

ISF Views on EDV, Conditions and Limitations of the Breeder's Authorization, Provisional Protection

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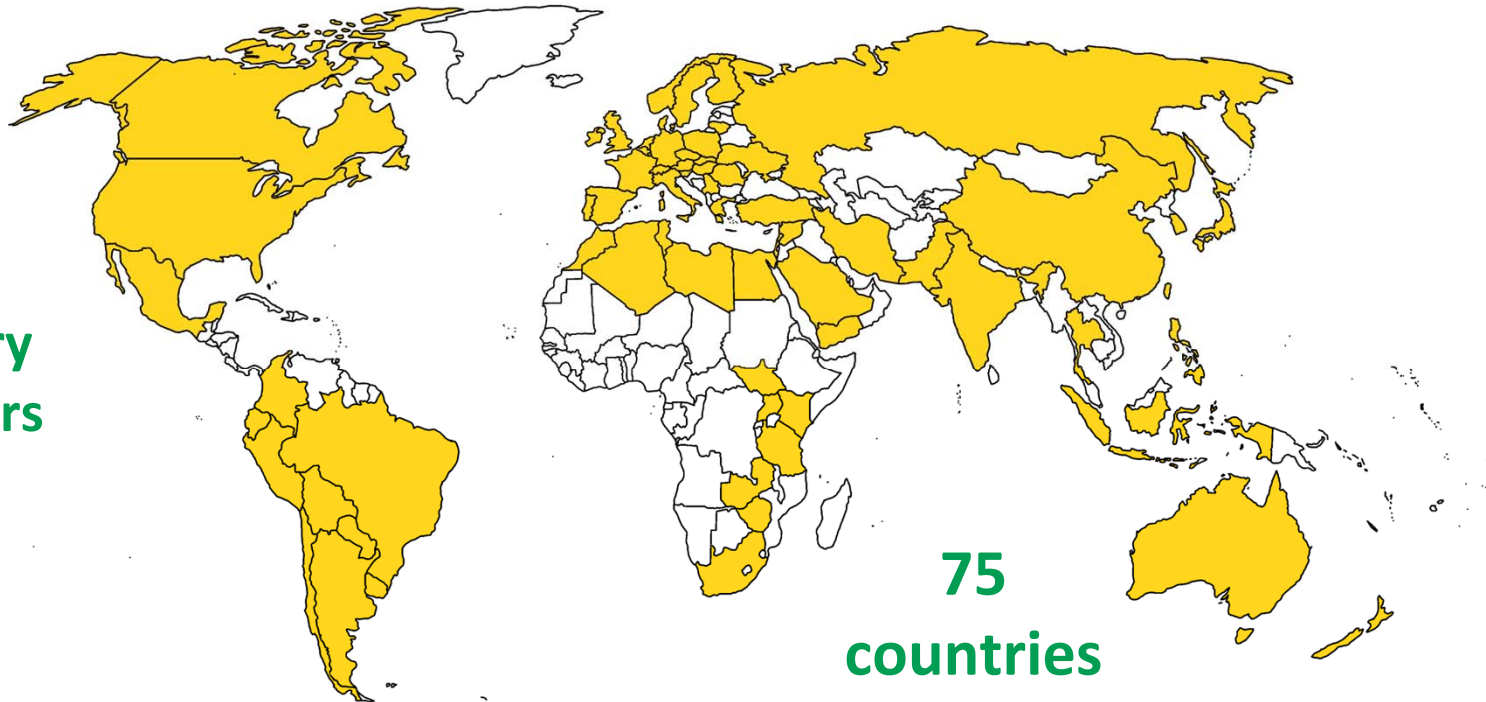
What is ISF?

- “Voice of the global seed industry”
- **Non**-governmental, **non**-profit making organization
- Recognizes its members’ contributions to **food security** and **sustainable agriculture**.

