excluded from any kind of intellectual property rights (Plant Variety Right and/or patent on genes or process), but not from marketing. Moreover the definition of marketing in the legislation needs revision: The exchange of small amounts of S&PM between farmers and gardeners as well as direct sale of small amount of S&PM for example to other farmers or on markets to private users must be excluded from the scope of the legislation and shall be allowed without any registration.

##### **4.3 Are certain scenarios unrealistic?**

Yes

**4.3.1 Please state which one(s) and why**

Scenario "Abolishment of Legislation"

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

Yes

**4.5 Other suggestions and remarks**

**5. ASSESSMENT OF OPTIONS**

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

No

**5.2 Have certain impacts been overlooked?**

Yes

**5.2.1 Please state which one(s)**

Scenario 2: Competitiveness disadvantages resulting from this scenario for SME breeders and consequences for employment have been overlooked. Moreover the impact on biodiversity has been underestimated: Under this scenario, the disappearance of varieties with broader intra-varietal diversity will continue. Scenario 5: Possible negative impacts for SME breeders due to language problem and possibly cultural differences if they lose direct contact points in their countries; resulting in further concentration in the seed sector, reduction of diversity, diminution of innovation potential of small breeders and farmers. Moreover, the loss of variety diversity will increase.

**5.3 Are certain impacts underestimated or overly emphasized?**

Underestimated

**5.3.1 Please provide evidence or data to support your assessment:**

See annex

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

3 = proportional

**5.5 How do you assess the possible impact of the various scenarios on your organisation or on the stakeholders that your organisation represents?**

**Scenario 1**

Very negative

**Scenario 2**

Rather negative

**Scenario 3**

Rather negative

**Scenario 4**

Very beneficial

**Scenario 5**

Very negative

**5.5.1 Please state your reasons for your answers above, where possible providing evidence or data to support your assessment:**

Scenario 4 can be a basis for an improved option, better serving the need for consumer choice, diversity and making use of a broad innovation potential (see other points and illustration attached). What has to be improved: 1. Transparency of breeding methods that go beyond selection and natural re-combination used for the variety and the parent lines (see also answer to question 2.5) 2. "Non-tested" varieties under section 2 should be re-named as "non officially tested varieties", as all varieties brought to the market have usually undergone some tests internally conducted in the breeding company or notifiers can refer to experience gained with the variety over time. 3. For varieties under section 2, no certification requirements should apply. 4. Varieties under section 2 should be excluded from the possibility of any intellectual property rights (Plant Variety Right and/or patents on genes or on processes). 5. Seed exchange and sales on the informal seed market (direct sale to end user) are not subject to any registration requirement.

## **6. ASSESSMENT OF SCENARIOS**

### **6.1 Which scenario or combination of scenarios would best meet the objectives of the review of the legislation?**

Scenario with new features

#### **6.1.1 What are your views with regards to combining elements from the various scenarios into a new scenario?**

##### **6.1.1 Please explain the new scenario in terms of key features**

Scenario 4 can be a basis for an improved option, better serving the need for consumer choice, diversity and making use of a broad innovation potential (see other points and illustration attached). What has to be improved: 1. Transparency of breeding methods that go beyond selection and natural re-combination used for the variety and the parent lines (see also answer to question 2.5) 2. "Non-tested" varieties under section 2 should be re-named as "non officially tested varieties", as all varieties brought to the market have usually undergone some tests internally conducted in the breeding company or notifiers can refer to experience gained with the variety over time. 3. For varieties under section 2, no certification requirements should apply. 4. Varieties under section 2 should be excluded from the possibility of any intellectual property rights (Plant Variety Right and/or patents on genes or on processes). 5. Seed exchange and sales on the informal seed market (direct sale to end user) are not subject to any registration requirement.

