



SEED MARKETING LAWS & CROP DIVERSITY

Briefing for the GAIA Foundation's Seed
Sovereignty Programme

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This briefing, developed by Fulya BATUR (KYBELE) for the GAIA Foundation's Seed Sovereignty Programme, aims to provide an overview of currently applicable European and national policy with regards to seed marketing, focusing on the perspective of crop diversity. These strict regulations have been mainly developed for the needs of industrial agriculture and those of conventional breeders' intellectual property rights. As a result, they quite poorly accommodate the wide range of seeds and the wide array of activities that crop diversity initiatives engage in at local level. Seed marketing rules potentially have detrimental effects on actors who wish to engage in the exchange and sale of seeds more broadly to preserve local traditions, or to develop and manage seeds that are tailored to specific growing conditions, low-input farming or to climate change.

Some flexibilities nonetheless exist within these seed rules, and the briefing will present different options that could be preferred by crop diversity initiatives to ensure the conservation and the dynamic sustainable use of a wide range of seeds. Considering the current defining moment in the United Kingdom, the briefing also defines pathways to explore while advocating for a more adequate policy framework for seed diversity and sovereignty in the future.

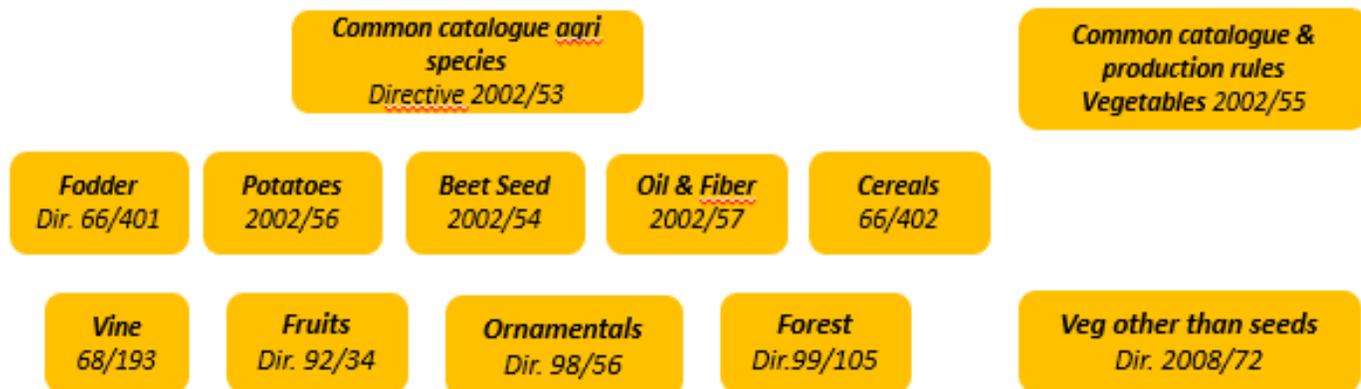
The briefing will therefore cover:

- ❖ European Seed Laws in a Nutshell
- ❖ Room to Manoeuvre & Options for Seed Diversity Initiatives
- ❖ Pathways for the Future: Advocating for Seed Diversity

EU SEED LAWS IN A NUTSHELL

The European Union (“EU”) rules that govern seed marketing are found in 12 different Directives each regulating different crop species. Adopted gradually and amended multiple times since the 1960’s, these Directives must be transposed into national legislation to have direct effects, as only the general principles are set at EU level. Therefore, the rules that apply to the marketing of seeds, and the room that is available for crop diversity within those rules, significantly vary from one EU Member State to another.

In 2013, the European Commission proposed a draft Regulation (i.e. a legislative act that is directly applicable without transposition into national legislation) on seeds and plant reproductive material. It would have replaced all the Directives on the marketing of seeds. The proposal was rejected by the European parliament in March 2014 by 650 votes to 15. One of the justifications for such refusal was that the proposal did not sufficiently facilitate and encourage biodiversity conservation and use in agriculture and horticulture. Six years later, the European Commission is now conducting a “study” on the options to reform seeds marketing rules to be published in 2021, which will probably lead to an amendment of applicable rules in the following years.



GRAPH 1: List of EU seed marketing Directives according to species

In the **United Kingdom**, the EU Directives have been **transposed** through the following acts:

- *UK General Act:* Plant Varieties and Seeds Act no 14 of 1964, Seeds (National Lists of Varieties) Regulations no. 3510 of 2001
- *England:* Seed Marketing Regulations no.463 in force since 1st April 2011, last amended by Seed, Plant and Propagating Material Marketing Regulation no. 682 of 2nd July 2020.
- *Wales:* Seed Marketing (Wales) Regulations no. 245 of 2012, Vegetable Seed Regulations no. 3035 of 2005
- *Scotland:* Beet Seed (Scotland) (No2) Regulations 2010, Cereal Seed (Scotland) Regulations 2005, Fodder Plant Seed (Scotland) Regulations 2005, Oil and Fibre Plant Seed (Scotland) Regulations 2004, Vegetable Seed regulations 1993.

General Principles

Each Directive lists the **specific crop species that are regulated at European level**. Aromatic herbs, quinoa, buckwheat, millet, lentils or parsnips are for instance not regulated, and therefore can be marketed freely, albeit conforming to other applicable legislation, like those ensuring plant health. The list of regulated species can be changed at national level (for instance, lentil seeds are regulated in France, while *sorghum bicolor* and *sudanense* are not regulated in Ireland or the United Kingdom, just like Ireland is the only EU country not to regulate *asparagus* seeds and propagating material, and the United Kingdom was the only country to get a derogation to not regulate *capsicum annuum*).

