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**Study on  
Farm Saved Seed  
in the European Union**  
*(version updated on 27/05/2009)*

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## Used abbreviations

BA	breeders' association
COPA	Committee of Professional Agricultural Organisations
CPVO	Community Plant Variety Office
CPVR	Community Plant Variety Right
ESA	European Seed Association
EU	European Union
FSS	farm saved seed
FU	farmers' union
PVR	national Plant Variety Right
UPOV	International Union for the Protection of New Varieties of Plants
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
ES	Spain
FI	Finland
FR	France
GR	Greece
HU	Hungary
IE	Ireland

IT	Italy
LT	Lithuania
LV	Latvia
MT	Malta
LU	Luxemburg
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

### Added attachments

Attachment 1:	Terms of reference
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## **Summary**

In January 2008 the CPVO charged the consultant with the conduction of a farm save seed (FSS) study in the European Union. For this purpose questionnaires were developed on the legal situation on FSS in the Member States (24 questions), the application of agreements between holders and farmers (11 questions) and on statistical data for different crops to assess the level of use on FSS. The legislation and the statistic questionnaires were addressed to the representatives of the Member States in the Administrative Council of CPVO and the agreement questionnaire to the members of the European Seed Association (ESA) and of the Committee of Professional Agricultural Organisations (COPA).

24 answers were obtained for the legislation, 23 for the agreement questionnaires and up to 22 answers for the statistic inquiries. The obtained answers were merged into different tables. The results of the legislation questionnaire are presented in three groups: Member States without PVR, Member States applying the UPOV act of 1961/72 or 1978 and Member States applying the UPOV act of 1991.

The answers give a very complex picture of the legal and practical situation in the Member States. Possible coherences between the parameter “judgments of the efficiency of the applied national remuneration systems” to other parameters were analyzed. A positive coherence could be observed between the efficiency of the applied remuneration systems and the obligatory or voluntary delivery of information by the national authorities. The statistical data demonstrate that the variation of the parameter “level of use of FSS” is higher between the Member States than inside the Member States. Therefore it can be assumed that the agriculture structure of Member States has stronger implication on the “level of use of FSS” than any parameter of the remuneration systems.

## **1 Introduction**

The consultant was commissioned to conduct a study on Farm Saved Seed in the Community in January 2008. The terms of reference comprise the evaluation of

- national legislation on FSS
- existing agreements between collection societies/breeders and farmers
- the organisation of national collecting systems
- statistics and
- comparison of national systems with the CPVR system.

Details of the terms of reference can be found in attachment 1.

## **2 Questionnaires**

Three questionnaires were developed to obtain the necessary information and data. The CPVO, ESA and the Bundesverband Deutscher Pflanzenzüchter were involved in its preparation and they cover the subjects’ legislation, agreement and statistic.

Legislation questionnaire: this questionnaire asks for information on the legal rules for FSS in the Member States. In addition it contains some questions on the application of CPVR provisions in the national legislation. The questionnaire was addressed to the members of the Administrative Council (see attachment 2).

Agreement questionnaire: it was prepared to obtain data on possible agreements between associations of breeders (BA) and farmers' unions (FU) and on collecting systems for the remuneration of FSS in the Member States. This questionnaire was sent to all members of ESA (34) and COPA (59) (see attachment 3).

Statistic questionnaires: their targets were to obtain reliable figures on the use of FSS over a period of five years for the species winter wheat, winter barley, durum wheat and potato. It was addressed to the members of the Administrative Council (see attachment 4). The given data can therefore be considered as official information on the use of FSS.

End of February the EU Commission sent out a questionnaire on the "acquis" of the marketing on seed and propagating material and asked for a return up to the middle of April. In many Member States the same persons are responsible for matters of marketing of seed and propagating material and for plant breeders' rights subjects. Therefore the dispatching of the questionnaires on FSS took place middle of April with the task to send it back end of May. Up to 2<sup>nd</sup> June 13 members of the Administrative Council, eight national breeders' associations and two national farmers' unions send back replies. To obtain further data an additional respite was met up. For some completed questionnaires additional inquiries were necessary. The last data were submitted middle of December. An overview of the obtained answers is given in attachment 4a.

The consultant visited the authorities in the Netherlands at the 28<sup>th</sup> August and those in the Czech Republic the 2<sup>nd</sup> September to discuss the national systems and to get background information.

### **3 Evaluation of the inquiry**

#### **3.1 Legislation Questionnaire**

24 Member States answered the legislation questionnaire. The three Member States from which no answers were obtained are Malta, which has no national Plant Variety Protection act and Spain and Latvia which are applying the UPOV act 1991. The data from Latvia are missing for technical reasons.

The legislation questionnaire was also filled in by five national breeders' associations. The given replies were compared with those of the representatives in the Administrative Council. The senders were contacted as far as in the replies serious differences could be observed.