### **6.2 Do you agree with the comparison of the scenarios in the light of the potential to achieve the objectives?**

No

#### **6.2.1 Please explain:**

- see answer to question on "impacts overlooked" - definition of objectives partly inappropriate, see answers to question 2.1-2.4

## **7. OTHER COMMENTS**

### **7.1 Further written comments on the seeds and propagating material review:**

The existence of the informal seed sector (see also FAO document for the CGRFA 2011 and the Second SOW of PGRFA) and the problems this sector faces in some EU member states due to misinterpretation of legislation is widely ignored. The informal seed sector is a source of innovation and plays an important role in the maintenance (in-situ conservation) and development of diversity of varieties. , The exchange and sale of S&PM in this informal context must be allowed without any registration and requires legal certainty (legislation in Switzerland has found a solution for these markets.) Although this issue is possibly not covered within this revision process, the IFOAM EU Group underlines that GMO - free seed is a pre-condition to guarantee GMO-free agriculture in the future and therewith the economic viability of the whole GMO-free food supply chain, including European plant breeders, seed producers, farmers, gardeners, beekeepers, farm workers and operators through the whole food supply chain. The prevention of the presence of GMOs in GMO-free seed is of great importance. Measures and legislation must

be implemented that ensure that seed purity will be maintained and any (also unintended) unlabelled presence of GMO in non-GM-seed must be prevented. The polluter pays principle must be ensured in the legal framework concerning GMOs. The burden of costs that result from the prevention of GMO contamination must not be shouldered by GMO-free food, feed and seed producers. Those companies that place GMO on the market must be made liable for the resulting costs for the GMO-free sector. Specific legal measures to protect seed production from GMO contamination must be introduced. Legislation and measures must be implemented on EU level to prevent any contamination of GMO-free-seed with GMO.

**7.2 Please make reference here to any available data/documents that support your answer, or indicate sources where such data/documents can be found:**

1. Annex: Testimony from Flanders 2. FAO document CGRFA/WG-PGR-5/11/Inf.5 ; STRENGTHENING SEED SYSTEMS: GAP ANALYSIS OF THE SEED SECTOR, 2011 3. 'Seed policies and the right to food: Enhancing agrobiodiversity, encouraging innovation' Report (A/64/170) presented at the 64th session of the UN General Assembly (21 October 2009) 4. Swiss seed legislation: Verordnung des EVD über Saat- und Pflanzgut von Acker- und Futterpflanzen- sowie Gemüsearten1 (Saat- und Pflanzgut-Verordnung des EVD) vom 7. Dezember 1998 (Stand am 1. Juli 2010)FAO document CGRF A-12/09/Inf.20, STRENGTHENING SEED SYSTEMS: A CONTRIBUTION TO THE PREPARATION OF THE SECOND REPORT ON THE STATE OF THE WORLD'S PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE 5. Bocci (Riccardo), Chable (Véronique), Kastler (Guy) and Louwaars (Niels), Set of recommendations on farm conservation strategy, the role of innovative market mechanisms, legislative framework for landraces, conservation varieties and amateur varieties in Europe, Farm Seed Opportunities, 2009. www.farmseed.net 6. Lipper L., Anderson L., Dalton T.J. (eds), 2010, Seed trade in rural market, FAO. 7. Louwaars N., 2007 Seeds of Confusion; The impact of policies on seed systems. PhD dissertation, Wageningen, The Netherlands – with references – with summaries in English and Dutch 8. M. S. Wolfe M.S., Baresel J.P., Desclaux D., Goldringer I., Hoad I, Kovacs G., Miedaner T., Østergaard H., Lammerts van Bueren E.T., 2008, Developments in breeding cereals for organic agriculture, Euphytica , 163:323–346 9. Osman A., Chable V., 2009, Inventory of initiatives on seeds of landraces in Europe, Journal of Agriculture and Environment for International Development, Istituto Agronomico per l'Oltremare. 10. Vetelainen M., Negri V., Maxted N. (eds), 2009, European landraces: on--?farm conservation, management and use, Bioersity International. 11. Visser B. 2002, An Agrobiodiversity Perspective on Seed Policies, in Louwaars N. ed., Seed Policy, Legislation and Law: Widening a Narrow Focus, The Haworth Press. ANNEX: INPUT OF THE working group 'WERKGROEP EIGEN ZAADTEELT' ON THE REVIEW OF THE EU-LEGISLATION ON THE MARKETING OF SEED AND PLANT PROPAGATING MATERIAL The working group 'Werkgroep eigen Zaadteelt' want to ask for more attention for their typical situation in the review of the EU-legislation. The Flemish situation In the traditional vegetable-growing regions Mechelen and Brussels there are now still a lot of growers selections (farmerselections). The growers selections are witnesses of a rich heritage and the main source of the breeder's selections of today. But more over, until now they have still an economic value due to growers who prefer their own selections, because of their intrinsic qualities. These grower saved selections are based on a broad genetic diversity, although there is a relative uniform product they can bring on the market. For the working group 'WERKGROEP EIGEN ZAADTEELT' those cultivars are again and again the start for seedsaving by growers so they can further develop their own selections in the future. That makes it possible that the grower's selections are adapted to the typical features of the farm as well as the soil, the local climate, the method of fertilization, the farmer's criteria and needs, resistance to illnesses, water stress and the need to be nutrient efficient. The Commission states that it wants to consider the problems concerning the loss of biodiversity in the review of the seed legislation. Growers with their own selections, are working on this issue, day after day, in practice. We regret that their efforts for the conservation of agro-biodiversity are not rewarded in the current proposals for the review of the EU-legislation. On the opposite, growers will be overloaded with a lot of costs for registration and administration. Such policy is rather discouraging the grower's efforts towards the