For all regulated crop species, the EU seed Directives contain provisions that (1) uphold the principle of pre-marketing registration (either of the plant variety or of the supplier), (2) establish production rules to ensure seed quality and maintenance, and contain (3) labelling and packaging standards.



GRAPH 2: Three main principles in EU seed marketing Directives

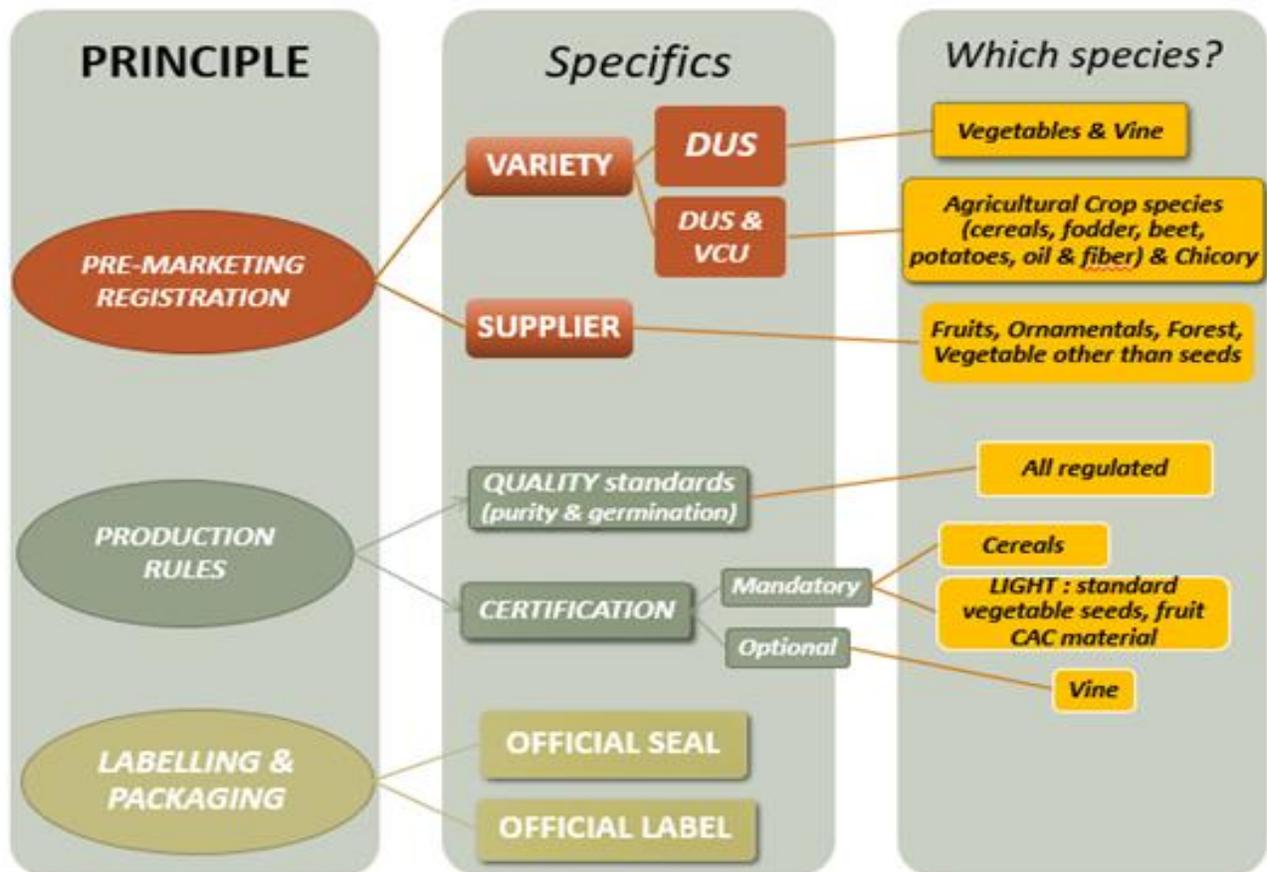
- (1) As a principle, all the Directives require **pre-marketing registration, prior to the marketing of seeds or plant propagating material**. While for most of crop species, one needs to register the **plant varieties of the seeds and propagating material** to be marketed, some Directives require only that the **suppliers of seeds or other plant propagating material be registered**.

The goal of pre-marketing registration is to determine the identity of seeds, to trace back its source, and also promote industrial productivity through the technical standards that ought to be complied with for the registration of plant varieties.

- In order to be registered in national catalogues, **plant varieties** must be distinct, uniform and stable (“DUS”). The national listing will then be computed to the European common catalogue of plant varieties, which provides access to the common market, but exists only for agricultural crops and vegetables. The plant varieties’ features are tested officially by public authorities before marketing, in conformity with Technical Protocols adopted by international and European authorities in charge of plant variety protection, a specific intellectual property right helmed by the UPOV Convention at international level, and the Community Plant Variety Office (“CPVO”) at EU level. For agricultural crop species and for chicory, in addition to DUS, varieties also need to demonstrate their “Value for Cultivation and Use (“VCU”), according to technical protocols adopted by national seed authorities. Once registered, plant varieties need to be **maintained** in the EU, i.e. their continuous cultivation needs to be ensured, subject to official controls.