From the 24 Member States which sent replies

2 Member States (GR, LU) have	no national Plant Breeders' Rights
5 Member States (BE, FR, IE, IT, PT) have	national Plant Breeders' Rights based on the UPOV acts of 1961/72 or 1978 and
17 Member States (AT, BG, CY, CZ, DE, DK, EE, FI, HU, LT, NL, PL, RO, SE, SI, SK, UK) have	national Plant Breeders' Rights based on the UPOV act of 1991

The given answers and as far as appropriate the respective information about the EU rules are compiled in attachment 5.

For the whole European Union the following list can be given:

No national PVR	3 Member States (GR, LU, MT)
National PVR based on UPOV 1961/72 or 1978	5 Member States (BE, FR, IE, IT, PT)
National PVR based on UPOV 1991	19 Member States (AT, BG, CY, CZ, DE, DK, EE, ES, FI, HU, LT, LV, NL, PL, RO, SE, SI, SK, UK)

The further evaluation of the legislation questionnaire follows the above formed groups.

### **3.1.1 Member States without national PVR**

The theoretical situation in respect of the use of FSS and the remuneration for its use in these Member States can be characterized as presented in the following table.

FSS in Member States without national PVR

Variety has	FSS possible	Remuneration
Community PVR	yes	yes
National PVR in another EU Member State	yes	no
No PVR at all	yes	no

According to the questionnaire these Member States were only invited to give answers to questions 1, 22 and the following. In Greece and Luxemburg a license collecting system for plant varieties to which a CPVR was granted doesn't exist. Luxemburg confirmed the effectiveness of the CPVR system and Greece negated. The comments given by Greece refer to a better cooperation of the concerned parties and a stronger involvement of the authorities in the system.

### **3.1.2 Member States with national PVR based on UPOV act 1961/72 or 1978**

Theoretically the following scenario can be expected in the five Member States (BE, FR, IE, IT, PT) belonging to this group.

FSS in Member States with national PVR based on UPOV act 1961/72 or 1978

Variety has	FSS possible	Remuneration
Community PVR	yes	yes
National PVR	yes	no
National PVR in another EU Member State	yes	no
No PVR at all	yes	no

For these five Member States the legal situation can be described differently. For Belgium and Italy the given answers are as expected. In both Member States no collecting systems for production licences for varieties with CPVR are established. Italy states that information and proofs should be acquired in the case of the infringement of CPVR. On request of the holder the national authorities have to give information on the basis of the national law on “transparency”.

In Portugal the processors are asked to give information on the variety and the quantity of the processed FSS and also the date and the place of processing. The farmers are not asked for any information. Holders and authorities are not asked to give information but the authorities are doing it on a voluntary basis. Portugal judges the national collecting system and the EU rules as ineffective.

The replies given by Ireland seem to be contradictory at first view. On the one side the UPOV act of 1978 is still applied but on the other side in the national law use is made of Art. 15 (2) of the UPOV act 1991 and also of EU FSS rules. The reason for this is the fact that Ireland has not yet ratified the UPOV Act 1991 but has already adapted its national law. The national rules for the collection of FSS fees are considered as effective and the EU rules as ineffective.

In France we can recognize a particular situation. The national PVR system excludes the use of FSS already before 1991. Consequently France denies the application of Art. 15 (2) of the UPOV act 1991 and of EU FSS rules on a national basis. Nevertheless a fee collection system for soft winter wheat varieties to which Community Rights were granted, was introduced based on an agreement between holders and growers. It is not applicable for nationally protected varieties. This system is characterized by the following elements:

- The fee for the use of FSS is collected by grain traders of the commodity,
- The fee level is 0,5 € per t of the produced commodity,
- No obligation for farmers or processors to give information,
- Remuneration takes place on the basis of the proportional cultivation area of the respective variety,
- Small farmers are exempted from any remuneration, the same definition for small farmers as in EU is applied, the system exempts also farmers who use FSS for the production of feeding stuff for their own livestock,
- In the case certified seed is used the licence fee is reimbursed to the farmers.

This agreement was legalised by a joint order of the Ministries of Agriculture, Economy and Justice. For varieties of other species protected under the EU system the EU FSS rules are applied. The French authorities consider the above described system as very effective; the EU system is appraised as ineffective.

### **3.1.3 Member States with a national PVR based on the UPOV act 1991**

In the 19 Member States belonging to this group theoretically the following scenario can be expected

## FSS in Member States with national PVR based on UPOV act 1991

Variety has	FSS possible	Remuneration
Community PVR	yes	yes
National PVR	yes	yes
National PVR in another EU Member State	yes	no
No PVR at all	yes	no

From these general conclusions some Member States show some fundamental variations.

Cyprus is not a UPOV member and doesn't apply Art. 15 (2) of the UPOV convention. As consequence FSS is not possible for varieties benefiting from a national breeder's right. Logically Cyprus didn't give any answers to the remaining questions. But no rights are granted in Cyprus up to now.

