



CPVO

Community Plant Variety Office

European perspective on the exceptions to Breeders' rights in the EU

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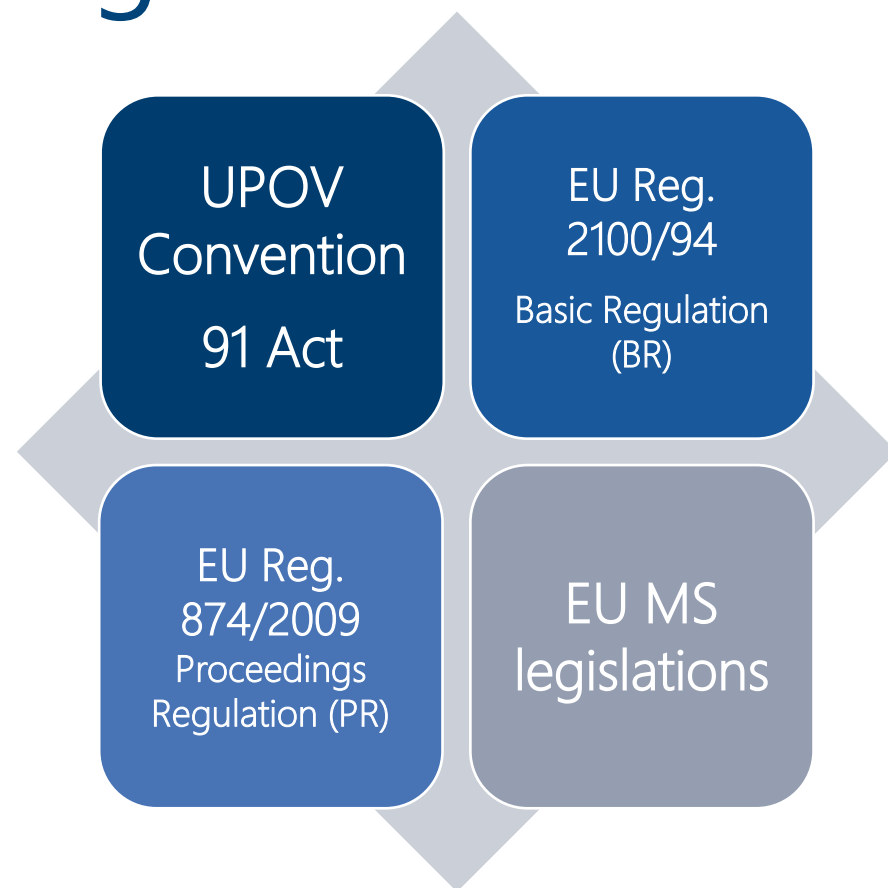
Outline

- The European Union Plant Variety System
- The CPVO
- Exceptions to the Breeders' rights



The European Union Plant Variety System

Plant Variety Rights (PVRs) in the EU: legal framework





PVR Protection in the EU

- The EU implemented a *sui generis* system of PVP in line with the TRIPS Agreement requirements (Art. 27(3)b);
- The EU PVP system is based on the International Convention for the Protection of New Varieties of Plants of the Union For The Protection of New Varieties Of Plants (UPOV) (1991 Act);
- The protection under the EU system has a uniform effect throughout all Member States (Art. 2 BR).



What fall outside of the scope of protection

- The EU PVR system, based on the UPOV Convention, only applies to new varieties, at the exclusion of varieties that are not covered or no longer covered by plant variety protection.
- Therefore many plant varieties can be replanted by a farmer without any authorization of the breeder.



PVR Protection in the EU

- Varieties of **all botanical genera and species** may be protected
- The CPVO has received applications for more than **2000** different **plant species**
- Duration of the right:
 - **25** years
 - **30** years for vines, trees and potato varieties
- Regulation (EU) 2021/1873 on the extension of the term of the CPVRs of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody small fruits and woody ornamentals
- Main points:
 - Entered into force on 15 November 2021
 - Extension of protection of 5 years



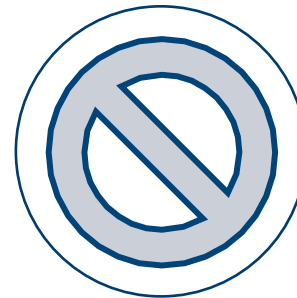
PVR in the EU



One title valid in all
27 Member States



One or several
national titles



No possibility of
double protection
(Art. 92 BR)



Existing national
rights cannot be
enforced during
EU protection





The Community Plant Variety Office (CPVO)

The CPVO



The **CPVO** is an Agency of the EU operational since 1995 and currently based in Angers, France.

