



## Kokopelli ruling -

# CJEU confirms validity of European seed marketing legislation

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ESA is the voice of the European seed industry, representing those active in research, breeding, production and marketing of seeds of agricultural and ornamental plant species. It represents more than 30 national seed associations (and with that more than 7000 seed businesses in the EU) and more than 60 direct company members.

ESA's mission is to work for fair and proportionate regulation of the European seed industry, freedom of choice for customers in supplying seeds as a result of innovative, diverse technologies and production methods and for effective protection of intellectual property rights relating to plants and seed.

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In its ruling of 12.07.2012 on the “Kokopelli case” (C-59/11), the Court of Justice of the European Union (CJEU) confirmed the validity and proportionality of the current EU seed marketing legislation. The Court supported the arguments put forward by the Commission, Council and some Member States and generally did not follow the line of argumentation of the Advocate General who had considered parts of the existing seed marketing legislation as invalid.

“The ruling comes at a very important time”, Garlich von Essen, Secretary General of ESA, the European Seed Association underlines. “The Commission needed this legal confirmation from the Court as it is currently finalising its legislative proposal for a revision of the European seed marketing legislation.”

This revision process started in 2008 with an evaluation of the strengths and weaknesses of the existing marketing legislation. Following the evaluation, the Commission will be submitting a legislative proposal to Member States and EP by the end of the year.

The ruling of the CJEU on the interpretation of some principle provisions of Europe's legal framework for seed marketing, in particular the requirement for an official examination and listing of varieties, was triggered by a national case involving a small-sized seed company and Association Kokopelli, also active in the marketing of seeds. Following a clear decision in the first instance, the case was referred to the CJEU to clarify if some of the EU's legal requirements for marketing of seed were in fact too strict and unduly restricted the right to conduct business.

“The CJEU has made it clear that the EU Treaty clearly defines fundamental policy objectives which include food security, food quality and agricultural development. The current seed marketing legislation properly addresses these objectives by regulating that only high quality seed of clearly identified and officially accepted plant varieties should be marketed. Where exemptions from the strict quality criteria are necessary, the current legislation already provides for respective options”, G. von Essen explains.

ESA has defined the clear identification of plant varieties, their performance (potential for yield or resistances etc.) and the actual high level quality of the seed finally sold to farmers and growers as its priorities for the legislative revision. The CJEU ruling now surely provides important guidance to the Commission for its further work.

According to G. von Essen, “the European seed sector is very satisfied with the ruling. It has strengthened the necessary transparency and with that consumer information and protection that is desired by farmers and growers and society at large and that is also a major driver of plant breeding innovation in Europe.”

For the full text of the ruling, see

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=125002&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=14213>