

A small circular icon showing a green plant sprout with two leaves.

**PLANT VARIETY
PROTECTION**
Enforcement of PBR in France

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A circular logo for "du service de la terre" featuring a collage of agricultural scenes and a central yellow circle.A small circular icon showing a green plant sprout with two leaves.

INTRODUCTION

Main plant breeding objectives

- Plant breeding is necessary for agriculture, food and feed supply and industrial uses:
 - Adaptation to the environment and climate change (drought or cold conditions)
 - Improved resistance to disease, pest
 - Productivity (Higher and regular Yield)
 - Quality and diversification of agricultural products
 - Food and feed quality
 - Development of plants with composition adapted to specific uses (starch in potato, oil in sunflower, ...)
 - Diversification of products (vegetable, cereals,...)

PVP is needed to support plant breeding activities realized by private or public breeding companies

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Rationale to develop IPR for plant variety

- Support research and breeding
- Promote the dissemination of genetic progress

By granting to the breeders:

- the exclusivity in the exploitation of its creation (new variety)
- for a limited time duration
- Important both for private and public research




INTRODUCTION

The UPOV system



- UPOV is a sui generis system
- The UPOV convention provides the basis for UPOV members to encourage plant breeding by granting breeders of new varieties an IPR
- France member since 1970
- UPOV has 2 exemptions:
 - ➔ one compulsory breeders' or breeding exemption
 - ➔ one voluntary farmer's exemption



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ORIGIN AND STATUS OF BREEDERS' EXEMPTION


- Free access to genetic resources needed
- In exchange, the protected innovation is immediately accessible
- It accelerates genetic progress
- The breeding exemption is endangered because of :
 - the patentability of biotech inventions
 - The article 27.3.b of TRIPS agreement

A circular logo with the text "du service de la terre" around the perimeter and a central image of a yellow flower.A small circular icon showing a green seedling with two leaves.

ORIGIN AND STATUS OF FARMER'S EXEMPTION

- The first version of UPOV convention had no provision : each member state is free to decide to have or not a farmer's exemption. France had not.
- In the 1991 version, a provision on farmer's exemption was introduced which allow member states to authorize farm save seeds
- Two conditions were introduced :
 - Exemption for species using traditionally farm save seeds
 - Remuneration of the breeder
- A new law in France in 2011


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Plant variety protection in European Union

- PVP according to the UPOV convention is the only one system in Europe
- European PVP is a balanced system : a legal protection for the breeder but a free availability for breeding and research purposes activities

	European PVP	Patent
Breeding	Free availability « <i>Breeding exemption</i> »	Impossibility
Experimentation without production	Free availability	Impossibility
Propagating the variety without marketing purposes and within a private or family framework	Free availability	Free availability
Using farm saved seeds of a protected variety by a farmer on his own holding	Possibility under regulated conditions « <i>farmer's exemption</i> »	Impossibility





UPOV convention of 1991

A new law in France in 2011

The last act of 1991 introduces several new points in the UPOV convention :

- Add of 5 supplementary years to the duration of the protection
- Concept of the essentially derived variety
- Possibility in a regulated framework for a farmer to use farm saved seeds from protected varieties for some plant species







Plant variety protection in France

In France, 2 regulations for the plant variety protection are in force :

European protection	National protection
<u>Regulation 2100/94 (CE) of 27 July 1994</u>	<u>Laws of the 1st mars 2006 and 8th december 2011 adopted in the Intellectual Property Code</u>
Conform to the UPOV convention of 1991	Conform to the UPOV convention of 1991


Extension of the protection duration in France

In accordance with the UPOV act of 1991 and the European regulation, the extension of 5 years more of the duration of the plant variety protection has been voted in France

[Law 2006-236 of 1st March 2006](#)

Protection duration =

- 30 years for varieties of vine, fruit and ornamental trees, potato, grasses and perennial forage legumes
- 25 years for the other crops



NEW LAW 2011 – 1843 OF 8th DECEMBER 2011

3 main changes :

- only bred varieties protected not discovered and developed
- inclusion of the concept of essentially derived varieties
- article 16 introduces a « farm save seed » provision



France: an original declarative system for the management of PBR

From the requests made by the data that are communicated by the licensees.

