

# Principles, procedures and recent developments in respect of the Community Plant Variety Protection system.

## Principles

### Substantive

The Community Plant Variety Protection system is operational since April 1995. It has been created by Council Regulation 2100/94<sup>1</sup> (the "Basic Regulation")<sup>2</sup>. The substantive part of the Basic Regulation is based on the version of 1991 of the UPOV convention. UPOV is the International Union for the Protection of New Varieties of Plants.

The **subject matter** of a Community plant variety right is a plant variety<sup>3</sup>. In order to be eligible for protection a variety has to be new, distinct, uniform and stable<sup>4</sup>.

The Community pvr system exists in parallel with the national pvr systems of 13 of the 15 present EU Member States. The same will be the case after EU enlargement in respect of the systems of the new Member States, most of which have national PVP legislation based on one of the versions of the UPOV convention.

The Community system offers protection on EU scale. On the basis of one application a Community plant variety right can be obtained, that is valid in the territory of all the 15 (soon 25) Member States of the European Union.

The **scope** of Community plant variety rights is to a high degree similar to that of a utility patent even though there are some differences due to the specific nature of plant variety rights. The rights of the holder are mentioned in Article 13 (2) of the Basic Regulation. The following acts in respect of constituents and harvested material of the protected variety require the authorisation of the holder: production and reproduction, conditioning for the purpose of propagation, selling, marketing, importing to and exporting from the Community and stocking. In addition to acts in relation to material of the protected variety itself, acts of exploitation effected in relation to essentially derived varieties, not distinct varieties and hybrid varieties dependent on the protected variety for their production require also the authorisation of the holder.<sup>5</sup>

There are important **derogations** to the scope of the right laid down in Articles 14-16 Basic Regulation. Article 14 sets out the terms for the so-called **agricultural exemption**. This exemption, better known as the farmers' privilege, gives farmers the right to use farm saved seed without the consent of the breeder of the variety in question. However, the farmer, with the

---

<sup>1</sup> Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ No. L227/1, 1.9.94

<sup>2</sup> Articles mentioned are Articles in the Basic Regulation if nothing else is indicated

<sup>3</sup> The definition of a plant variety given by article 5, para 2, of the Basic Regulation: "a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

- defined by the expression of the characteristics that results from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged."

<sup>4</sup> Article 5 UPOV 1991 Convention.

<sup>5</sup> Article 13, paragraph 5, Basic Regulation.

exception of small farmers, must pay the holder an equitable remuneration which shall be sensibly lower than the amount charged for the licensed product (Article 14(3)). If the parties can not agree upon the level of the remuneration, such remuneration should be 50% of the amounts charged for the licensed production of propagating material (Article 5 of Council Regulation No 1768/95).

In this context it should be mentioned that the Farmers privilege is, in the European situation at least, not longer a speciality of the pvr system. The Biotech Directive<sup>6</sup> obliges the Member States of the European Community to introduce in their patent laws a provision with the following bearing: "the sale or other form of commercialisation of plant propagating material (of a number of important agricultural crops) to a farmer by the holder of the patent (components of that material) .... implies authorisation for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm". Herewith the farmers' privilege has been introduced in European patent law.

As follows from the directive the farmer has to pay an equitable remuneration to the patent holder for such re-use of patented plant material.

Article 15 of the Basic Regulation excludes from the exclusive rights of the PBR holder "breeding for non-commercial purposes and breeding for the purpose of discovering and developing other varieties" (**the breeders' exemption**). Such a breeders' exemption, considered as one of the important characteristics of UPOV style PVP legislation, does not exist as such in respect of patents.

A different scope of protection offered by a patent and a plant variety right might especially create problems in the situation where a variety as such is covered by a plant breeders' right and a component of that variety by a patent. The patent system may require the authorisation of the patent holder for the use of the variety for breeding purposes, where this use is permitted under the plant breeders' right in question.

The progress in genetic engineering raises the prospect that, in the foreseeable future, an ever increasing number of plant varieties will contain patented inventions. The practical consequence would be that unless modifications in the patent legislation are introduced the breeders' exemption would be lost or greatly weakened.

