



COMMENTS ON THE EU FRAMEWORK ON FSS

Chisinau, October 6, 2015





Agenda

1. Introduction - ESA
2. Legal Context of FSS
3. Established case law of the CJEU
4. Plant Breeding Challenges
5. Royalty collection systems
6. Statistics
7. Conclusions



1. Introduction - ESA

- SINGLE voice of the European seed industry
- Represents the European seed industry via the European institutions and their representatives

- ✿ European Institutions and Bodies

- ✿ International Institutions



1. Introduction - ESA

ESA's mission is to work for:

- ✿ fair and proportionate regulation of the European seed industry
- ✿ effective protection of intellectual property rights relating to plants and seeds
- ✿ freedom of choice for customers (farmers, growers, industry, consumers) in supplying seeds as a result of innovative, diverse technologies and production methods



1. Introduction - ESA

ESA's Membership today:

- ✿ 38 national seed associations (Associations Members)
- ✿ 40 direct company members (Individual Members)
- ✿ 29 members in seed-related businesses (Associate Members)



1. Introduction - ESA

Item	
Value EU seed market	€ 7 bn
Number of seed companies	7.200
Employment	ca 52.000
Annual R&D Spending	Up to 20% (of turnover)
R&D Stations	750
R&D Employees	ca 12.500



2. Legal context of FSS

UPOV 1991 Convention:

- ✿ Art. 15(2): optional exception to the breeder's right to allow farmers to use for propagating purposes the product of the harvest they obtained by planting the protected variety
- ✿ Recommendation to Art. 15(2) – common practice

EU law:

- ✿ Art. 14 of CPVR Regulation: 'agricultural exemption' allowing the use of FSS of certain species of fodder plants, cereals, potatoes and oil and fiber plants
- ✿ Implementing rules in Regulation (EC) no. 1768/95



2. Legal context of FSS

Justification of the 'agricultural exemption' in CPVR Reg.

- ✿ Safeguarding agricultural production → still valid?

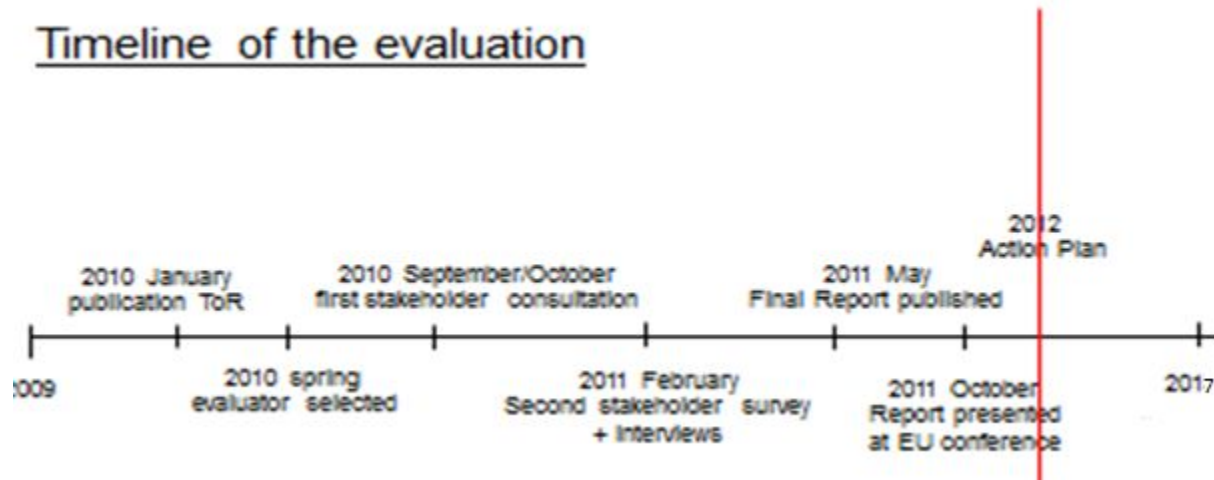
Cornerstones of the 'agricultural exemption'

- ✿ Safeguarding the legitimate interests of the breeder and the farmer
- ✿ Obligation of farmers to provide information
- ✿ Obligation of farmers to pay an equitable remuneration