- In order to market seeds and propagating material of fruit species, ornamentals, forest and vegetable propagating material other than seed, the pre-marketing registration applies to **suppliers**, and not varieties. Operators need to ensure that they comply with the standards set out by the EU and national laws. Once accredited or registered, they can offer their own catalogues for sale, following internal control and traceability systems. For regulated fruit species, national lists are established based on an official or non-official description, with no pre-marketing official control.
- (2) EU seed laws also include **rules and standards for seed production**. These provisions establish minimum **purity levels, germination rates** and other criteria to ensure that buyers, whether farmers or non-professional users, have access to better quality seeds. According to the Directives, these minimum standards must be controlled officially at different stages of seed production, either prior to their marketing, or after they have been put on the market. The most stringent requirement for seed production is that of **seed certification**, which is mandatory for certain crop species, but not for vine, ornamentals, forest or vegetable propagating material other than seeds. The production of certified seed is stringently controlled at different stages and requires *inter alia* respecting significant distancing requirements from neighbouring plants. Even though seed certification is mandatory for vegetable crops and for fruit propagating material, certain categories are established with lighter production and control rules. The production of standard vegetable seeds is as a result only subject to post-marketing controls, while fruit CAC material ought to comply with lighter requirements. Another stringent requirement linked to seed production relates to the obligation of **maintenance** of registered varieties, ensuring that official catalogues only list varieties that are still commercially relevant and circulating, and allowing the authorities to check the officially designated maintainer.
- (3) Lastly, all the EU Directives contain standards for the **labelling and packaging of seeds and propagating material put on the market**. In accordance with these provisions, all packages must bear an **official label**, and be closed by an **official seal**, in a manner that cannot be opened without damaging the sealing system or leaving evidence of tampering with the seal. Some exceptions are foreseen to these labelling standards for so-called EC Small Packages, which we will come back in the second part of this briefing.





GRAPH 3: Principles & Rules of EU seed marketing Directives according to species

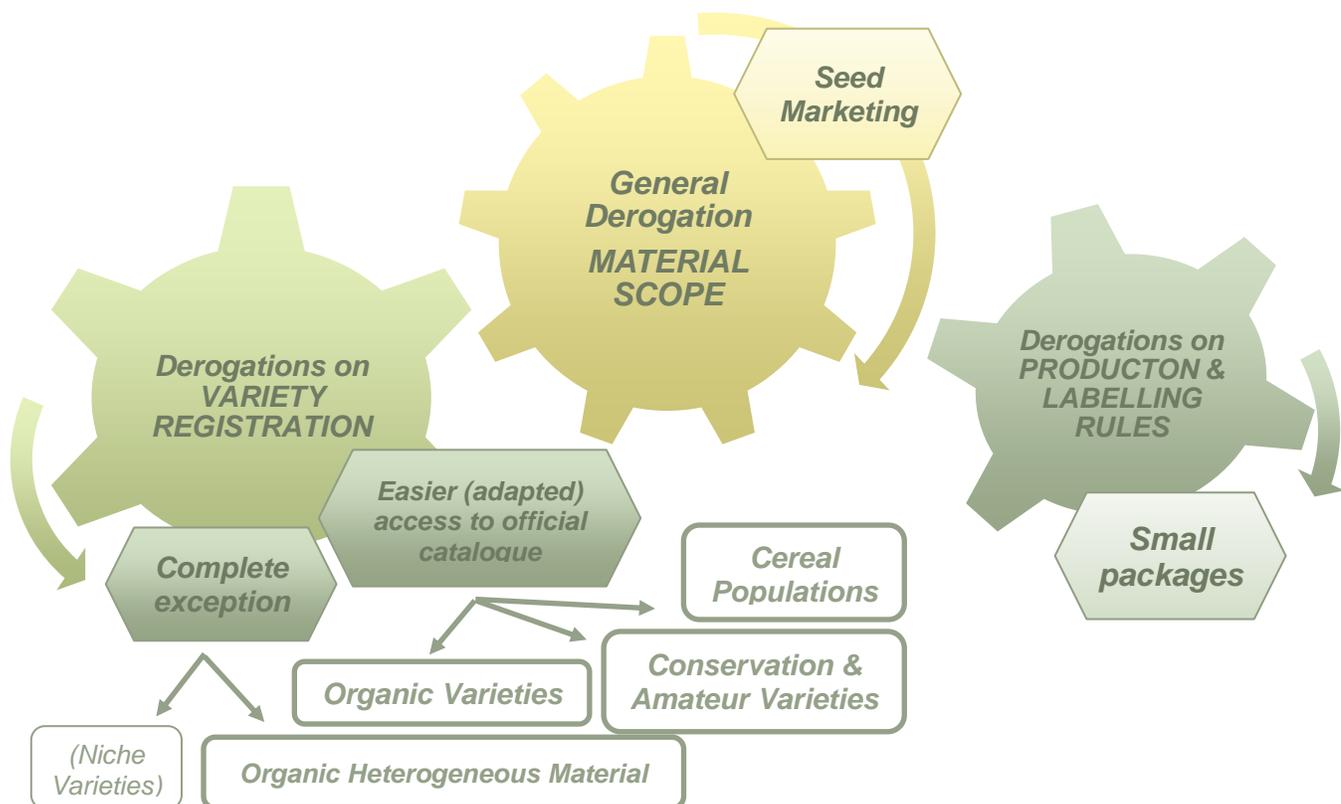
ROOM FOR SEED DIVERSITY?