## Formal

Under Community law, there is no common legal system in place as regards **infringement procedures** for plant variety rights. However, the Basic Regulation provides some basic conditions regarding civil claims, infringements and jurisdiction (Articles 94 to 107). These rules together with the Lugano Convention ensure that there will always be a competent court to deal with infringements of Community plant variety rights (Article 101). The procedures in such proceedings are governed by national law. Article 103 provides that, where jurisdiction lies with national courts, the rules of procedure of the relevant State governing the same type of action relating to corresponding national property rights shall apply.

Article 105 requires a national court or other body hearing an action relating to a Community plant variety right to treat the right as valid. This provision underlines the fact that only the

---

<sup>6</sup> Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998.

Office is competent with regard to the nullification or cancellation of a Community plant variety right.

The Basic Regulation states that the holder has a right to a reasonable **compensation** in case there is an infringement of his rights (Article 94 (1)). This is the case even if the infringer was in good faith. However, if it is established that the infringement was carried out intentionally or negligently, the infringer shall be liable to compensate the holder of the CPVR for any further damage resulting from the act of infringement. In cases of slight negligence, such claims may be reduced according to the degree of such slight negligence, but not however to the extent that they are less than the advantage derived there from by the person who committed the infringement (Article 94 (2)).

Article 95 provides that the holder of a Community plant variety right may require reasonable compensation from any person who has, in the time between publication of the application for a Community plant variety right and grant thereof, affected an act that he would be prohibited from performing subsequent thereto. This principle is known as the provisional protection.

Article 107 provides that Member States shall take all appropriate measures to ensure that the same provisions are made applicable to penalize infringements of Community plant rights as apply the matter of infringements of corresponding national rights. Accordingly, even though the Basic Regulation is silent as regards the sanction of seizure and destruction of infringing material, a holder of a Community plant variety right may ask a national court for such a remedy if such remedy is provided for under national law.

## **Procedures**

The procedures to be followed and the conditions required in relation to a variety submitted for community protection can be summarized as follows.

### **Where to apply?**

An application for plant variety protection can be made in any of the eleven official languages of the European Community direct to the CPVO or to one of the national agencies in a Member State, which in turn will take the necessary steps to send it on to the CPVO.

### **Who can apply?**

Any individual or company whose domicile or headquarters is located in the European Union.

Individuals or companies from a state which is a member of the International Union for the protection of new varieties of plants (UPOV) but not a member of the European Union can also apply, provided that an agent domiciled in the Community has been nominated.

### **Checking the application**

When an application is received, the CPVO checks to see that it is complete and eligible and that the variety is novel (see below). If no impediment is found at this stage, the CPVO arranges for a technical examination of the variety submitted.

### **Technical examination**

As stated above, the purpose of this examination is to ensure that the criteria of distinctness, uniformity and stability, are complied with.

A variety is deemed to be:

*Distinct* if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the date of application;

*Uniform* if it is sufficiently uniform in the expression of its characteristics; and

*Stable* if it remains unchanged after repeated propagation.

The examination for uniformity and stability must take account of any special features of the particular way in which the variety is reproduced or propagated.

The CPVO does not itself carry out **technical examinations**. These are entrusted to bodies deemed competent by the CPVO Administrative Council. Examinations have to be conducted in accordance with guidelines laid down by the CPVO.

Varieties submitted are compared during the examination with other varieties submitted as part of an application for Community protection and with appropriate varieties from the reference sample. Other reference varieties can be included if necessary.

### **Variety denomination**

In addition to the above requirement, a variety must be identified by a variety denomination. The variety denomination is proposed by the applicant and approved by the CPVO. To be approved by the CPVO, a variety denomination must fulfil several criteria. For example, it must allow the variety to be clearly identified and ensure it is different from a denomination identifying an existing variety of the same botanical species or a related one.

### **Novelty**

Novelty is another requirement which a variety must fulfil. A variety will be novel if, on the date of application for protection of the variety, it has not been sold or disposed of with the consent of the breeder:

earlier than one (1) year before that date within the territory of the Union;

earlier than four (4) years before that date outside the territory of the European Union or earlier than six (6) years in the case of trees and vines.

### **Grant of title**

If the CPVO believes that the findings of the examination are sufficient on which to base a decision and the other requirements have been met, it grants a Community plant variety right. In so doing, the CPVO issues the title holder with a certificate attesting to the grant of protection and a copy of the decision containing an official, detailed description of the protected variety.

