

1. INTRODUCTION

1.1 What is the name of your organisation?

European Seed Association

1.2 What stakeholder group does your organisation belong to?

Other

1.2.1 Please specify

ESA European Seed association is a European organization representing the interests of those active in research, breeding, production and

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

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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)

As to question 2.1: In point 2.2 of the "Options and analysis paper" the problems have been identified by the Commission. As said under question 2.1 we are of the opinion that at least part of these problems have not been correctly identified. We have the following comments:

Complexity and fragmentation of the legislation: The problem definition states that a recast of the S&PM legislation seems reasonable "with a view to its simplification and increased consistency with itself and other legal acts." We agree that both simplification and consistency is needed however as regards the need to work on the consistency of the S&PM legislation with other legal acts we are of the view that the consistency should be looked for only with those other legal acts that concern seed quality. The problem definition also states that "more fundamental changes may need to be considered". We have always been supporting the "modify" scenario because the S&PM legislation needs some improvements to make the system more effective. However, - as it was also the conclusion of the final report – fundamental changes are not needed in the legislation. High level of administrative burden in particular for public authorities: According to the problem definition of the paper the administrative burden needs to be lowered for the public sector. We think that the review should not only look at public burdens but also to the burdens that are born by business. The system has to be cost effective for everyone, public and private. Distortions in the internal market: The problem definition states that additional or stricter national requirements which may be applied by Member States lead to a non-harmonized implementation of the legislation. It is indeed possible that there are somewhat different requirements in some Member States but the fact that there are some differences in the requirements does not necessarily lead to a distortion. IT has to be underlined that the stricter national requirements in the context of the S&PM legislation are meant to reflect the environmental conditions that can vary from one Member State to another. This is an important and positive feature of the current legislation which ESA supports and would like to see maintained. (In this respect we refer to letter ESA 10.0466.1 sent to the Commission on May 27, 2010.) Room to strengthen sustainability issues: We agree with the Commission that strengthening sustainability is an important issue. However we do not agree with the problem definition as provided in the "Options and analysis paper" and consequently we do not agree with the Commission's analysis of sustainability and of related impacts throughout the paper. First, it has to be underlined that the Commission seems to have an over simplistic perception and understanding of the meaning of productivity. As also shown above, productivity is a relation between input and output (including also processing and

quality aspects). The problem definition states that the current legislation is focused on productivity which is still an important factor. We would like to underline that productivity is THE key factor in variety testing non the least because it already takes care of important sustainability criteria. (Please also see references under question 2.4) "Global food supply will need to increase without the use of substantially more land and with a diminishing impact on the environment: Sustainable intensification is a necessity." (The Foresight report (2011): The future of food and farming, Government Office for Science, London) Sustainable intensification means raising yields, increasing the efficiency with which inputs are used and reducing the negative environmental effects of crop production. Therefore, sustainability is optimised when the amount of natural resources (land, water, fuel, fertiliser) used per unit of useful crop production is the lowest, i.e. via the most productive varieties. As to question 2.2: The following problems / issues have been overlooked: - Page 3 of the "Options and analysis paper" rightly states that the objective – when the S&PM legislation was first developed – was to improve the productivity of agriculture in order to ensure food security in the EU. This objective is still among the key objectives the S&PM legislation has to focus on also in respect of the role of productive agriculture in view of sustainability – as presented under question 2.1. - The lack of consistency between national variety lists and the Common Catalogue is an issue the review of the S&PM legislation should seek to find a solution to.