This declarative system considerably reduces disputes, as far as the producers necessarily agree with the amount of the royalties which are charged to them.

The SICASOV system is strengthened and legitimized by controls and checks made by our internal departments :

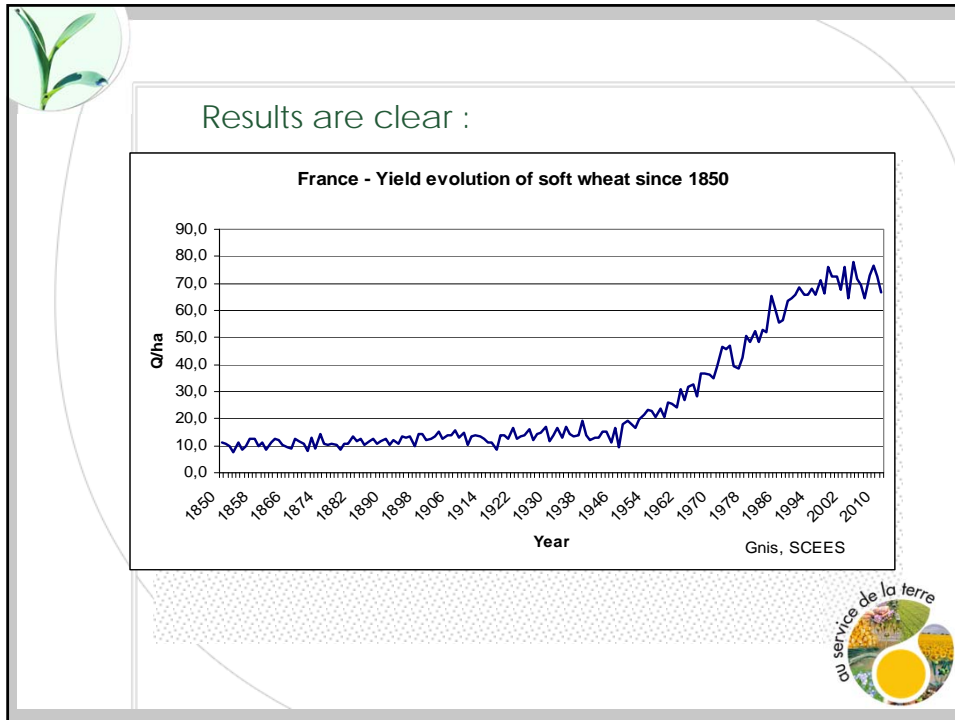
- Consistency monitoring of the data recorded all year long
- Controls based on the comparison with the data of accepted surfaces and quantities of seeds certified by the SOC GNIS
- Controls at the licensees' offices (financial accounting, stock account registers – production / certification data – purchase / sales)
- Possible legal actions in case of infringement of rights of intellectual property of the plant material (equipment) which confided (entrusted) to him (her)





- The seeds industry is a genuine gold nugget for France- a world leader in terms of production and exports with sales netting over 3billions euros.
- It is hugely innovative: with 13% of total sales invested in research (comparable to that of the pharmaceutical industry) it delivers more than 600 new variety every year in the country.
- Variety turnover is dynamic, with an average lifetime of two to six years for major crops.
- The breeding exemption is the corner stone of genetic progress : for example a study showed that the genealogy of the 8 most cultivated varieties of wheat includes 70 % of protected inbred lines of other breeders

au service de la terre




Results are clear :

- In wheat 131 varieties were registered in 1954
- In wheat 292 varieties were registered in 2015