2. Legal context of FSS

Timeline of the evaluation



- 🌱 Evaluation of the CPVR *acquis* started in 2009 – Action Plan was scheduled for September 2012
- 🌱 Delayed – cabinet did not take the commitment → standstill until today



2. Legal context of FSS

CPVO WG FSS (2010) conclusions:

- ✿ Legislator has to restore the balance
- ✿ Information obligation (national systems / SPS form)
- ✿ Small farmers (political concept, based on area)
- ✿ Own holding
- ✿ Information to farmers on free varieties
- ✿ R&D investment depends on effective enforcement rules and royalty collection systems



2. Legal context of FSS

CPVO ad hoc LWG:

- ✿ Experts from MSs and breeders' organizations
- ✿ Chaired by CPVO
- ✿ Discussed issues raised in evaluation report and beyond
- ✿ Formulated concrete proposals for legislative changes
→ FSS item was on agenda but on hold (with future follow-up needed)



3. Established case law of the CJEU

Cases:

- ✿ C-305/00 *Schulin*
- ✿ C-182/01 *Jäger*
- ✿ C-336/02 *Brangewitz*
- ✿ C-7 to 9/05 *Deppe*
- ✿ C-509/10 *Geistbeck*
- ✿ C-56/11 *Raiffeisen*
- ✿ C -242/14 *Vogel*



3. Established case law of the CJEU

These cases are mainly dealing with: information obligation of farmers / seed processors, reasonable compensation in case of infringement, equitable remuneration

Conclusions:

- ✿ Right holders cannot ask all farmers to declare their use or non-use of FSS
- ✿ Right holders need to have a clue (an indication) that farmer might have used FSS → can ask for the information
- ✿ Obligation for farmers to pay the equitable remuneration till 30 June of the marketing year within which planting of FSS took place

→ practical enforcement very cumbersome



4. Plant breeding challenges

Context 2015 – Challenges

- 🌱 How to feed the world in 2050?
- 🌱 Food Security
- 🌱 Sustainability
- 🌱 Climate change



Increased investment



4. Plant breeding challenges

Need for increased investment to:

- ✿ Develop adapted varieties
- ✿ Boost yields
- ✿ Develop varieties with improved disease resistance
- ✿ Develop varieties with improved quality traits
- ✿ Develop varieties for different uses (bio-energy)



5. Royalty collection systems

Systems for royalty collection on FSS use:

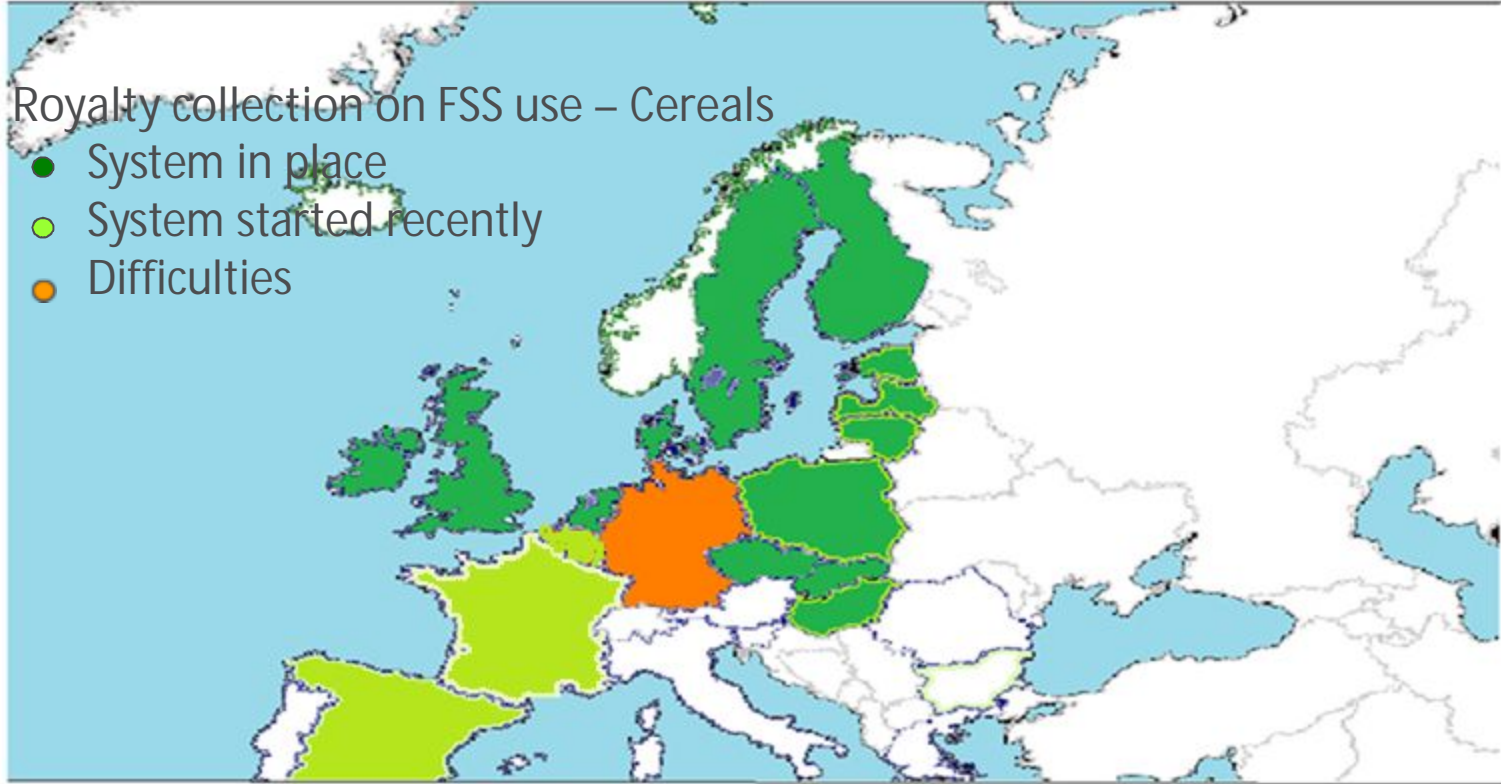
- ✿ Usually two sets of rules apply – national PBR and CPVR but collection is organised in one system → simple
- ✿ Cereals: 17 of 28 Member States – UK, IE, FI, SW, EE, PL, SK, CZ, HU, DE, NL, BE, FR, DK, LT, LV, ES
- ✿ Potatoes: 15 of 28 Member States – UK, SW, FI, EE, NL, DE, CZ, DK, HU, SK, LT, LV, BE, PL, FR
- ✿ Set-up and effectiveness of the national collection systems differ on a wide range