conservation of agro-ecological biodiversity. Practical examples: • The 'Mechelseblauwgroenewinterprei', winter leek, the older growers still have their own seeds but also some young growers see better results with their selections and want to go on with them. • Also the 'HollepijGroeneSelder', a type of green celery, is a typical vegetable produced in the Mechelen region. The variety is selected and cultivated only by growers and so far not by seed companies. It is a highly appreciated green celery for soup and mussels. • The 'MechelseVroegeBloemkool' is an early season cauliflower with a typical cultivation method. It can certainly be seen as a landrace with potential for a regional product. Until 1980-1990 lots of growers grew their own selections. Although most of these old cultivars are gone, some of them are still in production with some older vegetable-growers. A few younger farmers again take them over. • There is a European label of Protected Geographical Product for 'Brussels Grondwitloof'. About more than 100 farmers are cultivating "witloof" in a traditional way in the region of Brussels. Therefor they maintain their own selections throughout the season and produce their own seeds. This witloof growers are grouped in the vZWBUSSELS GRONDWITLOOF. • The organic growers are looking to integrate farmers' selections on the fields by their own selection and seedsaving. Akelei is an example of a biodynamic vegetable farm pioneering in it. After 25 years of working on this issue they have 10 selections of vegetables with own seed saving. During demonstration activities, coordinated by the working group 'WERKGROEP EIGEN ZAADTEELT', a lot of young people are interested in selection and seed saving on their place. This work is also encouraged by the Flemish federation of the organic sector, Bioforum ([www.bioforum.be](http://www.bioforum.be)) and Landwijzer ([www.landwijzer.be](http://www.landwijzer.be)). Motivation Farmers' selections are in fact a living in-situ gene bank, well adapted to the continuously changing conditions of the seasons and soils and parasites. In the future this genetic flow has to continue, they are the roots of the sector, while breeders can still find new inputs for their breeding work. Especially for organic farming a broad genetic diversity is very important even within selections. The power and the identity of a grower selection is not in the genome of an individual genotype but in the genetics of the population. These farmer-saved landraces can be further developed on farm as robust with a high agricultural performance as well as a broad resistance against plant pests and diseases. So, the conservation of the farmer's selections and the possibilities to develop them further are very important for the future of the organic farming, and for a diverse agro-ecological agriculture in general. Contact over IFOAM EU office or Bioforum Vlaanderen.

