CPVO
Community Plant Variety Office

CPVO Comments on the Commission Study exploring options to update the existing legislation on the production and marketing of plant reproductive material

1. Introduction

The Commission has published the Study exploring options to update the existing legislation on the production and marketing of plant reproductive material and has initiated a public consultation on the so-called Inception Impact Assessment ("IIA"). The CPVO congratulates the Commission for having carried out the study. The CPVO was happy to contribute to the study, in particular by providing input to the work of the external contractor. The CPVO is interested and willing to continue cooperation in view of the forthcoming impact assessment and has decided to respond to the IIA directly to DG SANTE rather than through the public consultation.

2. General comments

This document will focus on the role of the CPVO in relation to the initiative "Revision of the plant and forest reproductive material legislation".

The CPVO believes that there are reasons supporting the fact that the CPVO should be given further responsibilities in the PRM sector. Efficiency gains could be made for the Commission, EU Member States as well as the industry. As will be seen from the below, there are tasks that are presently carried out by the Commission that could be transferred to the CPVO. There are also tasks that EU Member States are under an obligation to carry out under the relevant directives which we believe Member States could delegate to the CPVO on a voluntary basis.

The above would fall neatly into the some of the key objectives mentioned in the study, which the CPVO fully supports, namely;

- making existing rules compatible with EU policy aims in particular the achievement of the EU green deal objectives and the implementation of the F2F strategy;
- streamlining administrative procedures; ○ decreasing administrative burden for operators.

The next section of this document includes more detailed comments on some aspects of the study.

3. Specific comments

3.1. Coherence of EU Acts

The CPVO supports the importance to establish coherence amongst different EU legal acts and to create the links with the principles of the plant health and official control legislation. However, in the Commission staff working document (the Commission document) we miss a reference to the EU PVR legislation (Plant Variety Rights). For some of the potential measures highlighted in the Commission document (DUS protocols for organic

varieties, exchange of PRM between farmers etc.), coherence with the EU PVR legislation is important. For instance, the absence of coherence could undermine key UPOV principles which the EU PVR system is built upon. The envisaged clarification of rules regarding exchange of seeds among farmers by establishing an ad hoc framework should not weaken the implementation of the provisions on the use of farm saved seeds laid down in the 14 of Council Regulation 2100/94 and Commission Regulation 1768/95.

Regarding the simplification of registration procedures under the DUS requirements, it is important to note that DUS examinations for national listing and for granting Community Plant Variety Rights (CPVR) are based on the same technical protocols. The harmonization of protocols allows the CPVO to use DUS reports from national registration procedures of agricultural and vegetable species to base decisions to grant CPVRs. Efficiencies following the mentioned harmonization means important cost savings for applicants and a reduction of administrative burdens. Any changes to this mechanism should therefore be carefully assessed (see also comments below).

3.2. Allow Member States to delegate national listing for certain species to the CPVO

In view of streamlining administrative procedures the CPVO is convinced that, especially for species without VCU requirements, applications for listing (vegetables & some fruit species) could be filed through the CPVO. The technical assessment is identical for listing and CPVR purposes, namely a positive DUS report. The CPVO could provide PVP protection and market authorization for the same (or very similar) price as the price now only comprising CPVRs. Some Member States may not be in favor of this whilst others may welcome efficiency measures that would allow them to decrease their administrative structure for this sector. The Directives could be amended so that Member States have an option to either provide national listing for the relevant species themselves or to delegate this task to the CPVO. This would remove administrative burden and costs for applicants as well as for national authorities. This proposal has not been explicitly taken up in the Commission document, it is however mentioned in section 9.2 Part B of the Commission document.

3.3. Variety denominations

The CPVO is managing the largest database worldwide for plant varieties, the CPVO Variety Finder (VF). Member State authorities and EU Examination offices notify regularly variety data to the VF. A part of those notifications are also made to the Commission in the framework of the EU Common Catalogues. We are of the opinion that significant efficiency gains could be made when only one single notification system is operational at EU level. The joint project on the EU variety portal is a step in that direction. It will however not remove extensive data exchanges between the Commission services and the CPVO. Member State authorities, the CPVO and the Commission could significantly reduce administrative burden, the risks of making mistakes and cost for stakeholders in case there was one single database managed by one "institutional manager". The CPVO would be ready to take over such responsibility for the EU variety databases for plant varieties. The Commission's approach so far has been that since the legislator has tasked the Commission to manage the Common Catalogue, this cannot be delegated to the CPVO. The CPVO believes that the impact assessment should consider amending the legal framework giving this task to the CPVO or empower the Commission to delegate or enter into a SLA with the CPVO on the management of the Common Catalogue.

3.4. Cross reference in applicable directives to DUS technical protocols issued by the CPVO

The basis for variety testing in the EU are the DUS technical protocols. The CPVO, in close cooperation with national experts, is in charge of the developing the technical protocols which are adopted by the CPVO Administrative Council. As mentioned above, the technical protocols are the basis for variety testing in view of national listing as well as for CPVRs.

The procedure laid down in the relevant Directives of updating the technical protocols to be applied for listing purposes, by referring to the CPVO technical protocols (the "cross reference"), is very slow. As a consequence, the technical protocols adopted by the CPVO Administrative Council for CPVR purposes become applicable for national listing with a significant delay. Experience has shown that EU-Examination offices start using the CPVO technical protocols for listing purposes before the "cross reference" has entered into force. Any future update of the legislation should aim to avoid such a time gap.