5. Royalty collection systems

Royalty collection on FSS use – Cereals

- System in place
- System started recently
- Difficulties

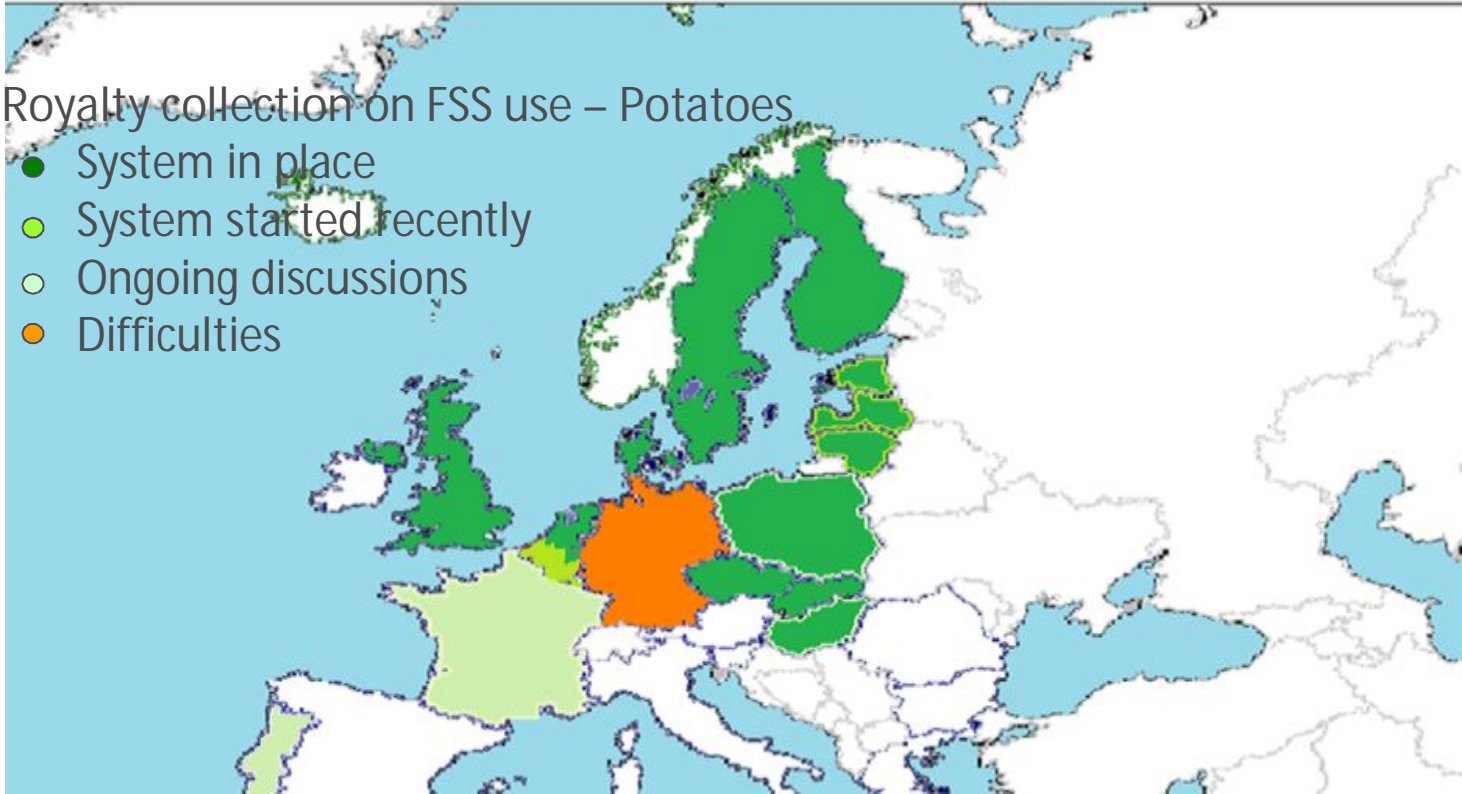




5. Royalty collection systems

Royalty collection on FSS use – Potatoes

- System in place
- System started recently
- Ongoing discussions
- Difficulties





6. Statistics FSS

Statistics ESA Survey 2012 – EU 27 (million ha's)

Crop		Coceral 2012	ESA Survey 2012	FSS % 2005	FSS % 2012	
Wheat	-soft	23 mha	19.4 mha	49	55	
	-durum	2.7 mha	2.2 mha	10	39	
Barley	-winter	4.5 mha	4 mha	42	46	
	-spring	7.8 mha	7.4 mha	56	55	
Rye		2.4 mha	2.4 mha	77	73	
Oats		2.7 mha	2.2 mha	71	70	
Triticale		2.7 mha	2.6 mha	59	70	
Total		47 mha	40.2 mha	52	56	



6. Statistics FSS

✿ Farm structure in the EU27 (Eurostat 2010)

	Nr of farms (million)	Nr of farms (%)	Area (million ha)	Area (%)
< 20 ha	10.5 million	87.5	39	22
>20 ha	1.5 million	12.5	133.5	78
Total	12 million	100	172.5	100



6. Statistics FSS

🌱 Farm structure in the EU27 (Eurostat 2010)

MS	Nr farmers	< 5 ha	5<x<20	>20 ha	% > 20 ha
DE	371	84	120	167	45
FR	527	130	101	296	56
IT	1680	1231	325	124	7
HU	626	560	42	24	4
PL	2391	1637	629	125	5
RO	3931	3531	370	30	1
SE	72	11	27	34	47
UK	300	119	60	121	40



7. Conclusions

- ✿ Legal framework
 - EU: not likely to be improved
 - National: Possibilities for more stringent rules
- ✿ Royalty collection systems
 - Extensive experiences in 17 EU Member States
 - Many different possibilities
- ✿ Communication with farmers - Crucial



7. Conclusions

More information on:

ESA position on FSS:

http://www.euroseeds.org/publications/position-papers/intellectual-property/esa_11.0050

ESA position on enforcement of PBRs:

https://www.euroseeds.eu/system/files/publications/files/esa_11.0051.1.pdf

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THANK YOU FOR YOUR ATTENTION!



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