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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Genetic Resources and Innovation in Agriculture (Seeds, Propagating and Planting Materials)
Subject:	Regulation on plant reproductive material - Article 9a (Control plot tests for pre-basic, basic and certified seeds) - Joint comments from Austria, Estonia, Germany, Finland, Latvia, Lithuania, Portugal and Sweden

Delegations will find in the annex joint comments on Article 9a (Control plot tests for pre-basic, basic and certified seeds) from Austria, Estonia, Germany, Finland, Latvia, Lithuania, Portugal and Sweden.

Joint comments of *Austria*, *Germany, Estonia, Finland, Latvia, Lithuania Portugal and Sweden* on Article 9a

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Article 9a (former Article 24) - Control plot tests for pre-basic, basic and certified seeds

This article was discussed in the Council working party meeting twice during the Belgian Presidency (March and June 2024) and again during the Polish Presidency (April 2025). During the discussions about this Article, many comments were made, and the formulation of this article was somewhat changed during the discussion. The latest version was provided by Polish Presidency (WK 7545/2025 INIT).

Control plot tests are conducted to assess and verify varietal identity and purity of seed lots. This is an important step in assuring the high quality of certification processes and high quality of certified seed. We have in our current seed marketing directives requirements for control plot tests and similar requirements are found in the OECD Seed Scheme`s rules.

During the discussion of this article in the Council Working Party meetings, some delegations have raised concerns about specific requirements in relation to sampling.

We are concerned that, according to the current wording of the Article 9a, point 1. and 3, the sampling would be restricted only to be done by the competent authorities or by an automatic sampling device that is officially approved by the competent authority. We are worried this requires in practice double sampling, as the authority would need to resample seeds lots already sampled by professional operators during certification under supervision. This would increase costs for the professional operators and for the authorities. It should be also considered that costs especially for SME companies would increase as they do not necessarily have the possibility to invest in automatic sampling devices.

Samples for seed certification can be taken also by professional operators under the official supervision of competent authority, if those professional operators are authorised to perform such activity (article 10 and Annex II, point C.). Before such an authorisation is granted, the competent authority must ensure that the professional operator is trained, possesses the needed knowledge, and follows all requirements related to sampling. Requirements for the competent authorities to supervise these actions performed by professional operators under official supervision are laid down in article 12.

Also, according to OECD rules, authorised samplers can be used when taking the samples during seed certification. For post control tests, there are no special requirements on sampling. We would also like to bring to your attention our observation in relation to the use of automatic sampling devices approved by the competent authority in sampling (point 3.). We found an uncertainty in current wording and what it means in praxis. According to ISTA rules, the sampling procedure starts when the automatic seed sampler is sealed. Taking this into account, this can be interpreted so that the automatic seed sampler can be sealed only by competent authority. For the purpose of seed certification, the automatic samplers can be used and professional operators are authorised to take samples. We believe that sampling should always be done according to the ISTA and OECD rules.

We propose that the art 9a, point 3. should be amended as follows (WK 7545/2025 INIT - see below track changes are in red and underlined):

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Article 9a (former Article 24)

Control plot tests for pre-basic, basic and certified seeds

1. Control plot tests shall be carried out by the competent authorities in order to verify that the lots of pre-basic, basic and certified seed, except **for lots of** seed ~~lots for~~ **of ~~potatoes,~~ vine and** fruit ~~and vine~~ species, placed on the market comply with the requirements relating to their varietal identity and varietal purity~~,~~.

   Those tests shall consist of a visual comparison between the control plot sown ~~from~~ **with** a ~~reference~~ **standard** sample ~~of the variety~~ and a plot sown ~~from~~ **with** a sample of ~~seed representative of the seed~~ **the** lot **under testing**. The **~~That~~** sample of the ~~seed~~ lot shall be taken ~~upon~~ **during the** certification or ~~during the~~ marketing of**:**

   a) **a** lot~~s~~ of pre-basic, basic and certified seed intended for the production of a new generation **or category** ~~of seed (pre-control)~~**;** or

   b) ~~of~~ **a lot of** seed of a generation no longer intended for further multiplication ~~(post-control)~~.

   Those tests shall take place **no later than** during the growing season following the drawing of the sample.

   a) […]

   b) […]

2. ~~The proportion of these~~ **Those** control plot tests **shall apply** ~~for~~ **to all lots of** pre-basic~~,~~ **and** basic **seed.** ~~and~~ **In the case of** certified seed**, the proportion of the** lots **to be tested** shall be determined on the basis of a risk analysis concerning possible non-compliance of the seed with the respective requirements.

3. ~~On the basis of the risk analysis referred to in paragraph 2, the control plot tests shall be carried out by using~~ **The** samples ~~from of~~ **from a tested** ~~seed~~ lots **of seed** referred to in paragraph 1 **shall be** taken by the competent authority**, by an authorised sampler under official supervision**, ~~**That sampling may be carried out or**~~**or by using an automatic sampling**

device officially approved by the competent authority. If samples are taken during marketing, they shall be taken by the competent authority.

Sampling is to be carried out according to ISTA rules.

4. […]

~~4.~~ **5.** ~~Where the results of control plot testing referred to in paragraph 1 are not conclusive as to the~~ **For the purpose of control of** varietal identity and varietal purity, biochemical and bio-molecular techniques recognised in accordance with Article 7(4), point (~~g~~**eb**), may be used ~~as a supplementary tool~~.

5a. When the results of the test referred to in paragraph 1 indicate that the requirements of Article 7 have not been fulfilled, the competent authority shall**:**

(a) withdraw or prohibit further multiplication and marketing of the ~~concerned~~ seed lot **concerned;** ~~or~~

(b) ensure that ~~it~~ **the seed lot concerned** complies with the applicable requirements**;** or

(c) ~~impose~~ **take** other appropriate corrective actions.

5b. The Commission may, by means of implementing acts in accordance with Article 76(2) set out rules concerning the control plot tests of **lots of pre-basic, basic and certified** seed ~~lots~~ per genera or species. Those rules shall be adapted to the development of scientific and technical knowledge and international standards, and may be established per particular genera, species or category. They may concern the following **elements**:

(a) criteria for the conduct of the risk analysis referred to in paragraph 2;

(b) the testing procedure;

(c) the ~~way of~~ evaluation of **the** results of the tests~~;~~

~~(d) the proportion of the seed lots or the frequency rates~~.

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