The EU seed Directives have all been developed not only to ensure that European farmers had access to higher **quality** seeds and were given insurances as to the **identity** of the seeds; but also to endorse a specific viewpoint on agricultural **productivity** based on intensive mono-cropping models. As a result, they uphold uniformity and pre-marketing official controls as their main cornerstones. Their stringent requirements make **little to no room for plant varieties that are not uniform or stable enough to make it into the national and European seed catalogues**. This grim reality applies to the majority of heirloom varieties, and to traditional or recent plant populations that have been selected by farmers, seed savers and other actors with different values and priorities, seeking qualities linked to socio-cultural preferences like taste or tradition, or pursuing adaptation to local or low-input growing conditions. None of the initial Directives mention the role that seed marketing could play in the conservation and sustainable use of crop diversity.

However, there are some **derogations** that can be used in order to ensure the development and durability of associations and companies with different business models and values than those upheld by the Directives. These are found either within the seed Directives themselves, or within the new EU Organic Regulation 2018/848, which has direct effect in all EU Member States and will enter force on 1st January 2022.

Three different types of derogations can be used by initiatives who wish to work with crop diversity and bring more seed diversity into different markets:

- A. Using the general derogation regarding the scope of the EU seed Directives, initiatives can argue that their activities do not fall within the scope of the legislation: **Marketing outside Commercial Exploitation.**
- B. Using specific derogations regarding variety registration requirements, initiatives can either
 - Benefit from a complete exemption from variety registration
 - **Advocating for Niche Material** (as proposed by the European Commission during the failed reform)
 - **Marketing Organic Heterogeneous Material**
 - Benefit from relaxed registration requirements to have access to the official national seed catalogue
 - **Marketing Conservation or Amateur Varieties**
 - Participating in the **Temporary Experiment on Cereal Populations & Heterogeneous Material**
 - Participating in the **Temporary Experiment on Organic Varieties**
- C. Using the derogations regarding labelling and packaging requirements: **Marketing registered varieties with no official label or seal**



GRAPH 4: Different derogations in EU seed Directives that can be used by crop diversity initiatives

GENERAL DEROGATION: EXCHANGE, SALE & TRANSFER OF SEEDS FOR NON-COMMERCIAL USE

The largest derogation that is potentially useful for crop diversity initiatives stems directly from **the material scope of the EU seed Directives**. Indeed, not only do their provisions solely apply to the **species** specifically listed in each of the Directives, they also only apply to activities that fall within the realm of “**seeds marketing**”, as defined in the Directives themselves.

The most recent and comprehensive definition of marketing comes from the Directives that were revised and consolidated in 2002 (beet, vegetable, seed potatoes, oil& fibre, fodder, cereals, vine & fruit), which considers : *‘the sale, holding with a view to sale, offer for sale and any disposal, supply or transfer aimed at commercial exploitation of seed to third parties, whether or not for consideration’* as marketing of seeds, thus subject to the precepts of the Directives. This last definition is mentioned word to word in the Irish and United Kingdom legal frameworks, but without giving any additional interpretation or guidance for stakeholders. The no.463 Seed Marketing Regulations of England adds that the sale, holding with a view to sale, offer for sale and any disposal, supply or transfer of seeds all need to be aimed at commercial exploitation of seed to third parties “*in each case*”, which is more flexible than the EU text. It would mean that if a particular part of the seed value chain is not aimed at commercial exploitation, then the entire value chain and its activities would be viewed as outside of the scope of the marketing rules. In Wales, the overarching Seed Marketing Regulations no. 245 of 2012 use the same wording as its English counterpart. However, the Welsh Vegetable Seed Regulations no.3035 of 2005 use slightly different wording, defining marketing as the “*selling, holding with a view to sale or offering for sale*”, OR “*any disposal, supply or transfer for the purpose of commercial exploitation of seed to third parties*”, further detailing that “*whether or not for consideration, and “market” and “marketed” shall be construed accordingly*”. This more stringent approach would mean that any offer for sale and exchange could qualify as marketing with regards to vegetable seeds in Wales.

Both the English and Welsh Regulations go on to state that “*marketing does not include trade that is not aimed at commercial exploitation*”, giving two non exhaustive examples such as the supply of seeds for testing, within a services agreement (for coating for instance) or in a closed circuit. As a matter of principle, **trade in seed not aimed at the commercial exploitation of the variety** is indeed not considered to fall within the scope of seed laws. However, in the absence of formal explanation as to the exact boundaries of such notion, it is not clear which side of the walls the wide range of crop diversity initiatives would fall in.



There have nonetheless been attempts to define such non-commercial activities and uses of seeds. **Local and peasant seed systems** that rely on the exchange but also the sale of seeds within their local communities would in theory fall outside of the borders of seed laws. In some instances, the sale of seeds by an association or company for the primary purpose of crop diversity conservation and its sustainable use, rather than a variety's commercial exploitation, would also fall outside of the walls of seed marketing rules. In the absence of clear rules at EU level, the boundaries will depend on the national public authorities' interpretation of the notion of seeds marketing, as a result of advocacy efforts, awareness and sensitivities. In Denmark for example, instructions were published in 2015 by national seed authorities "for amateur breeders, seed savers and companies about rules and practice of trade and transfer of seeds for non-commercial use and conservation". These instructions precisely delineate the contours of seeds marketing so as to exclude seed saver networks activities from the realm of seed marketing rules, both within and outside their membership. The Danish instructions make it clear that seed marketing laws "govern the production and marketing of seeds throughout the EU with a view to commercial use", which is understood as "the marketing of seeds for agricultural and horticultural production, i.e. commercial production". In Austria, a change of the national seed decree in 2015 has established that the transmission of seed by farmers or seed users against payment or in kind is allowed if the farmer or user does not trade in seed, if the variety is not registered and if the trade or exchange remains in small quantities. These quantities correspond to those fixed for research & experimentation purposes, with very limited amounts ranging from 150 grams up to 2kgs per operator per year and per variety or plant genetic resource.