Community protection may be granted as a general rule for twenty five (25) years, or for thirty (30) years in the case of vines, potatoes and trees.

### **Appeals**

A Board of Appeal has been established which is responsible for deciding on appeals made against decisions taken by the CPVO. The Board is made up of a Chairman and his/her alternate and members chosen by the Chairman from a list (drawn up on the basis of a strict regulatory procedure) depending on the cases under consideration. The Board of Appeal acts independently from the other organs of the CPVO.

The decisions of the Board of Appeal are open for appeal with the Court of Justice of the European Communities in Luxembourg.

### **Publicity**

Every two months the CPVO publishes an Official Gazette containing all the information appearing in its Registers, in particular applications for protection, proposals for variety denomination and grants of title. Any other information the CPVO feels the public should be informed about may also be published in the Gazette.

### **Recent developments**

#### **General**

The Community system is very successful. In 2003 more than 2500 applications for Community plant variety rights were received by the Community Plant Variety Office (CPVO), the authority responsible for the management and the implementation of the system. At present around 9000 Community plant variety rights are in force. *(Statistics)*

This growth shows that the breeding industry, although faced with the effects of the difficult economic situation, is still able to create a constant stream of new varieties. New varieties with traits such as higher yield, have more effective resistances against pests and diseases. New varieties that are better adapted to the needs of farmers and flower producers, to the requirements of the processing industry or, in the case of ornamentals, to the ever changing taste of the consumers.

It also shows that, although other industrial property rights are available for varieties per se, trade marks, or for biotechnological inventions encompassing more than one single variety, patents, and the plant variety right UPOV type is still considered by breeders as an adequate instrument to protect the output of their industry, new varieties of plants.

The high number of applications for Community protection (The number of applications received by the CPVO is higher than the sum of the national applications received by the national PVR authorities within the European Community) shows that protection on European scale is an attractive alternative for national protection for those varieties which have an international market. The accession on 1 May next of ten new Member States to the EU will add to the attractiveness of the Community system. The Community plant variety rights will automatically, as from that date extend to the territory of the acceding countries.

## Case law

- Court of Justice of the European Communities.

In its judgement in the Schulin case<sup>7</sup> the implications of the agricultural exemption as laid down in article 14 of the Basic Regulation and its implementing legislation, better known as "the farmers' privilege", were considered. It was the first time that the Basic Regulation was the subject of a judgement of the Court.

Article 14 authorizes farmers "to use, for propagating purposes in the field, on their own holding, propagating material of a variety ....., which is covered by a Community plant variety right." Authorisation from the right holder in question is not required. This provision applies to the major agricultural crops. In respect of ornamental and vegetable species, no farmers' privilege exists.

Farmers, other than small farmers, who make use of the possibility offered by this provision, are required to pay an equitable remuneration to the holder of the right.

This requirement has of course only a practical meaning, if the breeders can detect which farmers and in what quantities have sown farm saved seed of protected varieties. Article 8 of Commission Regulation 1768/95<sup>8</sup> contains implementing provisions in respect of the information that can be asked by breeders in respect of the use of their varieties. The Schulin ruling gives an interpretation of the scope of these rules. The Court ruled as follows:

*"The provisions of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94, of 27 July 1994, on Community plant variety rights in conjunction with Article 8 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 cannot be construed as meaning that the holder of a Community plant variety right can require a farmer to provide the information specified in those provisions where there is no indication that the farmer has used or will use, for propagating purposes in the field, on his own holding, the product of the harvest obtained by planting, on his own holding, propagating material of a variety other than a hybrid or synthetic variety which is covered by that right and belongs to one of the agricultural plant species listed in Article 14(2) of Regulation No 2100/94."*

It is clear that this decision of the Court does not make life easier of breeders who want to collect the remuneration for the use of farm saved seed. It is, taking into account the structure of the seed trade, difficult for breeders to keep track of seed reproduced and marketed under license contracts by third parties. The future will show what the practical implications of the Schulin decision are.

- Board of Appeal of the CPVO

In a recent decision of the CPVO Board of Appeal<sup>9</sup> a clarification was given of the notion of "breeder" within the meaning of article 11 (1) of the Basic Regulation<sup>10</sup>. The Board ruled that

<sup>7</sup> Judgement of 10 April 2003 in Case c-305/00 between Schulin and Saatgut- Treuhandelverwaltungsgesellschaft mbH.