2.3 Are certain problems underestimated or overly emphasized?

Underestimated

2.3.1 Please indicate the problems that have not been estimated rightly

1. The problem described as "room to strengthen sustainability issues" is not correctly estimated. In this respect we refer back to our answer provided under question 2.1 and emphasise that sustainable intensification is the right solution to meet the sustainability policy European Seed Association 26.05.2011 ESA_11.0407 Page 5/18 goal. This is also supported by a number of scientific studies: - The Royal Society (2009): Reaping the benefits – Science and sustainable intensification of global agriculture - Bruinsma, J. (2009): The resource outlook to 2050: by how much do land, water and crop yields need to increase by 2050?, FAO, Rome - The Foresight report (2011): The future of food and farming, Government Office for Science, London 2. The problem defined as "room to strengthen sustainability issues" makes a reference to specific markets for organic crops which are increasing their market shares. As a matter of fact the issue of niche markets is overestimated throughout the paper. We are of the opinion that such varieties are important for the genetic pool and breeding work but such markets are going into the direction of extensified agriculture. To produce them is not a sustainable solution and therefore is not consistent with the environmental goal sought by the Commission. 3. The problem defined as "high level of administrative burden" underestimates the high public benefit of the Member State's investment into the testing of both varieties and seed. It also seems to only concentrate on the wish to reduce the administrative burden on the side of public authorities and underestimates the need to also reduce such burdens on companies. 4. In the problem definition of "complexity and fragmentation of legislation" the benefit of a single Regulation is somewhat overestimated. In case instead of twelve Directives one Regulation is defining the legislative framework but that one Regulation is of very high complexity, in the end it will not deliver the desired simplification. The number of legislative instruments is not the decisive point where improvement could be brought but it is the content of such legislative instrument which counts.

2.4 Other suggestions or remarks

1. The problem described as "room to strengthen sustainability issues" is not correctly estimated. In this respect we refer back to our answer provided under question 2.1 and emphasise that sustainable intensification is the right solution to meet the sustainability policy goal. This is also supported by a number of scientific studies: - The Royal Society (2009): Reaping the benefits – Science and sustainable intensification of global agriculture - Bruinsma, J. (2009): The resource outlook to 2050: by how much do land, water and crop yields need to increase by 2050?, FAO, Rome - The Foresight report (2011): The future of food and farming, Government Office for Science, London 2. The problem defined as "room to strengthen sustainability issues" makes a

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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)

As to question 3.1: We are of the opinion that the following objectives have been incorrectly defined and placed in the "Options and analysis paper": It seems that the objective of fostering innovation is placed into the context of sustainability which is too restrictive and interpretation. As already explained under questions 2.1 and 2.3 it is indeed very important to select sustainable varieties but the main focus of breeding and innovation in breeding should be on productivity which is the best way of taking care of sustainability matters. It has to be underlined that innovation in plant breeding, the creation of new and more varieties also contributes to biodiversity (to the gene pool). Having said that, we consider that innovation is a separate and overall objective of the S&PM legislation and as such it has to be identified as an individual objective by itself. As to question 3.2: The following objectives have been overlooked: - Fulfilling the EU's global responsibilities for food security and globally sustainable agriculture. - Official testing / testing under official supervision of both variety performance and seed quality is crucial for agricultural crops with regard to high risk of market failure. In agricultural crops the characteristics of the harvested material are less specific than e.g. in the production of vegetables. Farmers not using the best performing varieties of agricultural crops would lose productivity and competitiveness but not their clients, at least not immediately. With farmers being quite often under cost pressure there is a high risk of farmers choosing not the most innovative varieties but rather those with low seed prices. In the long term this abstention from using innovation would not just jeopardise the farmers' competitiveness but also the goal of sustainability, since varieties would be used which are not the most productive and effective ones. In addition, varieties of agricultural crops must perform well under a wide range of environmental conditions which – other than in vegetables- can not be influenced. Farmers must be put in a position that this ability of varieties to perform well under these conditions is sufficiently tested for in a reliable way. - In respect of the Common Catalogue the objective is not only to improve the level of information provided but also to improve accessibility of the Common Catalogue by making it a real-time, user-friendly web-based application.

3.3 Are certain objectives inappropriate?

Yes

3.3.1 Please state which one(s)

The objective which reads "improve farmers' choice and access to a wide diversity of plant

varieties” is inappropriate. Wider diversity is not a goal in itself in the framework of the seed marketing legislation. The improvement of farmers’ choice is indeed an important goal of the S&PM legislation but this choice should focus on varieties which are beneficial, fit for use and fit for sustainable intensification.

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

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

Promote plant health and support agriculture, horticulture and forestry

3.6 Other suggestions and remarks

As to question 3.5: All the objectives listed in the table are important but we feel uncomfortable with this question as it might give a misperception of the priorities as understood by the industry. Therefore we prefer indicating our list of priorities here below: - Availability of high quality, innovative, clearly identifiable varieties allowing sustainable intensification - EU’s responsibility for global food security (for agricultural crops) - Availability of healthy, high quality seed and PM - Functioning of the market - Biodiversity - Information of the users As to question 3.4: Our answer given to question 3.4 is justified by the following reasons: - not all varieties that are applied for listing are protected - not all varieties that are protected are placed on the market (this is, in particular, the case for hybrid parent lines) - plant variety protection is only based on DUS whereas registration of agricultural crops also should involve VCU testing - in some cases breeders only apply for national plant variety protection and not protection on EU level

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)

We believe that none of the scenarios as defined in the “Options and analysis paper” can achieve the desired goals. A combination of elements presented in the different scenarios might lead to a better scenario therefore ESA welcomes the possibility offered by the Commission to execute such a combination.