From another viewpoint, the **non-commercial nature to seed sales can also be defined by the attributes of the users who buy them**. In one of its accompanying examples, the Danish instructions state that "sales to nurseries and horticulture is considered as sales to commercial use, while sales to private and gift shops are considered as non-commercial use of seeds". French lawmakers have taken the chain of thought further, by expressly stating that the sale of seeds of the public domain (with no intellectual property rights attached) to "non-professional final users who do not engage in the commercial exploitation of the variety" falls outside of the stringent seed marketing walls. This reading of the EU seed Directives was finally transcribed in the French legal order in June 2020 through a cross-cutting law on the transparency of the food chain, which amends the French Rural Code and exempts the sale, supply or transfer of seeds to non professional final users from the requirements enshrined in seed laws (except for sanitary rules linked to selection and production). This reading is however not shared by the European Commission, which has issued a controversial note to the French authorities arguing that "sales to final users" would qualify as commercial exploitation of seeds, and that the issue would be addressed in the forthcoming study on the options to reform EU seed marketing laws, expected early 2021. The French law nonetheless remains in force and provides the widest interpretation of the notion of seed marketing to date, in a country where less than 20 years ago, the exchange of sale between farmers could have been considered as regulated by seed marketing laws.

In December 2009, the **United Kingdom**, in its [submission](#) to the Food and Agricultural Organisation of the United Nations on the state of plant genetic resources in food and agriculture, gave official hints as its interpretation on what represents "seed marketing" in a context of commercial exploitation. Indeed, "the UK Government continues to argue that, other than for seed

potatoes, the [seed marketing] directive requirements should apply to commercial rather than amateur use and that the ‘small packet’ market used by gardeners for vegetable seed species should be exempted from these provisions”.

REGIMES WITH NO VARIETY REGISTRATION

Next to the root issue related to the definition of seeds marketing, the EU Directives also allow for complete exemptions from the requirement to register plant varieties before putting seeds on the market. The stringent pre-marketing requirement to register plant varieties, which relates to the marketing of agricultural crop species (cereal, fodder, beet, potatoes, oil and fibre), vegetables and vine seeds and propagating material, has been indeed completely derogated from on two accounts : the failed proposal of the European Commission in 2013, and in the forthcoming Organic Regulation 2018/848. With regards to the Directives that establish a supplier registration obligation, such requirement is for instance waived for fruit propagating material sold in local markets to non-professional final users. For the sake of conciseness, this briefing will only focus on the derogations from variety registration obligations.

➤ Niche Varieties

During the **failed reform** of the seed marketing rules at EU level, the EU Commission Proposal contained interesting provisions targeting “small scale activities concerning [seeds] which is adapted to local conditions, and made available on the market in small quantities”. The proposed text created a new category coined “**niche market seeds**”, completely exempted from the requirements on variety (or supplier) registration and making available on the market. According to the Commission, both farmer-breeders and gardener-breeders, whether being professional operators or not, would have benefitted from the regime, which was nonetheless limited to “small operators”. The major restriction on the proposed regime was that the material could only be made available on the market by micro-enterprises, to avoid abuse according to the EU Commission. Niche market seeds would have been marketed as standard seeds, with no pre-marketing controls, but conforming to some labelling and traceability rules, and most importantly, only in small packages. The maximum size of packages, containers or bundles, and requirements concerning traceability, lots, and labelling of the niche market material would have been developed further in a “delegated Act”, should the proposal have been adopted. It is impossible to know how package size would have been delineated at the end of negotiations, but it is highly probable that these would have mirrored either (a) quantitative limits set for the marketing of amateur varieties, or (b) the larger definition of EC small packages that opens the door to lighter labelling requirements.

Although niche market seeds have not seen the light of day in the EU, the term has long been heralded **in Switzerland**, where “**niche varieties**” benefit from simplified regulations. National Swiss seed laws were indeed amended in 2010 to enable the sustainable use of crop diversity and to reduce technical barriers for small-scale value chains. No variety registration is necessary for the marketing of seeds of niche varieties, but the **physical or legal person needs to be authorised** for the marketing of other seed than specified in the marketing regulation for seed and propagating material. Secondly, the legislation defines and controls the **size of the niche (annually maximum amount of seed production)**. Quantitative limits are officially set for the annual production of

niche agricultural crop species, fodder seeds and seed potatoes, while entities authorised to market niche vegetable seed need to declare the estimated volume of annual sales. The Federal Office for Agriculture grants the marketing of a “Niche Variety” to an applicant after a brief examination of the variety description, maintenance breeding and the propagation procedure. The opportunity targets small-scale breeders, producer-communities (1-5 farmers), and non profit-organisations (more than 5 farmers), without reference to micro-enterprises.

➤ Organic Heterogeneous Material

The Organic Regulation 2018/848, which will enter into force on the 1st January 2022, has quite considerably changed the landscape of seed marketing rules. It has put the emphasis on the need to ensure greater organic seed supply, and on the need for organic farming to have access to different types of plant material, specifically showing a high level of genetic and phenotypical diversity between individual plants. In this context, “**organic heterogeneous material (OHM)**” refers to populations stemming from on-farm management and crosses that result in the local adaptation of plant material. OHM is not a variety in the sense of the Directives, meaning it does not conform to the DUS criteria, as, although it presents common characteristics, it is characterised by high levels of genetic and phenotypic diversity.

