

IMPLEMENTATION OF THE NAGOYA PROTOCOL IN THE EUROPEAN UNION

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EU Regulation No 511/2014

- The European Union adopted Regulation No 511/2014 on 16 April 2014, which entered into force on 9 June 2014;
- The Regulation applies from the date the Nagoya Protocol entered into force for the EU, i.e. on 12 October 2014;
- The Regulation provides compliance measures for users from the Nagoya Protocol.

Case T-559/14 before the Court of Justice of the EU

- An action for annulment of regulation 511/2014 has been brought by several breeders organizations on 28 July 2014;
- The action is based on 5 pleas in law;
- Pleas in law that have an impact on the UPOV Convention:
 - Breach of the breeder's exemption restricted by the Regulation;
 - The Regulation does not take into consideration the plant breeding sector as genetic resources are essential to the functioning of the sector.



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- The Regulation creates legal uncertainty for plant breeders as its scope of application depends on whether or not States choose to exercise sovereignty over genetic resources.
- The future development of best practices reduce only the risk of non-compliance for users subject to the Regulation.



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- Three major provisions of the Regulation will enter into force only one year after the entry into force of the Regulation, i.e. as from 12 October 2015;
- Those are provisions under Articles 4, 7 and 9, namely:
- The setting up of the due diligence mechanism, the monitoring of user compliance and the mechanism of checks on user compliance to be done by national competent authorities;
- The Commission has to adopt implementing Acts to the effects described above.



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Uncertainties within the European Union

- The outcome of case T-559/14 pending before the CJEU is not known;
- The potential role of the CPVO in the compliance procedure is not known;
- Under the current Basic Regulation, applicants have already to declare the geographic origin of the variety and the breeding method.



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- However, if the CPVO would need to carry out additional tasks in the framework of the implementing acts to Regulation No 511/2014, this could imply a revision of its founding Act which is not foreseen in the working Programme of the European Commission for the current year.



Role of co-operation

- Co-operation between national authorities is a principle of the UPOV Convention;
- At EU level, it is reflected in the Basic Regulation (Article 91 thereof);
- The CPVO shares knowledge on plant varieties with the Entrusted Examination Offices and with Authorities outside of the EU with which agreements have been signed such as Mexico for the conduct of technical examination.



Conclusion

- The CPVO could potentially play a role in the fulfillment of the objectives of Regulation No 511/2014;
- The coming months will be decisive waiting for the outcome of case No T-559/14 and the drafting of the implementing Acts by the European Commission.