ISF in figures

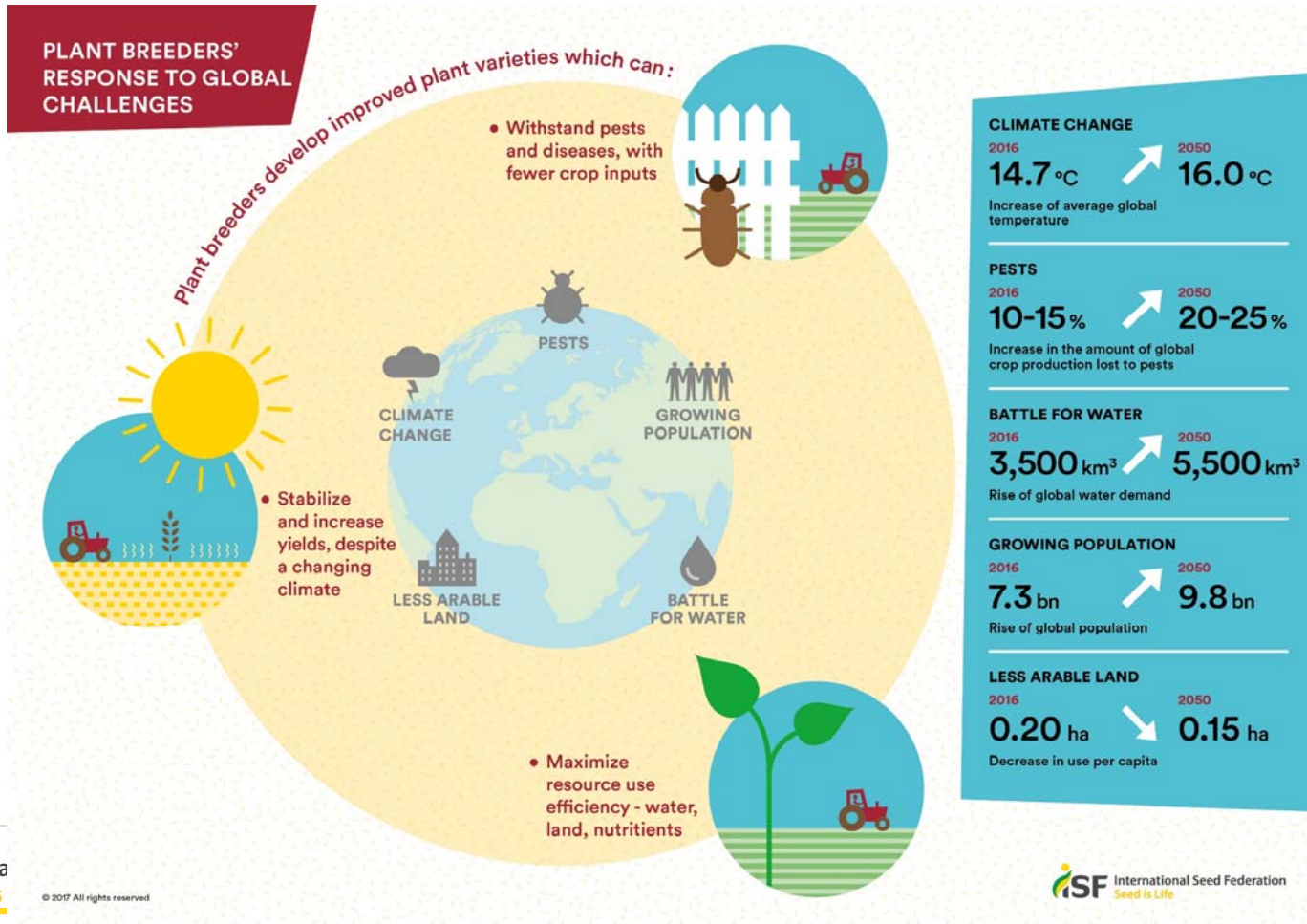
7500+
companies

50+
ordinary
members

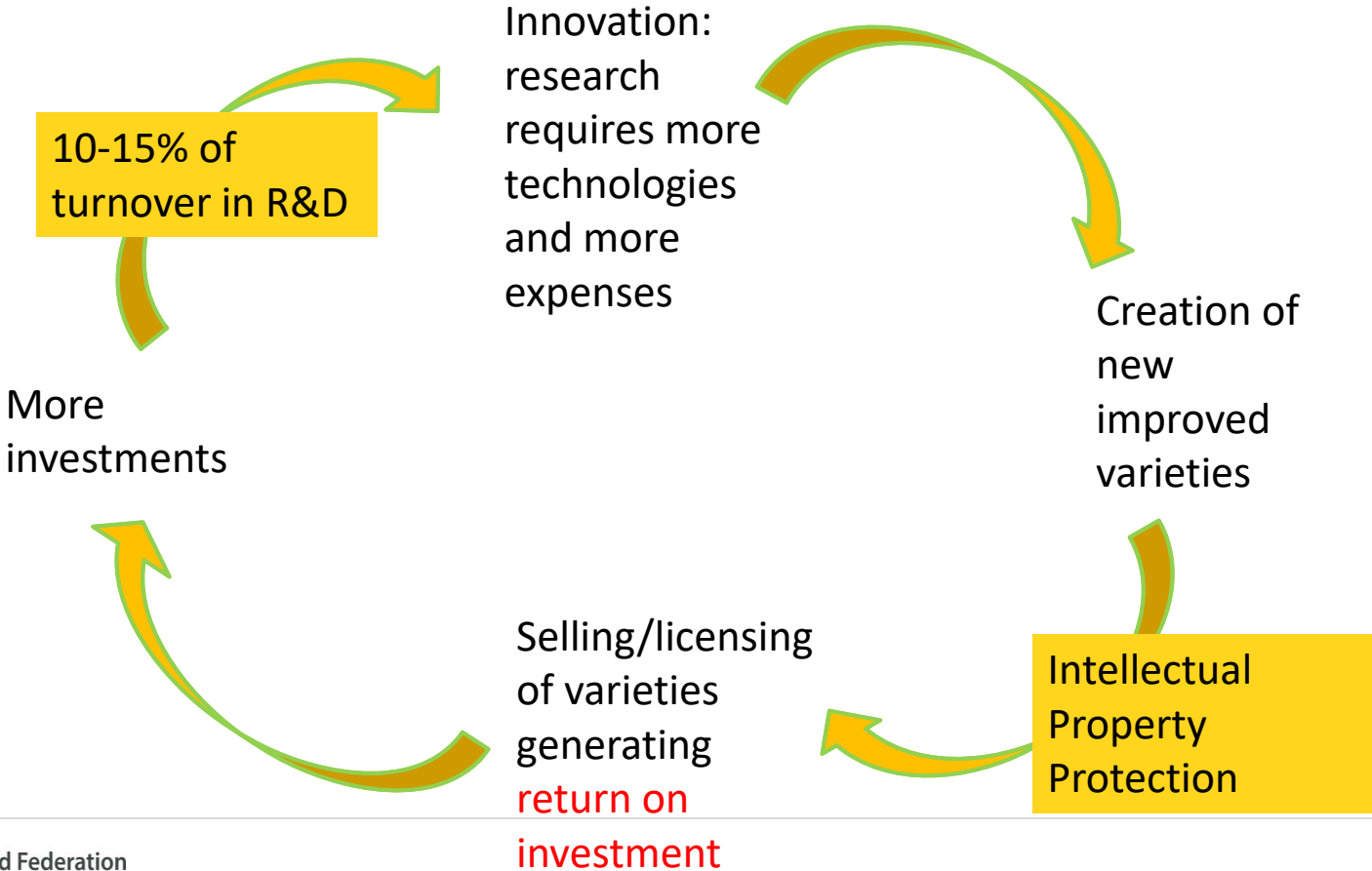


75
countries

The role of plant breeders to feed the world



The role of intellectual property protection



Outcome of a 2017 survey to ISF members

- What are your IP practices, needs and satisfaction?
- Is the current system futureproof, taking into account new breeding techniques?
- 70 responses for the following crops: hybrid field crops, non-hybrid field crops, vegetable crops, forage and turf crops, and mushrooms

- No call for a major change in the current IP system (UPOV)
- Implementation of UPOV 91 Act in countries which are not members
- Enforcement of UPOV in countries which ratified the 1991 Act
- Need to raise awareness on the benefits of IP

Essentially Derived Varieties

- EDV is an important component of the UPOV 1991 Act
- Typical examples raised during the 1991 Diplomatic Conference were:
 - a spontaneous (e.g. colour) mutant
 - a “traditional” GM, whereby one new gene is entered into an existing variety
- An EDV can be a true improvement over the existing variety, but a deliberate choice was made to use the initial variety predominantly
- EDV to ensure a fair return on investment to the breeder of the initial variety

ISF VIEW on IP - Essentially Derived Varieties

- The question of distinctness is a question of granting the right (official services) whereas the question of essential derivation is a question of the scope of protection (responsibility of the PBR holder of the initial variety).