Quite singularly, the Organic Regulation **derogates** to all the variety registration and seed certification requirements found in the EU Seed Directives and allows for OHM to be marketed following a **simple notification mechanism**, where OHM should be described. However, the exact contours of this new seed marketing regime will be defined in a so-called Delegated Act that is currently being negotiated by the European Commission and Member State representatives. The latest drafts show that the opportunities proposed by the OHM notification mechanism highly risk to be diminished by quite a conservative approach to the subject, even though the willingness of national seed authorities and the active involvement of crop diversity initiatives to make this regime a success adjust the reality on the ground.

The Organic Regulation provides some new avenues to explore for crop diversity initiatives who wish to offer seeds for sale in a commercial context, albeit with additional rules to follow with regards to seed production, which needs to be done in certified organic conditions for one generation.



REGIMES WITH LIGHTER OR ADAPTED VARIETY REGISTRATION

A number of specific derogations ensure the facilitated access to the official seed catalogues, allowing for the registration of certain types of varieties that do not fulfil the strict (DUS and VCU) criteria.

➤ Conservation Varieties (Agricultural crop & vegetable species)

From 2008 to 2010 three Directives (2008.62 for agricultural crops, 2009.145 for vegetables, and 2010.60 for fodder seeds) were issued at EU level to enable the conservation of plant genetic resources and implementing international law (such as the Convention on Biological diversity & the FAO Seeds Treaty). The idea is to “accept in national registries or the Common Catalogue, varieties which do not fulfil « classical » criteria in the name of biodiversity conservation”. These Commission Directives amend the rules for beet, fodder, cereal, seed potatoes, oil & fibre plants and vegetable seeds, to allow the registration of **landraces and conservation varieties which are “naturally adapted to the local and regional conditions and threatened by genetic erosion”**.

Although Member States are entitled to adopt entirely different criteria than DUS and VCU, most of them have only slightly adapted their pre-marketing controls for conservation varieties. In Ireland for example, S.I. No. 431 of 2009 (EC Marketing of Seeds Regulations) heralds the **mainstream DUS criteria**, adding a requirement that the variety for which the “conservation variety permit” is issued cannot have been listed in the common catalogue during the two years preceding the request for such permit.

Once the conservation variety is registered on a national catalogue, general **production rules** of the Directives with regards to quality apply, with slightly altered criteria. For seeds of agricultural crop species, seed lot certification therefore remains mandatory and adds a significant burden for operators. The proportionality of such burden is even more questionable when one considers the **significant quantitative and geographic limits** that are put on the marketing of conservation varieties, whether of agricultural crop or vegetable species. Indeed, these seeds can only be marketed in their region of origin, and the total area cultivated in the country cannot exceed 100 hectares per variety for agricultural crop species, and an area from 5 to 200 hectares for vegetables.

To register a conservation variety into the **United Kingdom** National List of Conservation Varieties, the description of the variety needs to be done according to classical DUS criteria. The application costs 175£, an amount significantly lower than a “normal” registration, which entails not only administrative costs, but also testing, costing anywhere from 1500 to 3000£. The registration needs to be renewed every ten years, and the variety needs to be maintained according to standards set in seed marketing rules.

➤ Amateur Varieties (vegetable species)

Commission Directive 2009.145, which allows the registration of conservation varieties for vegetable species, also established another category of varieties for regulated vegetable species, that of so-called amateur varieties. They are defined as having “**no intrinsic value for commercial crop production** but developed for **growing under particular conditions**”. Quite similar to (yet more restrictive than) the Swiss niche market seeds mentioned above, the registration of amateur vegetable varieties into national catalogues in the EU is usually based on an **official description of**

the variety, accompanied if needed by unofficial tests. Usually no DUS tests are required for the registration of amateur vegetable varieties, and even when DUS protocols are partially followed by authorities, there are usually no official examination of the varieties in field trials (contrary to conservation varieties).

With regards to **production rules**, seeds of registered amateur varieties must comply with the general requirements applied to standard vegetable seed, except those relating to purity. In parallel to the regime of conservation varieties, **quantitative limits** are set by the EU rules regarding the maximum net weight of packages of standard amateur vegetable seeds, ranging from 5, 25 or 250 grams depending on the species. However, there are no geographic limits to their marketing, which can therefore even extend beyond the borders of a single EU Member State. The regime of amateur varieties has been an important tool for the conservation and sustainable use of biodiversity. This category has enabled the registration of a lot of traditional, heritage or farmers populations, especially in countries where public authorities have adopted a relaxed and collaborative stance with local crop diversity initiatives and seed companies.

In order to register an amateur variety into the **United Kingdom** National Vegetable List, one needs to fill out the application form, along with the official description (formulars exist for each regulated species, referring to DUS technical protocols but with limited items to fill). The application costs 100£.

➤ Cereal Populations & Heterogeneous Material

A number of EU Directives (cereals, beet seed, vegetable seed, seed potatoes, and oil and fibre plants) allow the European Commission to launch so-called “temporary experiments”, as a way to explore alternatives to variety registration criteria, and to redress the exclusion of certain categories of seeds from the market, because they cannot comply with strict DUS and VCU requirements. These experiments are designed to assess the production of seed populations in order to gather information on seeds that could officially be marketed if the strict criteria held up in the Directives were to be amended. The European Commission has to this day only used this power once in 2014, and only for certain types of cereals.