Austria negated the application of Art. 15 (2) of UPOV convention and also of EU FSS rules, although the Austrian plant variety protection act (Art. 4(4)) contains some rules referring to FSS and small farmers. Details of application can be determined in an agreement between breeders and farmers which can be implemented by a ministerial ordinance. Such an agreement and ordinance doesn't exist up to now. Therefore the Austrian authorities concluded that the use of FSS without paying any remuneration is possible for all species.

Bulgaria is applying Art. 15 (2) of the UPOV convention and also EU FSS rules. Nevertheless, according to the given answers no remuneration is asked for using FSS. This is in accordance with Art. 19 (1) of the Bulgarian plant variety protection act where no remuneration is requested.

All other Member States applying the 1991 act of the UPOV convention are belonging in the scheme presented in the table above.

For the most of the inquired parameters the given answers are presented and analysed below.

Question 4: Does your national PVR system makes reference to EU FSS rules (Art. 14 of Council Regulation 2100/94 and respective implementing regulation)?

11 Member States make in their national system reference to the EU Farm Saved Seed rules. Five Member States denied such reference. It can be assumed that not all affirming Member States made direct references to these EU rules but the majority of the Member States have taken over numerous elements of them. This seems to be even the case for some Member States which denied such references.

Question 5: Do your national PVR rules cover in so far Community PVR and national PVR?

14 Member States answered this question, 11 said yes and three no.

It is indicated to consider these results in relation to the definition of small farmers (question 11). Finland answered the question with yes but the definition for small farmers is based on relatively small areas. For Lithuania the contrary can be observed. There the definition of small farmers is based on areas which are probably larger than needed for the production of



92 t of cereals. The question can be posed if these definitions are really applied for CPVR and PVR?

The Czech Republic answered the question from the legal point of view with no, but in practice the national remuneration system covers also varieties protected under the CPVR system. The definition of small farmers is based on the area of arable land, which should not exceed an area larger than 22 ha independently of the cultivated crops.

In Poland the definition of small farmers is based on relatively small areas. Consequently the answers to the questions 4 and 5 are no. Therefore it can be assumed that different collection systems exist in Poland one for varieties falling under the national PVR and another one for varieties protected under the CPVR system.

Question 6: How many and which genera and species are covered by your national system?

The genera and species for which FSS can be used in the Member States are the same as mentioned in the Basic Regulation Art. 14. (2) or a selection of them. As already mentioned above there is one exception for Austria, where FSS seems to be possible for all genera and species.

Question 7: Do farmers who used FSS have to pay remuneration to the right holder?

All Member States with the exception of the already known cases of Austria and Bulgaria affirmed this question (no: 2, yes: 14).

Question 8: Which kinds of arrangements for remuneration are possible in your country?

In the majority of the Member States three possibilities are given:

- contracts between holders and farmers (no: 4, yes: 9),
- rules based on legal national regulations (no: 5, yes: 8) and
- agreements between organization of holders and farmers (no: 6, yes: 9)

In FI, DE and UK mainly agreements are applied. In respect of Germany it has to be stated that the agreement was cancelled recently by the holders because they are considering it as ineffective.

Legal national regulations only are applied in CZ, DK and NL.

As far as breeders' associations have given answers to the legislation questionnaire too, some divergences to the responses given by the officials could be observed. For Finland the breeders' association considers the used remuneration system as a kind of combination between an agreement and the rules for subsidizing agriculture production. The officials, however, consider it as an agreement only. For the Netherlands the contrary can be observed. There the officials consider the used system as legally based but for the breeders' it is an agreement. The later point of view may be caused by the fact, that during the drafting of the Netherlands regulation the level of remuneration was subject to negotiation between breeders and farmers.

Question 9: In respect of the level of remuneration is reference made to respective EU regulations?

Three Member States only refer in their national rules to the EU regulation for the level of remuneration. 13 Member States said no. Nevertheless the majority of the Member States have taken over the EU wording of “sensibly lower” and also its EU interpretation of “50 %”. In the Netherlands only the remuneration level has to be for potatoes 60 % and for cereals at least 60 % of the amount charged for the licensed seed production.

Question 10: Are certain groups of farmers exempted from the payment of remuneration?

In all Member States (14) small farmers are exempted from the payment of remuneration with the exception of the Netherlands and Romania. But in practice also in the Netherlands small farmers up to an area of 15 ha arable land are exempted. The further going question in respect of the exemption of farmers grouped on other criteria was affirmed by Bulgaria without giving any further information.

Question 11: Is the definition of small farmers under the national law the same as under the Basic Regulation?

The definition of small farmers is the same as in the Basic Regulation in the majority of the Member States (yes: 11, no: 5). But also Member States which developed their own definitions have chosen a comparable approach. In some of these Member States the area to be still considered as small farmer may be larger than the area which is needed for the production of 92 t of cereals (LT, SE). In other Member States this area is relatively small (EE, FI, PL) (see table 1).