3.5. Simplifying implementing rules on variety denominations

Article 63 of Council Regulation 2100/94 establishes rules on the suitability of variety denominations. Article 63 is implemented by two different legal acts, one for CPVRs (Guidelines adopted by the Administrative Council of

the CPVO) and one for listing (Commission Implementing Regulation 2021/384). The reason for having two implementing acts are formal but the substance of the rules should be the same. The management of two acts is administratively heavy, especially when the two acts have to be updated simultaneously. Despite the fact that the rules should be the same, the present situation creates divergences in interpretation which are not always understood by stakeholders. It should be explored if one single act could be achieved in the future. As for the technical protocols, a cross-reference could be made from the Directives to the Guidelines of the Administrative Council. Another method, as mentioned above, could be to amend the legislation with a legal base for the CPVO to manage the Common Catalogue.

3.6. CPVO advice service on variety denominations

The CPVO has developed an "advice service" to Member States as regards the interpretation of the rules on the suitability for proposed variety denominations. Member States consult the CPVO on proposals for variety denominations submitted in national procedures and the CPVO provides an advice. This procedure was introduced in order to avoid situations where decisions on the suitability of variety denominations made on national level differ from decisions in respect of the same variety denomination at EU level. This service has significantly improved the situation as regards the acceptance process of variety denomination in the EU. However not all Member States are making use of that voluntary service. In cases where Member States do not make use of the advice service the experience made is that on a regular basis, variety denominations are accepted by a national authority despite an existing legal impediment. Such situations have a strong negative consequence for companies in terms of cost and administrative burden being obliged to change a variety denomination for PRM which is already on the market. One option would be to make it obligatory for Member States to use the CPVO advice service before a variety can be listed in the Common catalogue. Although the CPVO advices are not binding, this proposal would avoid inconsistencies in the decision-making process since Member States requesting advice always follow the opinion of the CPVO. Breeders would take advantage of a fully centralized service with predictable decisions.

3.7. Listing and PVP for organic varieties

The F2F strategy includes the aim of reaching 25% of agricultural land under organic farming by 2030 (8 years from now). One way to achieve this objective is to ensure that investments are made in plant breeding focusing on varieties that are suitable for organic farming. We believe that breeding companies are willing to make such investments if there is a prospect of a return on the investment. The EU plant variety right system provides breeders the possibility to protect their inventions with an intellectual property right and thereby a possibility to reinvest income in R&I activities. As mentioned above under 3.1, it is therefore important that coherence between the applicable regulations is achieved and that organic varieties can continue to be protected by a CPVR.

As regards the development of specific testing requirements for organic varieties, the CPVO will continue supporting the Commission. Moreover, the CPVO would be willing to take over more tasks to deal with registration and protection mechanisms that would be set up for organic varieties in the future. This would allow maintaining a coherence with the CPVR system and reduce administrative burdens on competent authorities in the Member States. The present revision of the 12 Directives and the expected targeted revision of Council Regulation 2100/94 would be the occasion to enlarge the mandate of the CPVO.

In respect of the "stringent registration procedures" as referred to in paragraph 3.2 of the Commission document we are very sensitive to modifications the DUS requirements that would create discrepancies for listing and CPVRs purposes. Also here the aspect of coherence should be born in mind. Today the "one key several doors principle' allows varieties to be listed in a national list and to obtain a CPVR on the basis of the same DUS report. This saves cost for stakeholders and reduces administration for national authorities. Any deviation from the present situation should therefore be carefully discussed. The present system allows already today for a high degree of flexibility as regards the Uniformity requirements depending on the type of variety. The use of such flexibility for instance for population varieties should be explored. The CPVO, being the authority in charge of preparing the DUS Technical Protocols in a harmonized way for listing and CPVR purposes, is eager to contribute to such discussion.

3.8. The use of Biomolecular techniques

The CPVO is satisfied to note that the Commission document makes reference in paragraph 3.5 to potential obstacles to innovation. We share the view that the "current rules impede the use of scientific and technical developments

such as BMT". In that context we would like to remind the Commission that in addition to footnote 47 of the Commission document where reference is made to working groups established by OECD, ISTA and UPOV, also the CPVO Administrative Council has set up a BMT Working Group IMODDUS. IMODDUS acts as think-tank for the CPVO and stakeholders and explores possibilities on how modern BMTs could be used within the framework of variety testing. We think that IMODDUS could contribute to discussions as referred to in the proposed Horizontal measures under paragraph 5.2 of the Commission document. In this respect, relying on actions that can be implemented under Horizon Europe should be further explored and implemented. The CPVO would be willing to take a leading role in this field. Moreover, with the adequate increase in resources, the CPVO in partnership with other institutions/agencies (such as the EUIPO) would be willing to support the development of new digital technologies to support innovation and competitiveness of the EU PRM industry. In this area, the Commission document also refers to the lack of a secure IT system of exchange information on seed fraud in relation to the voluntary EU Seed Fraud Network, which hampers the functioning of the network. Within the cooperation of the CPVO with the Observatory on infringements of IP Rights, the Office would be able to support the implementation of the EU Seed Fraud Network.

Angers, 16 July 2021