Commission Implementing Decision 2014/150/EU launched a **temporary experiment** providing for certain **derogations for the marketing of populations of the plant species wheat, barley, oats and maize**. Member States needed to expressly sign up to the experiment and effectively execute it. The experiment has been taken up only in a handful of countries, namely Denmark, the United Kingdom, Germany, France, Italy and the Netherlands. In these countries, an authorisation procedure to market specific cereal populations was set in place based on non-DUS criteria to establish varietal identity. The experiment has been limited to so-called “cross-composite populations” elaborated in specific breeding programmes that have crossed at least five plant groupings and has resulted in the notification of 35 populations across the participating Member States. In the UK, the Organic Research Centre has registered the only population that found its way into market through the experiment, the ORC Wakelyns population ‘YQ’ of winter wheat. In Italy, where the Rete Semi Rurali network has taken ownership of the experiment, seven wheat populations were registered, and 65 tonnes of bread wheat were sold from only the three bread wheat populations marketed by the farmers’ network.

➤ Organic Varieties

In order to boost the production of organic seeds and support organic breeding in view of the end of derogations to use conventional seeds in organic farming by 2035, the Organic Regulation 2018/848 establishes a preferential treatment for **organic varieties suitable for organic production (OV)**.

These varieties, which are the result of organic breeding, will be the subject of a **temporary experiment** of 7 years to assess alternatives for their registration. The experiment will not be launched by organic authorities but those competent for seed certification and will mostly focus on how to **amend DUS protocols** to make room for organic varieties' inner diversity and the different traits that are focused on compared to conventional breeding. As the goal is to ensure that these varieties get an adapted access to national lists, all production rules and labelling standards established by the seed marketing rules will be followed for organic varieties.



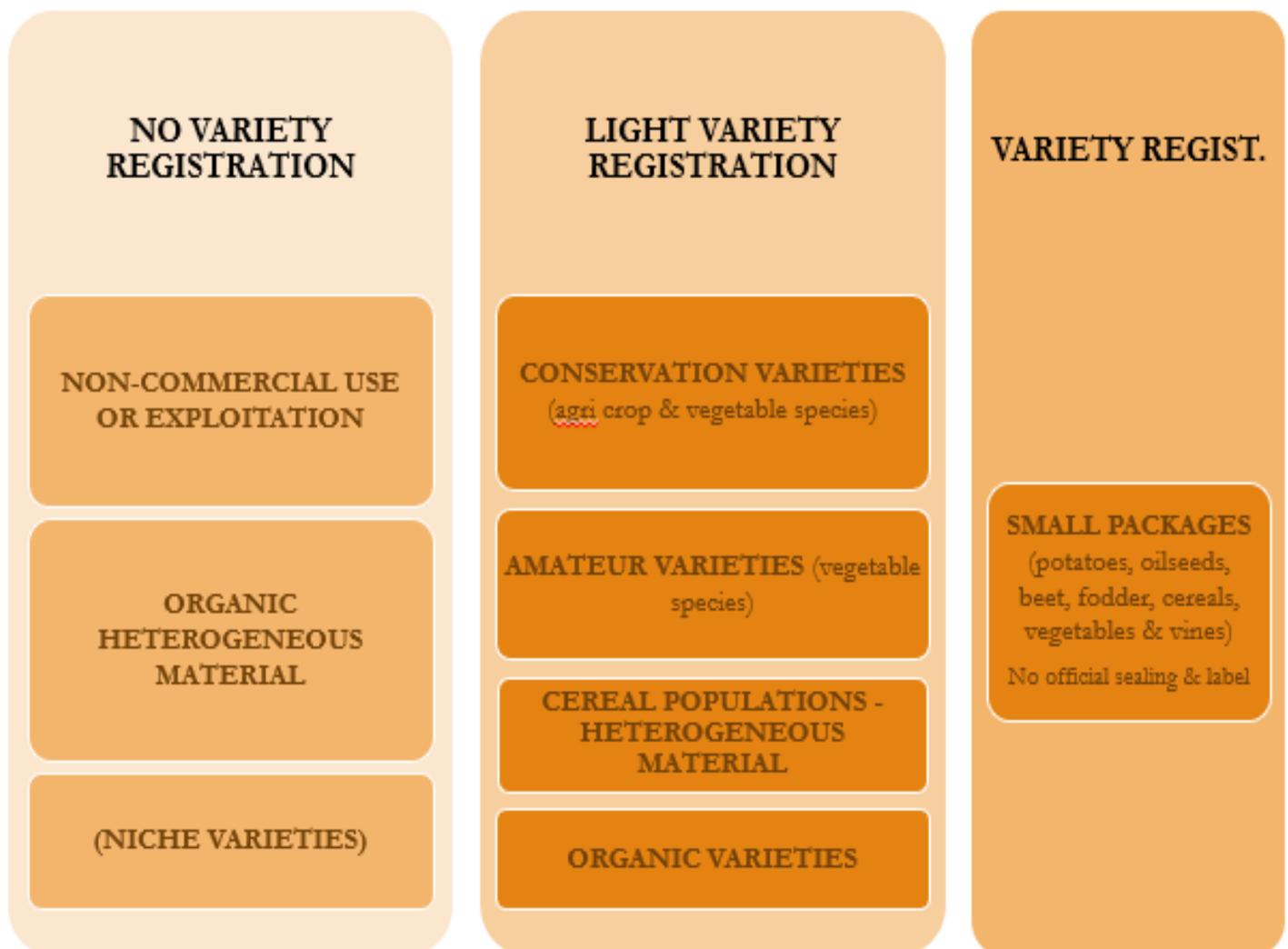
LIMITED DEROGATIONS: LIGHT LABELLING & PACKAGING RULES