The figures for the percentage of small farmers to total number of farmers and the percentage of area cultivated by small farmers to the total area of arable land reflect the different structures of agriculture in the Member States. For the percentage of small farmers the variability is relatively high it varies from 21 % for Finland up to 90 % for Slovenia. In respect of the arable area a comparable observation can be made. In Germany the area cultivated by small farmers represents only 10 % of the total area but in Slovenia up to 70 %.

	max. ha cereals	max. ha potato	max. ha other crops	% of small farmers to all farmers	% area of small farmers to total area arable land
Bulgaria	1	-	1	-	-
Germany	15	5	15	53	10
Denmark	18	5	-	33	5
Estonia	10	1	-	-	-
Finland	10	2	10	21	-
Lithuania	30	10	30	77	52
Poland	10	10	10	86	36
Sweden	18-33	4	18-33	46	-
Slovenia	20	8	20	90	70

Question 12: Does legal obligations exist for farmers to give information?

The sub questions were answered by the Member States as followed:

on variety and its quantity used for FSS?	no: 3, yes: 13
on area sown with FSS?	no: 3, yes: 10
on processing of the used FSS?	no: 5, yes: 8
on variety and its quantity of bought certified seed?	no: 6, yes: 8

Summarizing it can be stated that in all Member States applying national FSS rules the farmers are obligated to give information in respect of the cultivated variety and the quantity used for sowing and/or the area sown with the respective variety. Information on the processing and on the bought quantities of certified seed is less requested in all Member States.

In Finland farmers have the obligation to give information on

- All varieties cultivated on the farm,
- The area sown with each variety and
- Whether the used seed has been certified seed or FSS.

Question 13: Are small farmers exempted from the obligation to give information?

The small farmers are not exempted to give information in the most of the Member States (9). For those Member States where no obligation exists (5 Member States) the question may be raised by which means it can be proved that the respective farmer is really a small farmer. One possibility may be that the authorities have an established list of small farmers to which the breeders have access. But having in mind that the Council Regulation (EEC) Nr. 1765/92 is no longer in force it can be assumed that the authorities don't have such data anymore.

Question 14: Is the obligation only valid if indications are available to the holder that FSS has been used by the farmer?

Only DE, HU and RO affirm such an obligation. For the other 12 Member States it can be concluded that irrespective of the judgments of the European Court of Justice farmers are obliged to give information although no indications are available whether FSS has been used or not. Such a conclusion lets assume that their national legal rules are sufficient clear and imply such an obligation. An analysis of these national regulations may be a reasonable addition to this study.

Question 15: In the case of doubts has the holder the right to ask the farmer for supporting documents?

This question was denied by Bulgaria and Slovenia only. 12 Member States affirmed this question.

Question 16: Does a legal obligation exist for processors to give information?

The sub questions were answered by the Member States as followed:

on the variety and the quantity of the processed seed?	no: 5, yes: 9
on the time and the place of processing?	no: 6, yes: 7
on the name and address of the clients?	no: 6, yes: 6

The given replies were identical or very similar to those given to the questions relating to information to be given by farmers (question 12). From the Member States, which affirmed the necessity to get information from farmers four Member States negated this question for processors. The four Member States are DK, NL, LT and SI. It can be concluded that in these Member States the remuneration system is not based on data from processors. In contrast the United Kingdom asks more data from the processors than from the growers. In Czech Republic the data from processors are mainly used for checking the information given by the growers.

Question 17: Is the obligation valid only if indications are available for the processing of FSS by the processor?

This question is affirmed by Germany and Rumania only. These two Member States affirmed also the comparable question 14 in respect of the farmers. Comparable to the remarks made for this question it can be assumed that the national rules of the other Member States (11) are strong enough to oblige the processors to give the relevant information without indications presented by the holder.

Question 18: In the case of doubts has the holder the right to ask the processor for supporting documents?

The given replies were identical or very similar to those given to the question related to farmers (question 15). Bulgaria, Germany and Slovenia denied such a possibility and 10 other Member States confirmed it.

Question 19: Does a legal obligation exist for the holder to give information on the amount of a licence for seed production?

Unlike to the EU rules in 10 Member States no legal obligation exists to the holders to give information about the level of the licence for seed production. In four Member States such an obligation is given. In respect of an equal treatment of all parties involved in the process of finding an acceptable remuneration level holders should be obliged to give relevant information, too.

Question 20: Does a legal obligation exist for national authorities to give information?