4.3 Are certain scenarios unrealistic?

Yes

4.3.1 Please state which one(s) and why

Scenario 1: As full cost recovery will lead to shift of cost burden from (some) Member States to stakeholders which is not „compensated“ by increased efficiency or flexibility in scenario 1 we are of the view that there is no justification for this scenario per se. Furthermore, scenario 1 only focuses on one of the identified objectives but none of the others and it is therefore inconsistent with the overall aims of the review. Scenario 3: We believe that scenario 3 is unrealistic and detrimental to almost all policy goals. It introduces the possibility of registering agricultural varieties without proper performance testing and certification which leads to massive dis-harmonization and creates a double market. It is complex for users and confusing for consumers and the reactions the market may produce in case of such a scenario have been incorrecassessed. Scenario 4: We believe that scenario 4 is unrealistic and detrimental to almost all policy goals. It is complex for users and confusing for consumers and the reactions the market may produce in case of such a scenario have been incorrectly assessed. The scenario will lead to massive dis-harmonization and the creation of a double market whereby this scenario seems to focus on turning existing niche markets into large markets. As already stated before the issue of niche markets is overestimated by the Commission. We can support the current system (Directives 2008/62 and 2009/145) which has been put into place for conservation and amateur varieties. Some production and marketing restrictions for such varieties, which restrictions are in line with the goal of conservation as defined in those Directives, are necessary in order to prevent market failure with regard to sustainable productivity and should also be reasonable in view of the size of the market concerned. In addition, this scenario also foresees the introduction of mandatory “environmental VCU” for all tested varieties including also vegetables which is unneeded and unrealistic. Such a requirement would increase administrative and financial burden, would slow down registration for vegetables and would not generate any added value for users of vegetable seeds but would be rather detrimental to progress.

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)

The impact on consumer information and protection (consumers cover the actors of the whole chain including farmers, growers, processors) – also with a view to traceability - of each scenario should also be considered. If certain elements of the legislation are taken away, there is less information to consumers and with that also reduced protection of consumers which would also be contrary to the trend in other policy areas.

5.3 Are certain impacts underestimated or overly emphasized?

Underestimated

5.3.1 Please provide evidence or data to support your assessment:

Please see our answer in a separate document (ESA_11.0407_Q 5.3) annexed to the present document.

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

5 = not proportional at all

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

Rather negative

Scenario 2

Fairly beneficial

Scenario 3

Very negative

Scenario 4

Very negative

Scenario 5

Don't know

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

Scenario 5 has some interesting elements but we don't understand how it would work in practice. For the other scenarios please see the reasoning in our answer provided to question no. 5.3.

6. ASSESSMENT OF SCENARIOS

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

A combination of scenarios

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

As already stated under question 4.2 we are of the opinion that a combination of some elements from scenarios 2 and 5 can be taken as a basis for a new scenario together with some new elements. Please see our preferred „ESA scenario? in a separate document (ESA_11.0407_Q 6.1) annexed to the present document.

6.1.1 Please explain the new scenario in terms of key features

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:

- We have realized that unfortunately the assessment presented in the individual tables after each scenario under Chapter 5 of the "Options and analysis paper" and the assessment presented under Chapter 6 - on several occasions - contain important mistakes or typing errors. - Also - as extensively explained under question 5.3 - we are of the view that certain impacts have been incorrectly identified. For these reasons please find below the comparison of the scenarios – including also our proposed new „ESA scenario? – as we see it:

7. OTHER COMMENTS

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

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:

- The Royal Society (2009): Reaping the benefits – Science and sustainable intensification of global agriculture - Bruinsma, J. (2009): The resource outlook to 2050: by how much do land, water and crop yields need to increase by 2050?, FAO, Rome - The Foresight report (2011): The future of food and farming, Government Office for Science, London