Mission Statement:

'To deliver and promote an efficient Intellectual Property Rights system that supports the creation of new plant varieties for the benefit of Society'





Exceptions to the Breeders' rights



The material scope of PBRs



Variety constituents

(also referred to also as 'propagating material')



Harvested material

(products of the harvest)



Optional extension to **products obtained**
directly from material of the protected variety
(not implemented in the EU)



What does it mean in practice?

- The authorization of the breeder is required to propagate the protected variety for commercial purposes.
- The UPOV Convention specifies the acts that require the breeder's authorization in respect of the propagating material of a protected variety and, under certain conditions, in respect of the harvested material.
- UPOV members may also decide to extend protection to products made directly from harvested material, under certain conditions.
- The use of non-protected varieties is not affected by the PVR system.

Compulsory exceptions to the scope of Breeders' right



Art. 15 Basic Regulation

- Acts done privately and for non-commercial purposes
- Acts done for experimental purposes
- Acts done for the purpose of breeding, or discovering and developing new varieties (the breeder's exemption)





The “Breeder’s exemption”

Art. 15(c) Basic Regulation

- Enabling plant diversity
- Free access to protected varieties for the development and exploitation of further plant varieties, not subject to any restriction by the breeder of the protected variety
- Germplasm sources remain accessible to anybody
- Genetic basis for plant improvement is broadened and actively conserved
- Opportunity for all breeders to share in benefits of breeding activities



Acts done for experimental purposes



- The breeder's right does not extend to the use of the protected variety for experimental purposes.
- What does it mean? A researcher or scientist can conduct studies on a protected variety, and publish results of those investigations, without seeking authorization from the right's holder.
- What are the advantages? It is important to encourage contribution to the body of scientific knowledge about various plant varieties.

Acts done privately and for non-commercial purposes



- This provision allows amateur gardeners to use propagating material for use in their own garden without seeking authorization as long as the act is private and non-commercial.
- Additionally, a **farmer** can propagate a protected variety to be used exclusively for the production of a **food crop** to be consumed entirely by that farmer and his/her dependents (i.e. **subsistence farming**).



Conditions and limitations

- Breeders may decide the conditions and limitations under which they authorize the exploitation of their protected varieties.
- A right's holder may, for instance, allow the farmer to exchange seeds of protected varieties freely within the local community.



Optional exemption: Farmer's Privilege

Art. 14 Basic Regulation

- Covering varieties belonging to a limited list of 21 agricultural crops in well-defined circumstances and classified into four categories:
 - a) Fodder plants
 - b) Cereals
 - c) Potatoes
 - d) Oil and fibre plants

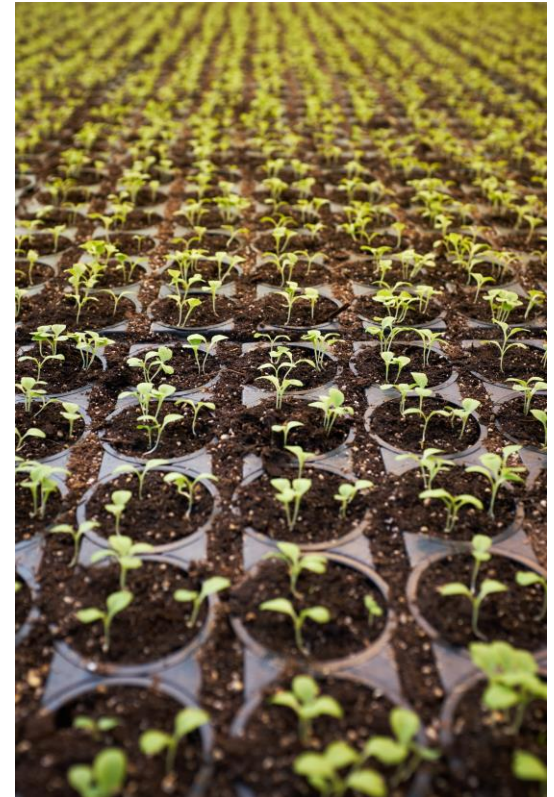




Scope of the Farmer's Privilege in the EU

Art. 14 Basic Regulation

- Farmers are authorized to use for propagating purposes in the field the product of the harvest which they have obtained by planting, propagating material of a variety other than a hybrid or synthetic variety, which is protected by a PBR
- Farmers shall pay an equitable remuneration **sensibly lower** than the amount charged for the licensed production of propagation material
- Small farmers shall not be required to pay any remuneration to the right's holder





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