Seven Member States answered this question with yes. The majority of them are applying rules comparable to those of the implementation Regulation Nr. 1768/95. Eight Member States denied such an obligation. Further information was given by CZ, FI and NL. The given answers and comments are presented below in detail:

Czech Republic: "Information, which relates to the production, processing or use of farm saved seed, but this information may be denied if they could not be gained as a part of the ordinary activity, could be gained only with the expenditure of additional costs and would be violated a personal data (article 19 Act. No. 408/2000 Coll, on plant variety rights protection, as last amended, - Czech PVR law)"

Finland: National authorities are not obliged but they have the right to give the following information to the holder on requests:

“a) Farmer’s name, address and telephone number; b) farm identification code; c) language code; d) is the field area under farmer’s control less than 10 ha or, in the case of early potatoes grown under cover more than 1 ha or in the case of other potatoes more than 2 ha; e) is the area used for varieties protected with EU PBR more than what is required for the production of 92 t of cereals; f) is the area used for potato varieties protected with EU PBR more than what is required for the production of 185 t of potatoes; g) the areas sown with FSS of varieties protected with PBR (both national and EU), given by variety”

In Finland the data on the use of FSS are collected in application of the national rules for farm aid and on the law on farm data bank. It stipulates that these data must be submitted to the breeders’ association if there is an agreement between the breeders’ association and the farmers’ union.

Netherlands: “a) Seed certification services give survey of persons/enterprises who/which have produced propagating material of protected variety under certification scheme; b) quantities of propagating material of protected variety under certification scheme”

Question 21: Which information is given by national authorities on a voluntary basis?

In seven Member States information is given on a voluntary basis. This information concerns mainly data which are available in the frame of the seed certification procedure. It can be expected that such data are also available in countries which denied this question or did not give any answer. Finland only denies this question.

Question 22: Does a licence collecting system exist in your country for plant varieties to which a CPVR was granted?

Looking to the group of the 19 Member States applying the UPOV act 1991 10 Member States confirm the existence of a licence collecting system and 5 state that such a system doesn’t exist in their countries. Regarding all three groups of Member States 12 Member States affirm the existence of a licence collecting system and nine deny it.

It is certainly the task of the organisations of holders to install collecting systems for licences and not the duty of the legislator. Consequently for the Netherlands the answer of the official representatives in the Administrative Council was no, but the breeders’ association replied yes. It can be assumed that nearly in all Member States breeders’ associations have created such systems or breeders try to get on an individual basis their licence fees.

Question 23: In your view, do the national provisions provide an effective tool for breeders to collect the remuneration on FSS that they are entitled to?

In the group of the 19 Member States applying the UPOV act 1991 nine member States affirm the effectiveness of their national systems and six negate it. Looking over all Member States 11 states are judging their national system as effective and seven states not. It can be stated that the majority of the Member States are more or less content with their national fee collecting systems for the use of FSS.

Question 24: In your view, do the EU provisions provide an effective tool for breeders to collect the remuneration on FSS that they are entitled to?

From the group of the Member States applying the UPOV act of 1991 six Member States deny but 8 member States affirm the effectiveness of the EU system. The situation changes if all Member States are considered. Here 10 Member States (DE, DK, FR, GR, HU, IE, LT, PL, PT, RO) negate and nine (BG, CZ, EE, FI, LU, SE, SI, SK, UK) affirm the effectiveness of the EU system.

As far as comments to the questions 23 and 24 and also general comments were made they are added in attachment 6.

### **3.1.4 Discussion**

Looking to table 2 it can be observed that in the group of the Member States applying the UPOV act of 1991 no big differences exist between the judgement on the national and the EU system. This may be caused by the fact that the successfully working national systems

Table 2: Effectiveness of national and EU collecting systems for the use of FSS		
	Effectiveness national system	Effectiveness EU system
Member States applying UPOV act 1991	no: 6 / yes: 9	no: 6 / yes: 8
All Member States	no: 7 / yes: 11	no: 10 / yes: 9

are applied too for varieties which are protected under the CPVR system as in the Czech Republic or in Finland.

But looking over all member States it can be clearly stated that the majority of the Member States are judging their national systems as more effective as the EU system.

To obtain findings by which parameters the positive judgement of the national systems was caused the coherences between the effectiveness of the national system to the following parameters were analysed

- information to be given by the authorities,
- kind of arrangements to collect remuneration and
- definition of small farmers.
  
- information to be given by the authorities,

From the 11 Member States which judge their national collecting systems as effective in eight Member States (CZ, EE, FI, LT, NL, SE, SI, SK) a positive relationship can be observed between the effectiveness and the information obtained by authorities given on an obligatory or voluntary basis. For FR, IE and UK which judged their systems positive too such an observation could not be made.

From the seven Member States which judge their national collecting systems as ineffective in five Member States (BG, DK, HU, PL, PT) information is given by authorities mainly on a voluntary basis. In Germany and Romania no information is given at all.

It can be concluded that there is a positive effect on the judgement of efficiency of the national systems if information is given by the authorities on a voluntary or obligatory basis. But the results show too, that the information given by the authority is not a absolute necessity or an guarantee to establish a collecting system which is working satisfactorily.