The last type of derogations are very specific exceptions that are granted in some Directives to **alleviate the stringent requirements either with regards to production rules, or to labelling and packaging standards**. In potatoes, oilseeds, beet, fodder, cereals, vegetables & vines, operators that sell seeds in small packages do not need to comply with the full spectrum of labelling requirements. Small seeds packages are defined with regards to the maximum net weight of a single package, both in EU seed Directives and the corresponding national laws. In England's Seed Regulations, small packages can weigh up to 2,5 kg for beet seeds, up to 15 kgs for cereal or oil and fibre seeds, up to 2 kg for fodder seeds. For vegetable seeds the EU texts set limits of 5 kgs (for legumes), 500 grams (for onions, chervil, asparagus, spinach beet or chard, red beet or beetroot, turnips, water melon, gourd, marrows, carrots, radishes, scorzonera or black salsify, spinach, corn- salad or lamb's lettuce) or 100 grams (all other regulated species). The species listed for the 500 grams weight limit is different in the UK, as it applies to seed packages of asparagus, beetroot, carrot, chard or spinach beet, gourd, marrow, onion, radish, spinach or turnip.

The plant variety that the seeds belong to however needs to be registered in a national official list. That is why even though these provisions do provide some much welcome flexibility to enter the

formal seed market, the stringent variety registration requirement still constitutes a barrier to entry for crop diversity.

The EU seed Directives do **provide different options for crop diversity initiatives to choose from** when assessing how to ensure their activities related to the exchange, storage, transfer and sale of seeds comply with applicable law. These options can be divided into three groups according to the flexibility they offer with regards to the plant variety registration requirement. Except for the general derogation regarding the transfer and sale of seeds in a non-commercial context, all options include more or less stringent production and labelling rules.



GRAPH 5: Options available for crop diversity actors to engage in the exchange and sale of seeds, in light of plant variety registration requirements

SEED MARKETING OUTSIDE COMMERCIAL EXPLOITATION

- Potentially wide-reaching opportunity
- Need positive national interpretation (administrative or formal decision, blind eye?)
- No quality standards or production rules to follow

ORGANIC HETEROGENEOUS MATERIAL

- Organic Regulation 2018/848 – in force on 01/01/2022
- Notification dossier & description OHM?
- Quality standards - Production rules & Organic certificate

NICHE VARIETIES

- Not operational (from EU Commission proposal 2013 & CH law)
- Quality standards - Production rules

CONSERVATION VARIETIES (agri & vegetable seeds)

- Linked to DUS protocols - Quantitative limits (global area) & Geographic limits (region of origin)
- Quality standards - Production rules (mandatory certified seed for agri)

AMATEUR VARIETIES (vegetable seed)

- Official description - Quantitative limits (package net weight)
- Quality standards - Production rules (standard seed except purity)

CEREAL POPULATIONS - HETEROGENEOUS MATERIAL

- Temporary Experiment (limited number of countries)
- Notification procedure – No certification

ORGANIC VARIETIES

- Future Temporary Experiment: limited species
- Mere adjustment of DUS protocols
- Quality standards - Production rules – Organic Certificate & Organic Breeding

GRAPH 6: Detailed options for crop diversity actors (strengths & weaknesses)

MAIN PATHWAYS FOR FUTURE ADVOCACY

The contextual analysis of EU seed Directives shows that there are two mutually supportive pathways to advocate for more space for associations and companies that strive to conserve seed diversity and ensure its wider and more sustainable use in the United Kingdom:

- (1) **target the definition of seed marketing**, delineating the notion of commercial exploitation favourably to exclude a wide range of activities from its scope,
- (2) define more favourable outlines **for *ad hoc* regimes that allow for the commercial exploitation of all types of seed diversity**



EXCHANGE & SALE OUTSIDE “MARKETING”

Advocate for a defined yet ample range of activities falling outside of the notion of commercial exploitation of seeds and propagating material

GENERAL DEROGATION
COMMERCIAL ACTIVITIES AIMED AT
CROP DIVERSITY CONSERVATION:
Definition of Scale? Actors?



AD HOC REGIMES FOR MARKETING SEED DIVERSITY

Carve out better suited *ad hoc* regimes that ensure the commercial exploitation of crop diversity outside of the productive agricultural production mindset. Allow non-DUS material to be sold in commercial exploitation context

LIGHT VARIETY REGISTRATION:
Conservation & Amateur Varieties

PARALLEL REGIME:
Notification Organic Heterogeneous Material

GENERAL DEROGATION:
Niche Varieties

While the former approach would undeniably support initiatives where the primary aim of conservation and sustainable use of crop diversity is evident and that are generally not engaged in significant mercantile activities in the formal seed market, the second approach would focus on creating legal certainty for those seeking a tailored and legitimate entry for a larger range of seed initiatives into the formal seed market. By understanding and communicating the practical challenges and inherent limits of the existing options provided for by the EU seed Directives, the future landscape of seed marketing laws in the UK could very well become a supportive tool for crop diversity initiatives, rather than a hurdle to overcome.