

Community Legislation on Enforcement of Plant Variety Rights

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Contents

1. The Basic Regulation
2. The Customs Regulation
3. The Directive on Enforcement
4. Criminal Sanctions
5. The Role of the CPVO
6. The Evaluation of the CPVR System



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 !