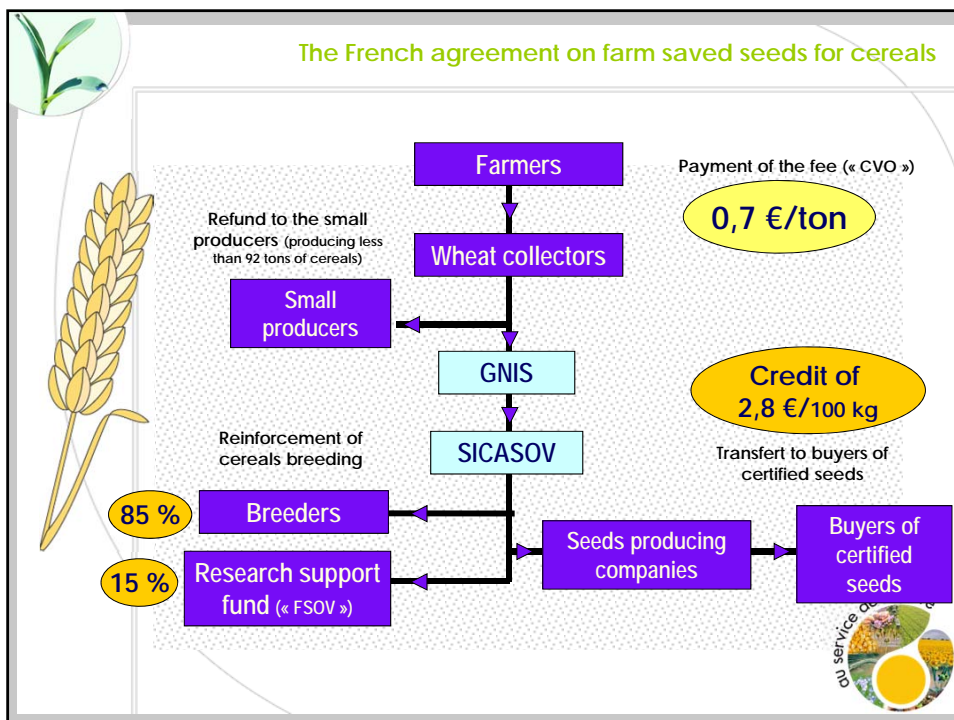
New varieties and available diversity for main species in 2015

	Number of varieties registered on the French catalog	Number of new varieties for 2015
Sugar beet	386	47
Cereals and Protein plants	733	87
Forrage crops	848	62
Corn and Sorghum	997	121
Oil seeds	515	54
Potatoes	201	10
Vegetables	2601	146



THE FARM SAVE SEED PROVISION

- Farmers may use on their own holdings seeds of protected varieties produced on their own holdings
- Possible for more than 21 species for which farm save seed is traditional
- Possible if a payment is done on FSS to the breeder of the variety used
- This payment may be done through :
 - a direct contractual agreement between farmer and breeder
 - A collective agreement between group of farmers and group of breeders or a single breeder
 - A special general agreement through GNIS (with is actually the preferred choice of farmers' trade-unions)



Coexistence of variety protection and patentability in France

European directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions

- A genetic information or a plant's element can be patented
- Plant variety cannot be patented even if it included a patented gene.

A variety could be only protected by a plant breeders' right according to the European Regulation 2100/94.

So, coexistence of plant variety protection and patent has to be organized, for example in genetically modified variety.



Coexistence of variety protection and patentability in France


French law 2004-1338 of 8 september 2004, which has modified the intellectual property code

- Free availability of protected varieties including a patented gene for breeding

If a new variety is bred from a variety including a patented gene :

- When the patented gene is expressed : authorization from the holder of the patent for the breeder to exploit the new variety
- When no patented gene : the breeder may exploit freely and protect his new variety





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Coexistence of variety protection and patentability in France

Regulation 1257/2012 of 17th december 2012 implémentant creation of unitary european patent


- This regulation introduced the French « partial breeding exemption » in the unitary patent
- The access to varieties including patented invention is free for research and breeding

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Coexistence of variety protection and patentability in France

Law of 9th of August 2016

- The patent on any product obtained through an essentially biological process
- Patents granted on native traits are not covering the same native traits obtained through essentially biological process (conventional breeding or chance)

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THANK YOU FOR YOUR ATTENTION !

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