<sup>8</sup> Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14 (3) of Council Regulation (EC) No 2100/94 on Community plant variety rights

<sup>9</sup> Decision of 3 April 2003 in the Case A 017/2002 (Sakata Seed Corporation v SVS Holland BV)

*"the concept of "breeding" in that provision does not necessarily imply inventing something totally new but includes the planting, selection and growing on of pre-existing material and its development into a finished variety."*

This decision is in line with the position defended by the CPVO.

In another important decision of the Board of Appeal an interpretation has been given of the notion of " variety of common knowledge" as laid down in article 7 , paragraph 1, of the Basic Regulation<sup>11</sup>. The relevant considerations of the Board were the following:

*"The source of the plant material of the reference variety used by the testing authority was the Botanical Garden in Heidelberg, which obtained the original plant material from Nothelfer's nursery in Speyer. The reference variety was denominated "Comtesse Louise Erdody" after a detailed examination of the published literature on Begonia rex carried out by Dr. Kramer of the Botanical Garden in Heidelberg. It can be left undecided whether the reference variety is correctly named "Comtesse Louise Erdody" or not. The relevant point is whether "Comtesse Louise Erdody" was a variety in common knowledge on the date of the application for a grant of Plant Breeder's Rights.*

*The variety "Comtesse Louise Erdody" was disposed of both by offering for sale by Nothelfer's nursery between 1994 and 2000, and also by its supply to and maintenance in the Botanical Garden to which there was public access. Therefore the criteria for common knowledge are met. This conclusion is supported by UPOV TGP/3.2., dated 15 August 2002, 3.2.(c) which reads: "Specific aspects which should be considered to establish common knowledge include, among others: ... commercialization of propagating ... material of the variety .....; existence of living plant material in publicly accessible plant collections."*

The decision of the BOA is important for two reasons. In the first place the Board expressed that the correctness of the name under which a variety has acquired this status is not relevant for the answer on the question whether it has become a variety of common knowledge.

Secondly it confirmed that the presence of a variety in a publicly accessible collection, in this case a botanical garden, creates common knowledge. This judgement confirms that paragraph 2 of article 7 of the Basic Regulation (similar to the second full sentence of article 7 of the UPOV '91 Convention)<sup>12</sup> contains examples and not an exhaustive list of common knowledge creating circumstances.

#### - Decision Committee CPVO

---

<sup>10</sup> "The person who bred, or discovered and developed the variety, or his successor in title, both – the person and his successor – referred to hereinafter as 'the breeder'."

<sup>11</sup> " A variety shall be deemed to be distinct if it is clearly distinguishable by reference to the expression of the characteristics that results from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge on the date of the application ....."

<sup>12</sup> "The existence of another variety shall in particular be deemed to be a matter of common knowledge if on the date of application determined pursuant to Article 51:

- (a) it was the object of a plant variety right or entered in an official register of plant varieties, in the Community or any State, or in any intergovernmental organisation with relevant competence;
- (b) an application for the granting of a plant variety right in its respect or for its entering in such an official register was filed, provided the application has led to the granting or entering in the meantime.

The implementing rules pursuant to Article 114 may specify further cases as examples which shall be deemed to be a matter of common knowledge.

The competent CPVO Committee<sup>13</sup> has on 6 November 2003 taken a decision<sup>14</sup> on a request to declare null and void the right in relation to the Canna variety Phasion. The grounds of the request were: 1. the holder is not entitled to the right granted in respect of Phasion; 2. the variety did not fulfil the criteria of novelty at the date of the application for community protection. In respect of the first ground the committee had to give an interpretation of the notion of breeder<sup>15</sup> as laid down in the Basic Regulation. The Committee considered as follows:

57. *According to Kirsten, Kruger agreed that Kirsten took a number of rhizomes home, propagated them and supplied them to Morgenzon Estates nursery. Morgenzon Estates nursery then bulked them up on his behalf. Having evaluated and bulked up the plants, Kirsten applied for plant variety protection in 1994 and the first batch of Cannas became available for commercial exploitation in 1995 and 1996.*

58. *The concept of "discovered" a variety is not defined in the Council Regulation 2100/94.*