- kind of arrangements to collect remuneration

From the 11 Member States which judge their national collecting systems as effective in nine Member States agreements between holders and farmers, in six Member States individual contracts and in 5 the national legal rules are applied (multiple mentioning possible).

From the seven Member States which judge their national collecting systems as ineffective in four Member States contracts and national legal rules are possible and in three Member States agreements (multiple mentioning possible). Two Member States belonging to this group didn't give any answer.

The data give the impression that agreements between holders and farmers have a positive effect on the judgement of the efficiency. But it has to be noted that in Germany, which judge the national system as ineffective the holders cancelled the agreement with the farmers because according to their view the system is working absolutely unsatisfactory.

- definition of small farmers

From the 11 Member States which judge their national collecting systems as effective in seven Member States the EU definition is used, in three Member States national definitions and in one Member State no definition at all.

From the seven Member States which judge their national collecting systems as ineffective in five Member States the EU definition is used and in one member State a national definition. One Member State has not given an answer.

In the two groups the ratio between the application of the EU definition and national definition is very similar. Therefore no clear conclusion can be taken. No legal definition of small farmers exists in the Netherlands.

### **3.2 Agreement questionnaire**

23 replies were obtained on the agreement questionnaire from in total 19 Member States. In 14 cases the questionnaire was filled in by breeders' associations (BA), in five cases by farmers' unions (FU) and in five cases by members of the Administrative Council. For Sweden a joint reply from the BA and the FU was sent. The given answers can be seen in attachment 7. For the Czech Republic detailed comments were obtained. They are added in attachment 8.

For the reason that this questionnaire was addressed to BA and FU the evaluation concentrates mainly on the answers given by these two groups.

Question 1: Does the agreement treat Community PVR and national PVR?

In nine Member States agreements are established and in eight not. This result is valid for CPVR and national PVR. This means that the existing agreements cover varieties protected

under both systems. As far as results from the breeders' associations and the farmers' unions were available (DE, SE and UK) the answers were identical.

The chosen procedures to install such a double impact in the established agreements differ in the Member States. For example in Sweden already the national plant variety protection act refers to Art. 14 of the basic regulation 2100/94 and the respective implementation regulation. Furthermore the agreement between the Swedish Seed Trade Association and the Federation of Swedish Framers was published in the official gazette of the CPVO. In this case the agreed level of remuneration can be used as a guideline. Such an agreement covering varieties under the CPVR and the national PVR was published for Germany too without having such a clear reference in the national legislation. But the German breeders have judged the effectiveness of this agreement as rather unsatisfying. Therefore the German Federal Association of Plant Breeders cancelled it. In the future the national legal rules will be applied for varieties protected under the German PVR and the EU rules for varieties falling under the CPVR system.

Question 2: How many and which genera and species are covered?

The numbers of the covered genera and species are in the most cases less than the figures given in the legislation questionnaire. This means that established collecting systems for the remuneration do not exist for all species for which the use of FSS is legally possible. For the non covered species the holder has to take his own provision to collect the remuneration.

For Spain the list covers in total 30 genera and species. This is a higher number of genera and species as mentioned in Art. 14 of the Basic Regulation.

Question 3: Level of remuneration?

In the agreements a high diversity can be observed for the level of remuneration. The lowest indicated level is 30 % of the licence fee in Germany and the highest 65 % in the Netherlands for cereals.

Question 4: Are certain groups of farmers exempted from the payment of remuneration?

Question 5: Is the definition of small farmers the same as under the EU Regulation and the national law?

In all agreements small farmers are exempted from the payment of remuneration. The definition of small farmers is more or less the same as under the national legislations. The remarks made under question 11 of the legislation questionnaire are valid here too. Remarkable is the info given by the Netherlands breeders' association. Although the national legislation does not include a definition of small farmers, in the agreement they are defined as those who produce less than 92 t of cereals. In practice this threshold is interpreted as "less than 15 ha of arable and horticultural crops".

Question 6: Which information are the farmers asked for?

The information given by farmers in the frame of an agreement is more or less the same as under the respective national legislation. In France and the Netherlands no information is required by the farmers. Information about the bought quantity or the area sown with certified seed and the respective variety are required in Spain and Hungary. Only in Germany and



Lithuania the holder has to present indications about the use of FSS to obtain the requested information.

Question 7: Which information are the processors asked for?

In four of the nine Member States in which agreements are applied no information is required by the processors. These Member States are DK, EE, FR and NL.

Question 8: Description of the agreement

As far as descriptions of agreements were delivered they are added in attachment 9.

Question 9 and 10: Degree of satisfaction and reasons for dissatisfaction?

