



ESA

European Seed Association

Community Plant Variety Rights System – views of the European seed industry



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Before we start

ESA:

- is the single voice of the European seed industry representing the interests of its members towards the European institutions and their representatives
- Works for effective IP protection for plants and seeds; fair and proportionate regulation of the European seed industry; freedom of choice for customers
- members from all over Europe (associations, seed companies, related companies)



Content

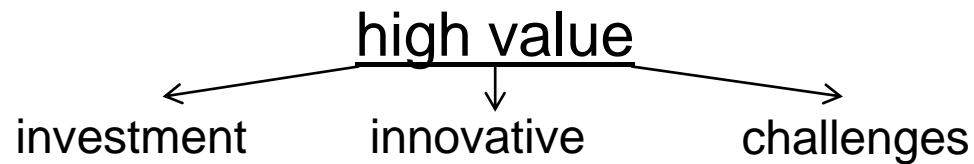
1. Some general comments on the CPVR system
2. About the outcomes of the evaluation:
 - In general
 - In more details
 - Some additional issues
3. Closing remarks



General Comments

Why is IP protection important for plant breeders?

- products of plant breeding are of



- Creation of such products needs incentives
- IP → allows a fair return on investment



IP stimulates innovation



General Comments

PBR:

- UPOV → specific IP: tailored to the needs of the plant breeding sector

↳ “open source” → breeder’s exemption

CPVR:

- single title in whole EU
- to the benefit of all: breeders, farmers, wider public
- breeders are generally very satisfied with the system



General Comments

- However plant breeders welcome the evaluation since experience has shown that the system:
 - has some deficiencies;
 - needs some clarification;
 - needs some modernization.



A review after 15 years looks timely.



About the evaluation... in general

- Overall a very positive report
- Confirms that the system works well and is well appreciated by its users
- Identifies a number of areas for improvement
- All options recommended for action touch upon relevant issues



About the evaluation... in details

Option A: implementation of 'one key several doors' approach

- DUS criteria same for protection and variety listing
- Should be enough to conduct testing once and use the report same DUS report for national and EU listing and protection
- To improve efficiency, reduce costs and administrative burden
- Principle suggested by ESA in Better Regulation → taken up
- For coherence ESA also proposed the principle to be implemented in the CPVR review → taken up

→ Very positive outcome



About the evaluation... in details

Option B: improve information on patents

- Transparency on patented material is important for breeders
→ ESA supports the idea BUT
- doubts if the proposed way of implementation involving CPVO is the right one
- Full coverage of such a system is needed – not only CPVR protected varieties

→ ESA proposes to give more consideration to possible ways of implementation



About the evaluation... in details

Option C: improve interaction with Enforcement Directive

- Important to align enforcement provisions in the two pieces of law → ESA supports this option BUT regrets that report only goes this far
- Enforcement is the weak point of the system:
 - Self-reproducing material → easy to infringe, difficult to police and prove
 - Enforcement provisions not tailored to the specific material and IP



Can become an obstacle to plant breeding and breeding progress – at least in certain crops



About the evaluation... in details

Option C: improve interaction with Enforcement Directive (cont.)

- Report confirms on several occasions that enforcement is the big concern of breeders but ranks the issue as secondary → ?

→ ESA proposes to reconsider this option and put much more emphasis on the topic in the review



About the evaluation... in details

Option E: improve adoption of thresholds for EDV determinations

- CPVO-led support in developing thresholds for EDVs
- ESA supports more involvement of experts from CPVO but
- keep projects industry-led

Definition of EDVs

- Difference in wording in CPVR and UPOV
- Need to align the two definitions for clarity
- Brought up in evaluation by ESA → not taken up

→ ESA proposes to reconsider this important question and include it as a recommended policy option



About the evaluation... in details

Option G1: amend CPVR to obligate farmers to report 'yes' or 'no' whether they have used FSS

- Current system does not work in respect of enforcement of FSS – due to weak wording of Regulation and ECJ rulings



About the evaluation... in details

Option G1: amend CPVR to obligate farmers to report 'yes' or 'no' whether they have used FSS (cont.)

- Very important conclusion of the report
 - Amendment is crucial to achieve the goal of the review = improve the functioning of the system
 - CPVO FSS WG also came to this conclusion
- ESA very much welcomes this recommendation



About the evaluation... in details

Options H1 and H2: specialized courts on national and EU level

- Currently no or not enough expertise on PBR with courts
→ further weakens enforcement
- ESA proposed the creation of specialized courts in evaluation
→ taken up in recommendations → very positive
- Important step to improve enforcement possibilities



About the evaluation... in details

Option I1: amend CPVR to improve the provisions on protection in respect of harvested material

- Conditions of exercise of right in respect of harvested material need clarification → ESA supports this recommendation BUT
- ESA also proposed extension of scope to products directly obtained from harvested material:
 - Improve enforcement possibilities for breeders
 - Tool to improve traceability and fight against illegal material
- Extension of scope to harvested material in transit also proposed
→ not recommended by report

→ ESA proposes to reconsider this proposal and include as recommended option



Some additional issues

Report also recommends:

- Extension of CPVR system to EFTA countries
 - Administrative improvements (access to documents; textual errors; facilitation of hiring procedures)
- benefit the users of the system → support

BUT:

- Some options rated too low compared to its wide support
- Some options such as facilitation of communication (between applicant and CPVO as well as applicant and examination office) not recommended → ?
- Some other proposals of ESA such as protection symbol → not even considered by report → ?



Some additional issues

One of the objectives of the evaluation as defined in the Terms of Reference was to look into the issue of interface between patents and plant breeder's rights

- no real conclusions / recommendations in this respect
- ESA still considers it an issue of high importance
- new IP position of ESA on this aspect adopted in September 2011



Closing remarks

ESA is of the view that:

- Provisions on reporting obligation in respect of FSS
- Better enforcement possibilities
- ‘One key several doors’ principle
- Clarifications on harvested material and EDVs

are THE key issues for this evaluation that must be in the focus



Closing remarks

- Many recommendations of the report are of key importance
- ESA hopes that the Commission will follow those recommendations
- in order to:



improve the efficiency and effectiveness of the Community plant variety rights system



THANK YOU FOR YOUR ATTENTION!

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