59 *Within UPOV, the notion of "discovery" is described as the activity of "selection within natural variation".<sup>16</sup> It is also explained that the "discovery" of mutations or variants in a population of cultivated plants is indeed a potential source of new improved varieties.*

60 *Another interesting view of the term "discovery" is given in a report on the Australian plant breeders act <sup>17</sup> in which it is stated that:*

*"a person can not normally be considered the "discoverer" of a plant if someone else provides the particulars of its existence to that person."*

61 *Since there is no clear definition of "discovered" in Council Regulation 2100/94, guidance may also be found in how the word is used in the ordinary language. In the New Oxford Dictionary, discover is described as:*

*"find something unexpectedly or in the course of search. " <sup>18</sup>*

62 *In the same dictionary, an example of a discovery is:*

*"be the first to find or observe (a place, substance, or scientific phenomenon)"*

63 *It is undisputed that the first time Kirsten was confronted with a canna variety with variegated leaves and orange flowers was in Kruger's garden. Kruger, who was a botanical expert, was well aware of the existence of the plants in his garden. Kirsten*

---

<sup>13</sup> The Committee determining questions relating to the nullity and cancellation of community plant variety rights.

<sup>14</sup> Decision (No A4)

<sup>15</sup> See footnote 10

<sup>16</sup> UPOV Document C (Extr.)/19/2 Rev., August 9, 2002, originally presented to the Council in its Nineteenth Extraordinary Session Geneva, April 10, 2002

<sup>17</sup> Clarification of Plant Breeding Issues under the Plant Breeder's Rights Act 1994, Report of the Expert Panel on Breeding, December 2002

<sup>18</sup> The New Oxford Dictionary, Clarendon Press, Oxford 1998

*was given some rhizomes from the plot where they grew, but did not make any selection of mutations or variants in the population of cultivated plants in Kruger's garden.*

*64 It is the opinion of the Office that the notion "discovered", within the meaning of Council Regulation 2100/94, needs to include at least a minimum of activity of the person claiming to be the discoverer. Kirsten was shown the variety by Kruger. Kirsten was thus neither the first person nor the first expert to observe the variety in question.*

*65 In the opinion of the Office, the UPOV document mentioned above rather explains that mutants or variants found and selected should not be excluded from protection, than explaining that a professional showing another professional a variety grown in his garden should be comprised by the term.*

*66 It is the view of the Office that the term "discovered", within the meaning of the Council Regulation 2100/94, should not comprise the events described by the Holder.*

For reasons of "decision economy" the Committee did not examine the question of novelty.

- Supreme Court of Appeal of South Africa

This court was in a procedure concerning the South African PVR for the Canna variety Phasion<sup>19</sup> confronted with the same question. The answer given corresponds to the decision of the CPVO just mentioned:

*"- [15] The plaintiff was accordingly not the discoverer of Phasion and the statement to the contrary in the application was a material misrepresentation without which the Registrar would not have granted a plant breeder's right.<sup>20</sup> Unfazed, the plaintiff submitted that it could rely on the fact that it had 'developed' the Phasion canna. It will be recalled that under the Act as it then stood a person who 'developed' a new variety qualified as a breeder. Assuming this to be an answer to the defendant's objection that the application was flawed, the fact is that the evidence establishes that the plaintiff did not 'develop' the variety. Kruger gave Kirsten some rhizomes from the plants growing in his garden.<sup>21</sup> These Kirsten planted and once satisfied with the result he sent rhizomes to Morgenzon for testing and bulking purposes which Morgenzon did. This does not mean that the plaintiff or Morgenzon on its behalf 'developed' the plant. It is the same plant as the one received from Kruger. Multiplying and testing a plant, plain English<sup>22</sup> and the Act make clear, are not the same as developing it (cf s 14(3)). Successfully developing a market is not the same as developing a plant."*

## Legislation

---

<sup>19</sup> Weltevrede Nursery (PTY) LTD versus Keith Kirsten (PTY) LTD and another (Case No 515/2002)

<sup>20</sup> The Community Plant Variety Office of the European Union reached the same conclusion in a decision (No A4) of 6 November 2003.

<sup>21</sup> It is not alleged that Kruger developed the variety or that the plaintiff was the successor in title of Kruger.

<sup>22</sup> *Encarta World English Dictionary* gives as the primary meaning of 'develop': 'to change, or to cause to change, and become larger, stronger, or more impressive, successful or advanced'. There is no other appropriate meaning which can be attached to the word in this context.