For DE, SE and the UK judgments of the breeders' associations and the farmers' unions are available. In all three countries the farmers' unions consider the system as rather satisfying, the same opinion is expressed by the Swedish Breeder Association, but the breeders' associations in DE and UK are considering the system as rather unsatisfying. The Danish Breeders' Association has the same view. But there are also breeders' associations which are satisfied or fully satisfied. They are from FI, FR, NL and SE.

What is the reason for this dissatisfaction? The mainly presented argument concerns the provision of information on the use of farms saved seed. Farmers and processors refuse to answer the breeders' requests unless concrete indications can be presented for the use of FSS and the nearly impossibility of the breeders to present sufficient and reliable indications.

Question 11: Comments?

As far as comments were made they are added in attachment 10.

### **3.3     Statistic questionnaires**

The representatives of the Member States in the Administrative Council were invited to answer the statistic questionnaires for the species winter wheat, winter barley, durum wheat and potato.

For winter wheat from 21 Member States data were obtained. From one Member State the data are incomplete and are not considered. The data from Spain and the Netherlands are from the breeders' associations and for France the breeders' association sent replies too (see attachment 11).

22 Member States delivered data for winter barley. From two Member States the data are incomplete and are not considered. As for winter wheat the data from Spain and the Netherlands are from the breeders' associations (see attachment 12).

13 Member States only sent data for durum wheat. The data from four Member States don't contain any data presented in the summary and are therefore not presented. The data from Spain are from the breeders' association (see attachment 13).

For seed potato 21 replies were obtained. One Member State asked to consider the information as confidential and the data of another Member States were too limited to be

presented. For the Netherlands the answers are from the breeders' association. For some Member States the obtained answers are unfortunately rather incomplete (see attachment 14).

The method to calculate the used farm saved seed in percentage to the total acreage of the respective crops is as followed. The acreage sown with certified seed (parameter 8 of the statistic questionnaire) is defined as the quantity of sold certified seed (parameter 4) proportional to the average quantity of seed used for sowing purposes (parameter 5). By choosing a parameter which is based on the sold quantity of certified seed the effects of seed export and import could be more or less disregarded. The acreage sown with non certified seed (parameter 9) was defined as the total acreage of the crops (ha) (parameter 1) minus the acreage of seed production (parameter 2) minus the acreage sown with certified seed (parameter 8). The percentages of used FSS (parameter 10) are expressed as ratio between the areas sown with non certified seed to total acreage of the crops. In these percentage figures are also included the acreages which are sown with seed from the black market. Details for the calculation procedure can also be seen from the questionnaires, attachments 11 – 14. The other required parameters were mainly used to make a plausibility check as far as necessary.

### **3.3.1 Winter wheat**

Having a look to table 3 it can be recognized that the variation of the parameter “% used FSS” is higher between the 20 Member States than within one Member State over the observed period of five years.

For the most Member States the figures over the year are remarkable stable. A stronger augmentation of the percentage of used FSS can be observed only for Finland. But as already stated the Finish remuneration system is considered by all involved parties as satisfactory. A less augmentation can be found for Greece and Hungary. A clear reduction of the use of FSS can be observed for Sweden only, which is applying for the national PVR the EU rules and where holders and farmers negotiated an agreement. The figures for Bulgaria are contradictory.

The most intensive use of FSS can be observed in Greece and Poland with up to 92 %. In the Italy and Sweden over the years the use of FSS is relatively low until zero.

Member States	years				
	2007	2006	2005	2004	2003
AT	54	55	54	53	49
BG	18	7	9	30	44
CZ <sup>1</sup>	16	17	14	12	12
DE	48	49	49	53	43
DK	18	16	15	8	15
ES	67	68	71	72	71
FI	81	69	49		
FR	49	49	47	48	42
GR	89	91	83	81	81
HU	62	69	66	46	42
IE	23	27	27	18	25
IT	9	6	7	12	9
LT	75	78	86	84	78
LU	25	10			
NL	28	33	26	30	
PL	89		92	91	89
RO	40	34	39	45	20
SE	0	11	11	28	24
SK	44	45	42	49	35
UK	42	46	37	40	43

### **3.3.2 Winter barley**

The figures for the percentage of used FSS for winter barley are presented in table 4.

Also for winter barley it can be observed that the variation of the parameter “% used FSS” is greater between the 20 Member States than within one Member State. But the figures within the Member States are less stable than for winter wheat. A reduction of the use of FSS can be found for Bulgaria and Sweden. No augmentation of the use can be observed. As for winter wheat the most intensive use of FSS is made by Greece and Poland, followed by Spain. In SE and IE the use is relatively low.

