

# **Community Legislation on Enforcement of Plant Variety Rights**

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# 1. Council Regulation 2100/94

- Infringing acts in relation to the variety
- Infringing acts in relation to variety denominations
- Injunctions
- Compensation
- Competent Court
- Prescription
- Penalties



## 2. Customs Regulation

- Council Regulation (EC) No 1383/2003 on customs action against (suspected) counterfeited and pirated goods
- Implementing Commission Regulation No 1891/2004



# Basic contents

- Customs authorities may
  - Stop (sometimes even destroy) goods suspected of infringing IP rights
- The right holder must be involved
- The importer/exporter's rights must be respected



# Scope

- In principle; suspected goods under almost all customs situations such as;
  - Import
  - Export
  - Placed in a free zone or free warehouse
- Limited number of exceptions
- PVR specifically mentioned as an IPR comprised by the Regulation



# 3. Enforcement Directive

- Directive 2004/48/EC on the enforcement of intellectual property rights
- harmonisation of
  - civil law measures,
  - procedures and
  - remedies



# Enforcement Directive

- Adopted 29 April 2004
- Transposition deadline 29 April 2006
- No change in substantive IP rights
- “TRIPS plus” and “best practices”



# Scope

- IPR rights as provided for by
  - Community law and/or
  - laws of the Member States
- Commission has published a list of IP rights
- Plant variety rights on the list



# Contents

- Contains provisions *inter alia* on:
  - General obligations
  - Evidence and preserving evidence
  - Right of information
  - Provisional and precautionary measures
  - Corrective measures
  - Damages and Legal costs
  - Publication of judicial decisions



# 4. Criminal Measures

- Proposal for Directive and a Council Framework Decision on 12 July 2005
- The Commission made a new proposal for a Directive on 26 April 2006
- The legislator has hesitated to adopt the proposal (EP and the Council)



## 5. Role of the Office in infringement cases

- The role of the Office is, and should be, limited.
- An active role could jeopardize the impartiality of the Office.



# Role of the Office in infringement cases

- Article 91 says that the Office, examination offices, courts and authorities should give assistance to each other
- Open files
- Provide samples
- Access to growing facilities



# Proposal

On an initiative of the CPVO President, the Administrative Council has presented a proposal to the Commission in which Member States are under an obligation to appoint national courts (one/limited number) competent to hear plant variety right infringement cases.



# Under discussion

- The taking of DNA samples in the application procedure
- Keeping of the sample by a laboratory
- DNA sample could be used by the holder in subsequent infringement proceedings



# 6. Evaluation of the CPVR System

- Article 94 and 97 of the Basic Regulation could be amended so as to ensure that national legislation implementing the enforcement directive can be applied
- EDV enforcement could be improved
  - Develop standardised protocols for the most economically important species
- CPVO could play a role



# Evaluation of the CPVR System

- FSS rules could be improved so as to ensure that holders acquire the necessary information on the use of FSS



# Summary

- The EU legislator is active and takes enforcement on IPRs seriously.
- Legal tools are available to right holders.
- Rights of defendants must be taken into account.
- Member States must implement and apply Community legislation.
- The role of the Office is and should be limited in infringement cases.



Thank you for your attention !

