

Observation from New Zealand concerning WG-HRV/2/5

Para 5 Proposals from ISF etc

Article 13 provides for provisional protection for the period between the filing or the publication of the application for the grant of a breeder's right and the grant of that right. The period is specific and does not include any reference to claims of priority. New Zealand has the view that guidance in this document should have not include anything regarding a claim of priority or a priority date because priority has no role in provisional protection. It is correct that when a claim of priority is sustained the priority date becomes an effective application date or the first application for certain matters such as determining distinctness but not with respect to provisional protection.

It is understandable to raise this matter because varieties do spread around the world and not always under the control of the breeder. It is a good question to ask regarding the scope of provisional protection but for now we can only work with what we have. As Japan has pointed out each member state shall choose the starting point of the provisional protection, at application date or date of publication. There are currently no other options.