ISF reading of UPOV 1991 Act:

- Distinction: the first condition for a variety to be essentially derived is that it is clearly distinguishable from the initial variety
- Predominant derivation: The predominant use of an initial variety
- Conformity: High phenotypic and genotypic conformity with the initial variety

ISF View on IP - Predominant derivation

ISF and ESA - proposal:

Parent A (PVP) x Parent B



Hybrid X ← Breeder II



Parent A+ (will be used by breeder II to produce Hybrid Z)

Can Parent A+ be considered to be predominantly derived from Parent A (the initial variety) ?

ISF: Yes, Plant material of Parent A is (predominantly) used, not by breeder II, but used nonetheless.

ISF is still interested to include this in the UPOV Explanatory Note

ISF View on EDV - Conformity to the initial variety

The definition of essential characteristics should not be restricted to a limited sub-set of DUS or additional characteristics. The essential characteristics include all characteristics related to the description for DUS and testing in relation to determining the agronomic value of the said variety.

Essential characteristics = all relevant characteristics

Except for the differences that result from the act of derivation, the EDV conforms to the initial variety in the expression of the essential characteristics

Thus: Retaining the majority of the (essential) characteristics, **but not all the (essential) characteristics of the initial variety**

UPOV Explanatory Note on EDV

According to ISF nowhere in **UPOV/EXN/EDV/2** it is stated that an EDV has to be conform to the initial variety in all essential characteristics.

Example

A variety which, compared to the initial variety, contains an important disease resistance is for us a typical example of an EDV!

Important: do all UPOV members have the same reading of **UPOV/EXN/EDV/2**?

Need for clarification?

ISF View on IP - EDV disputes

ISF supports that an EDV has a high phenotypic conformity compared to the initial variety.