<sup>1</sup> Figures cover only the acreages sown with recorded non certified seed

Member States	years				
	2007	2006	2005	2004	2003
AT	34	23	34	37	21
BG	14	10	11	20	27
CZ <sup>2</sup>	18	24	18	13	16
DE	44	44	48	49	38
DK	13	0	0	0	3
ES	82	83	81	83	83
FR	34	34	31	31	25
GR	87	91	91	90	93
HU	51	64	72	61	57
IE	6	19	18	19	6
IT	15	11	15	19	22
LT	73	67	60	72	86
LU	17	20			
NL	54	68	64	40	
PL	82	84	86	83	92
RO	44	59	46	69	39
SE	1	0	0	17	37
SI	22	25	29	26	22
SK	62	54	36	62	44
UK	37	40	37	37	36

### **3.3.3 Durum wheat**

For durum wheat the data basis is relatively narrow. From 10 Member States only data can be presented and not all data are complete. The figures are given in table 5.

The seed market for durum wheat in the EU is very much influenced by the EU policy to promote durum wheat production. In the past subsidies were paid if the sowing was done with certified seed only. This rule is deleted now. For this reason it may be that for Austria, France and Italy growing percentage of use of FSS can be stated. For the new Member States, Hungary and Slovakia, in 2003, the year before the accession, the percentage of used FSS is relatively high. In the two following years more certified seed was used and after the deletion of the subsidies more FSS was used again. In Greece the percentage over the years was always high and an over production seems to exist in Spain and the United Kingdom.

These figures for durum wheat give the impression that the intensity of the use of FSS is more influenced by rules outside of the national and community Plant Variety Rights systems than by any parameter of these systems.

<sup>2</sup> Figures cover only the acreages sown with recorded non certified seed

Member States	years				
	2007	2006	2005	2004	2003
AT	28	15	10	3	0
DE					
ES	0	0	0	0	0
FR	25	20	12	7	7
GR	62	70	69	58	65
HU	0	23	0	0	63
IT	14	15	2	6	5
SI	36	34	30	29	24
SK	39	57	21	19	59
UK	0	0	0	0	0

### **3.3.4 Potatoes**

The figures for the potatoes are presented in table 6.

Member States	years				
	2007	2006	2005	2004	2003
AT	40	38	41	41	41
BG	1	2	1	1	1
DE	49	49	48	45	48
EE	95	94	98	99	99
FI					
FR	9	9	8	11	11
GR	59	60	61	69	68
HU					
IE		48	54		
IT	31	34	31	25	29
LT	96	98	98	98	99
LU	1	9	9		
NL		45	38	39	39
PL	93	95	95	95	95
RO	96	97	98	97	96
SE					
SI	53	63	65	51	62
SK					
UK	35	42	36	36	33

The use of FSS for potatoes is in EE, LT and PL very high, up to 99% and in BG, FR and LU nearly certified planting material only is used. Over the observed period in the Member States the figures are very stable and no clear augmentation or reduction of the use can be

stated. Annexed are complementary statistics about the use of FSS in potatoes provided by ESA

#### **4 FINAL REMARKS**

The results of the study are very complex. The few observed coherences between the positive judgment on efficiency or satisfaction of the applied remuneration systems with any other parameter are relatively weak. The strongest coherence could be observed between the efficiency and the obligatory or voluntary delivery of information by the national authorities (questions 20 and 21 of the legislation questionnaire). Such a positive relationship can be stated for eight Member States. For two Member States the non-efficiency of their systems was correlated with the non-delivery of any information by the authorities. These cases can be considered as confirmation of the above mentioned positive coherences. Such a clear coherence could not be observed to other parameters.

The statistical data show that the level of use of FSS depends from the agricultural structure and practices in the respective Member States. In Poland and Lithuania the average level of use of FSS for winter wheat is 90 and 80 %. The percentages of small farmers to the total number of farmers are in Poland 86 % and in Lithuania 77% and these farmers are cultivating in Poland 36 % and in Lithuania 52 % of the arable land. For Greece with a comparable level of use of FSS the same observation will be certainly valid. All three countries don't consider the EU system as effective. For Denmark and Sweden the level of use of FSS is relatively low. For winter wheat it varies in Denmark from 8 till 18 % and in Sweden from 0 till 28 %. For both countries the percentages of small farmers to the total number of farmers are with 33 and 46 % significant lower than for Poland and Lithuania. Denmark is considering its PVR and the CPVR system as ineffective but Sweden in contrary as effective.

It can be concluded that the agricultural structure, the size of the farms and the tradition to use FSS have higher implications on the level of use of FSS than any parameter of a remuneration system for FSS.

At the end some remarks are made to the definition of small farmers. The EU definition was taken over by the most Member States. The made comments show however that these rules are heavily to apply in their entity. This might be the reason, that one Member State, the Netherlands, does not apply such a definition or other Member States, as the Czech Republic, are applying a simplified formula to assess small farmers. Furthermore it became evident that it is difficult for the holders to obtain the respective data because the legal basis for the definition of small farmers in the basic regulation is no longer in force and the national authorities don't have anymore such data. Therefore it seems to be appropriate to create on EU level a new definition or to authorize Member States to create for their territories national definition for the maximum size of small farmers.