



**CPVO**  
Community Plant Variety Office

# Enforcement

## EU legislation

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## Outline

1. The Basic Regulation
2. The Customs Regulation
3. The Directive on Enforcement
4. Criminal Sanctions?
5. The Role of the CPVO
6. Examples on Farm Saved Seeds



## 1. Council Regulation 2100/94 (Basic Regulation)

- Infringing acts in relation to the variety
- Infringing acts in relation to variety denominations



## Enforcement of EU rights

- The right holders enforce the rights
- Legislator must create the necessary legislative environment
- National courts competent to hear infringement cases



## Applicable national court

- ↪ National court
  - ↪ Domicile of defendant
  - ↪ Domicile of plaintiff
  - ↪ Where the Office is located
  - ↪ Where the damage occurred



## The role of national courts

- Infringement cases (Art 94)
  - Order injunctions
  - Compensation (damages)
- Wrongful use of denomination
- Claims on entitlement
- Acknowledgement (EDV)



## 2. Customs Regulation

- Council Regulation No. 608/2013 on customs action against (suspected) counterfeited and pirated goods
- 1 January 2014



## 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
- 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
  - remedies



## 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 Sanctions ?

- No legislation at EU level on criminal sanctions
- However, criminal sanctions applicable for national pvr shall be applied to EU titles (Basic Regulation)



## Penalties under national law

- Prison
- Fines
- Seizure of goods
- Closure of establishment



## 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.



## 5. 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



## 6. Examples of infringements in FSS Cases



## Limitation of the Scope

### Article 14 Reg 2100/94

- Restrict the breeder's right
- Farmers are authorized to use for propagating purposes in the field, on their own holdings, the product of the harvest which they have obtained by planting, on their own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant variety right



## Agricultural Exemption

- Exception limited to
  - a) Fodder plants
  - b) Cereals
  - c) Potatoes
  - d) Oil and fibre plants

Full list in Art 14(2)



## Conditions - Article 14(3) BR

- Subject to the safeguarding of the **legitimate interests of the breeder** (*UPOV Condition*) and the **farmer** (*BR*)
- Farmers must pay remuneration for the use
- Small farmers are exempted
- Monitoring up to holders
- Information may be provided by official bodies



## Remuneration

- Farmers shall pay an *equitable remuneration sensibly lower* than the amount charged for the licensed production of propagation material



## Remuneration

- The fee can be determined in a contract between individual farmers and holders
- A contract between organisations of farmers and holders can be used as a **guideline** if published in the CPVO Gazette



## Equitable remuneration

If no contract:

- 50% of the amount charged for the
  - licenced production of propagating material
  - of the lowest category qualified for official certification
  - of the same variety in the same area



### **Cases C-7/05 to C-9/05,**

*Saatgut-Treuhandverwaltungs GmbH v Deppe and others*

- One of the questions that arose in this case was whether 80% could be seen as « sensibly lower »
- 80% was mentioned in an agreement between organisations of farmers and breeders, but the contract had not been published in the CPVO Gazette
- The court answered this question in the negative



New Corporate Identity

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## Information - Farmers

- On request, farmers are required to provide relevant information to the holder
- The details of such information can be laid down in a contract
- If no contract, the information laid down in Art 8 IR shall be provided; such as
  - Amounts used
  - Who processed the material



## C-305/00

*Schulin v Saatgut-Treuhandverwaltungs GmbH*

- The holder is only authorised to request information from a farmer if he has some **indication** that this farmer has used seed of a protected variety



## Information - Processors

- On request, processors are required to provide relevant information to the holder
- The details of such information can be laid down in a contract
- If no contract, the information laid down in Art 9 IR shall be provided; such as
  - Amounts processed
  - Who commissioned the service



### C-336/02

*Saatgut -Treuhandverwaltungsgesellschaft GmbH v Brangewitz GmbH*

- If the holder has an indication that a processor is processing farm saved seed of a protected variety the processor must provide information
  - not only to the farmer for whom the holder had an indication of use
  - but to all farmers for which the processor has processed the variety in question



## 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.



## Summary

- Examples of challenges
  - Securing evidence
  - Can DNA techniques be used ?
  - Time consuming
  - Expensive
  - Courts unexperienced



**Thank you for your attention!**