- Article 29 Basic Regulation.

The Community's legal framework for the protection of biotechnological inventions, established in Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions<sup>23</sup> lays down in Article 12 rules for the grant of non-exclusive compulsory licences where protected plant varieties incorporate patented inventions, and vice versa. The CPVO being the only authority empowered to grant compulsory licences in respect of Community plant variety rights, this provision has to be implemented the Basic Regulation. Article 29 of that regulation contains a general provision for the grant of compulsory exploitation rights for Community plant varieties on grounds of *public interest*. Article 12 of the Directive does not impose the same requirement in relation to a compulsory cross-licensing between an invention patent and a plant variety right. The condition governing the possible grant of such compulsory license is, that the patent holder has to demonstrate that the invention constitutes *significant technical progress of considerable economic interest* compared with the protected plant variety.

The Commission has proposed to amend said article 29 by adding the following paragraph:

*"8. The following rules shall apply (by way of derogation from paragraphs 1 to 7):*

*(a) Where the holder of a patent for a biotechnological invention applies to the Office for a compulsory licence for the non-exclusive use of a protected plant variety under article 12(2) of Directive 98/44/EC, the Office shall grant such a licence, subject to payment of an appropriate royalty, provided that the patent holder demonstrates that*

*(i) he has applied unsuccessfully to the holder of the plant variety right to obtain a contractual licence; and*

*(ii) the invention constitutes significant technical progress of considerable economic interest compared with the protected plant variety.*

*(b) Where, in order to enable him to acquire or exploit his plant variety right, a holder has been granted a compulsory licence under article 12(1) of the above Directive for the non-exclusive use of a patented invention, the Office shall, on application by the holder of the patent for that invention, grant to him a non-exclusive cross-licence on reasonable terms to exploit the variety.*

*(c) On granting a licence or cross-licence to a patent holder under sub-paragraph (a) or (b) respectively, the Office shall restrict the territorial scope of the licence or cross-licence to the part or parts of the Community covered by the patent."*

The proposal has been agreed upon by the European Parliament on 13 January 2004.

In the working group of the Council, where the proposal is discussed, an exchange of views has taken place about the compatibility of the "public interest" criterion used in the UPOV convention with the "significant technical progress of considerable economic interest" requirement to be introduced in the Community system for the cross compulsory licenses. Some Member States have expressed the fear that introducing this requirement in its PBR legislation would disqualify the European Community as a member of UPOV. Others have defended the position that the Directive criterion could be considered as forming part of a wide "public interest" notion. I am inclined to defend that line.

---

<sup>23</sup> OJ L 213, 30.7.1998, p. 13.

- Council Regulation (EC) No 3295/94

On 22 December 1994 the Council adopted Council Regulation (EC) No 3295/94 laying down the conditions for the intervention of the customs authorities and the measures to be taken by the competent authorities with regard to counterfeit or pirated goods. One of the main objectives of the Regulation is to facilitate for holders of intellectual property rights to hinder such goods as far as possible from being placed on the market and to set up an appropriate procedure enabling the customs authorities to act in a way that such infringements can be properly enforced.

The Regulation does not comprise plant variety rights yet, but the Commission has recently proposed a new Regulation replacing Council Regulation (EC) No 3295/94. The proposal refers specifically to plant variety rights. If adopted by the Council, the Regulation would thus extend the scope of the regulation to plant variety rights.

- Proposal for a directive on measures and procedures to ensure the enforcement of intellectual property rights.

The Commission has presented a proposal for a Directive on the enforcement of intellectual property rights. Plant variety right protection is comprised by the proposal.

The Directive will establish general principles that will need to be implemented in national legislation. The Directive includes almost all aspects of enforcement such as provisions on evidence, evidence protection measures, right of information, provisional measures, precautionary measures, recall of goods, removal from the channels of commerce, destruction of goods, preventive measures, damages, legal costs, and provisions under criminal law. The objective is to ensure that intellectual property rights are enforced in an equivalent fashion throughout the Community but within the existing national frameworks.

Adoption and implementation of this Directive would add to the effectiveness of intellectual property rights in general and Community plant variety rights in particular.

Frankfurt, February 2004  
Bart Kiewiet, President CPVO