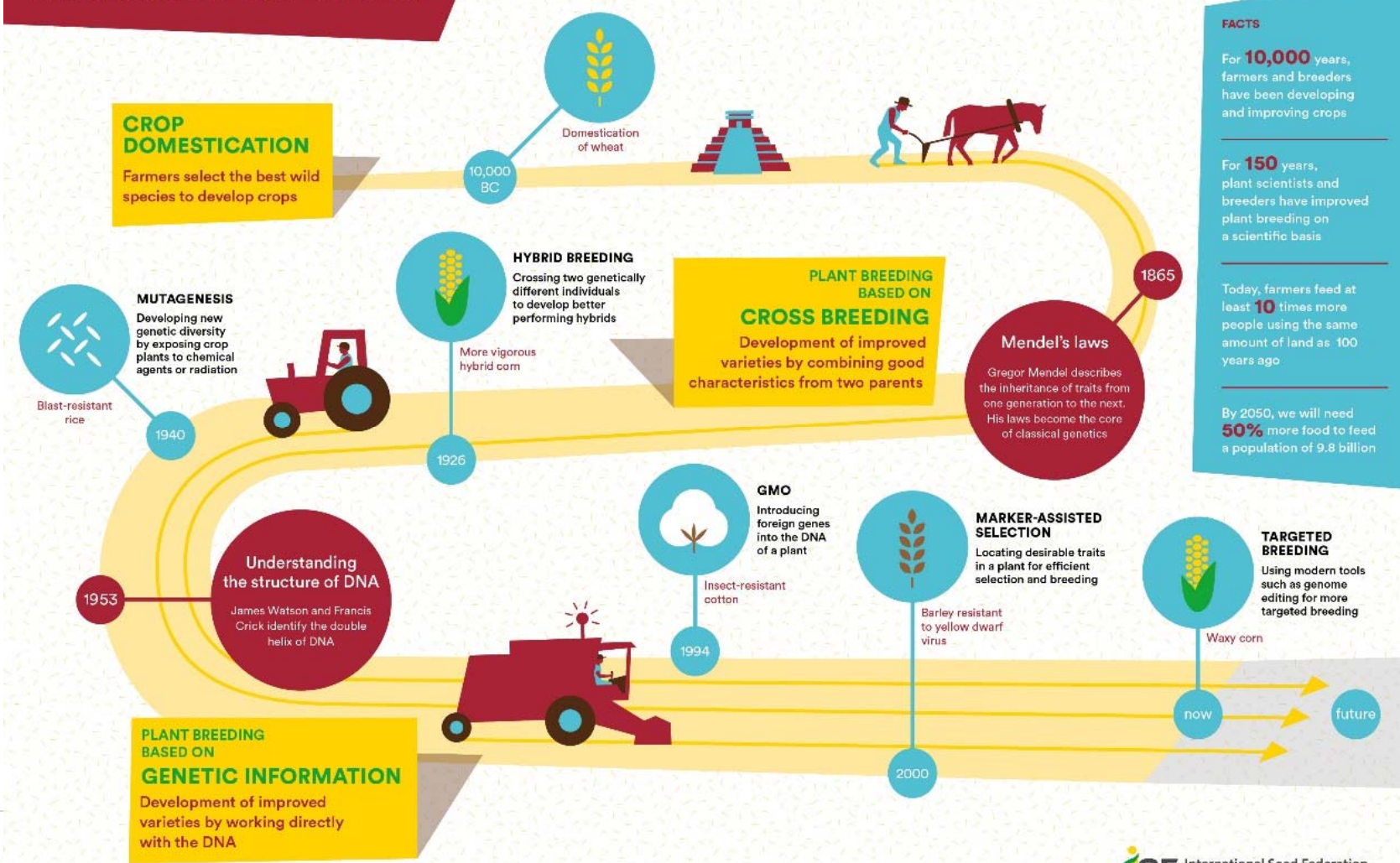
However, as the phenotypic characteristics are resulting from the genotype, a strong genetic similarity between the initial variety and the putative EDV can give a strong indication of essential derivation.

A molecular genetic distance threshold, defined on a crop by crop basis since there is large difference in genetic diversity between crops, is useful to support EDV dispute procedures.

ISF has developed guidelines for a variety of specific crops (perennial ryegrass, maize, oilseed rape, cotton, lettuce and mushroom) in which a genetic threshold is established (in order to reverse the burden of proof).

ISF has created an Arbitration Chamber in case of EDV disputes + Regulations + Explanatory Notes: available on ISF website

MILESTONES IN PLANT BREEDING



FACTS

For **10,000** years, farmers and breeders have been developing and improving crops

For **150** years, plant scientists and breeders have improved plant breeding on a scientific basis

Today, farmers feed at least **10** times more people using the same amount of land as 100 years ago

By 2050, we will need **50%** more food to feed a population of 9.8 billion

Essentially Derived Varieties & plant breeding innovations

ISF position:

Breeding method used has no impact on the concept of EDV

Same criteria should be applied

=> To bring innovation to farmers to address tomorrow's challenges



yields



disease and pest resistance



climate adaptability



resource use efficiency



product quality, diversity
and nutritional value

Conditions and Limitations to breeder's authorisation

- Breeders, as owner of their variety should remain free to apply any conditions, related to the calculation of their remuneration, quantity of material, currency etc.
- This is the contractual freedom of the breeder
- However, national contract laws may put restrictions on the conditions and limitations on the use of licensing agreements.
- UPOV/EXN/CAL/1 gives good examples

- No need for a modification of UPOV/EXN/CAL/1

Provisional Protection

- ISF did not get information from its members on difficulties encountered regarding the granting of a provisional protection
- ISF recommends that either the publication of the filing in the official publication of the national PBR-office or the use of a label with the notification “PBR pending” should be deemed sufficient to inform the professional user of the existence of a filed PBR-application.
- No need for a modification of UPOV/EXN/PRP/2



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