



# The EU system of Farm Saved Seed

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**4 March 2020**



# PVR as IP rights

- A Plant Variety Right (PVR) is an Intellectual Property Right.
- Exclusivity - authorization required for (art. 13 BR):

*(a) production or reproduction*

*(multiplication);*

*(b) conditioning for the purpose of propagation;*

*(c) offering for sale;*

*(d) selling or other marketing;*

*(e) exporting from the Community;*

*(f) importing to the Community;*

*(g) stocking for any of the purposes mentioned in (a) to (f).*

# PVR as IP rights - Exceptions

- Limitations (Art. 15 BR):
  - Acts done privately for non-commercial purposes
  - Acts done for experimental purposes
  - Acts done for the purpose of breeding, or discovering and developing new varieties (the **breeder's exemption**)
- The **agricultural exemption** (« Farm-saved seed » or « FSS ») (Art. 14 BR)

# FSS - legal framework



- **Basic Regulation (« BR »)**  
Article 14 Council Regulation No 2100/94
- **Implementing Rules on the Agricultural Exemption (« IRAE »)**  
Commission Regulation No 1768/95

## FSS - Scope

- “[...] farmers are authorized to use for propagating purposes in the field, on their own holding, the product of the harvest which they have obtained by planting, on their own holding, propagating material of a variety [...] which is covered by a CPVR.” (Art. 14(1) BR)

# FSS - Scope



- Only “on their own holding” (Art. 14(1) BR)
- Only “other than a hybrid or synthetic” varieties (Art. 14(1) BR)
- Exception limited to some agricultural species:
  - Fodder plants
  - Cereals
  - Potatoes
  - Oil and fibre plants

(Full list in Art. 14(2) BR)

# FSS - Conditions (Art. 14(3) BR)

Aimed to safeguard the **legitimate interests** of the **breeder** and the **farmer**.

- No quantitative restriction
- Processing allowed
- Farmers must pay remuneration for the use
- Small farmers are exempted
- Monitoring up to holders

# FSS - Conditions (Art. 14(3) BR)

- “relevant information” shall be provided [...] by
  - farmers and by suppliers of processing services, and
  - may equally be provided by official bodies.



❖ *Appeal Decision No 2135-18 of the Swedish Administrative Court of Appeal 26 September 2018*

- ❖ Appeal to a Decision of the Swedish Board of Agriculture rejecting to disclose, on the grounds of confidentiality, data on FSS payments requested by the Swedish Seed Trade Association.



# FSS - Conditions

## ❖ *Appeal Decision No 2135-18*

### ❖ The Court decided that:

- ❖ no confidential data were concerned, and
- ❖ those data should be disclosed.



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# FSS – On the right to information from official bodies

- According to Art. 11.1 IRAE:

*"A request for information on the actual use of material, by planting, of specific species or varieties, or on the results of such use, which a holder addresses to an official body, must be made in writing".*



- ❖ Judgement of 17 October 2019 in case C-239/18 , *Saatgut-Treuhandverwaltungs GmbH v. Freistaat Thüringen*.

# FSS - On the right to information from official bodies

- **Main question**

- This case aims to determine if Art. 11. 1 IRAE applies to requests to information concerning species of plants (without defining the protected varieties for which that information is requested).

- **Findings of the Court:**

- Art. 11.1 IRAE does **NOT** provide the possibility for the holder of the CPVR to request information from an official body on the use of material of species, without defining the specific protected variety.

# FSS - Remuneration (Art. 5 IRAE)

Farmers shall pay an

- equitable remuneration
- sensibly lower than the amount charged for the licensed production of propagating material:
  - of the lowest category qualified for official certification,
  - of the same variety in the same area.



## **FSS - Remuneration** (Art. 5 IRAE)

- The fee may be determined in a contract between:
  - Individual farmers and holders
  - A contract between organizations of farmers and holders can be used as a guideline if published in the CPVO Gazette.

# FSS - Remuneration (Art. 5 IRAE)

- If no contract:
  - 50 % of the amounts charged for the licensed production of propagating material:
    - of the lowest category qualified for official certification,
    - of the same variety
    - in the same area.

## **Cases C-7/05 to C-9/05,**

*Saatgut-Treuhandverwaltungen GmbH v Deppe and others*

- One of the questions that arose in this case was whether 80% could be seen as « sensibly lower »
- 80% was mentioned in an agreement between organizations of farmers and breeders, but the contract had not been published in the CPVO Gazette
- The court answered this question in the negative

# FSS – Individual obligation to payment (Art. 6 IRAE)

- The obligation to pay the remuneration starts when the farmer makes use of the product of the harvest for propagating purposes in the field.
  - ❖ *According to judgement in case C-242/14:*
    - ❖ The farmer may still fulfil that obligation after he has sown the product of the harvest of the protected variety.
    - ❖ The date of actual use of the product for propagating purposes in the field is not the deadline by which payment of equitable remuneration must be made but the date from which that remuneration becomes payable.
- The holder may determine the date and manner of payment (not earlier than the date on which the obligation comes to existence).



# Case C-242/14

*Saatgut-Treuhandverwaltungs GmbH v Vogel and others*

- **Main question**

Determine the period within which the equitable remuneration shall be paid by the farmer in case of no-contract.

- **Findings of the Court**

- It is necessary to define a payment period.
- Holders of a PVR are responsible for the control and supervision of the use of protected varieties.

## Case C-242/14

*Saatgut-Treuhandverwaltungs GmbH v Vogel and others*

- **Findings of the Court (II)**

- Marketing year: from 1 July to 30 June of the subsequent calendar year.
- The period within which the remuneration shall be paid, in case of no contract, expires at the end of the marketing year during which the plantation took place



No later than 30 June following the date of reseedling

# FSS - Lack of payment

- Payment of equitable remuneration → derogation from the authorization requirement (Art. 13.2 BR)
- In case of non –payment by the farmer → actions of Art. 94 BR
  - ❖ Judgment in cases C-305/00 and C-242/14 – action for an injunction in respect of:
    - Infringement
    - Payment of fair compensation
    - Both
  - ❖ Moreover, if the infringement is intentional or negligent → **DAMAGES**

**Thanks for your attention**

