



Plant Variety Protection in Europe

- the Review Process
- the Enforcement
- the Free Trade Agreements

Workshop at the LLD Forum

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PVP in Europe – the status quo

- Plant Variety Protection – Intellectual Property Right for Plant Varieties
- Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights
- One title granted by the CPVO valid all over Europe (25 / 30 years)
- Requirement: Distinct – Uniform – Stable
- Breeders Exemption - but not for Essentially Derived Varieties
- Farmers Privilege
 - but only for some crops: some fodder plants, Cereals (Oats, Barley, Rice, Canary grass, Rye, Triticale, Wheat, Durum wheat), Potatoes, Swede rape linseed with the exclusion of flax.
 - only small farmers exempted from payments.

Evaluation -> Review of CPVR/CPVO

- Surveys/Consultation until April 2026 to prepare the Evaluation Study
- The evaluation study helps the COM draft its '**Staff Working Document**' (written by DG SANTE) which compiles the findings of the study but also includes the conclusions that the COM draws from them. Those are not established, it could be
 - (a) all is fine, it is just a matter of implementation and no legal action is required at EU level (which is what happened after the 2011 evaluation)
 - (b) nothing is right and the system is not useful at EU level : the Regulation should be repealed, or
 - (c) the problems are systematic and linked to the Regulation's text itself, so we need to open it and start working on a proposal
- If they choose option (c), then they have to **develop a proposal for a new Regulation (or an amendment to the existing Regulation)**.
 - Which means, under the Better Regulation guidelines, that an **impact assessment study has to be launched, based on policy options formulated by the COM**. New study means another round of consultations (open public consultation, survey, interview, workshop...), but this time to assess the impact of each option that the COM is envisaging for the future.
 - After the consultation, the COM presents its proposal to the European Parliament and the Council of the EU, which each adopt their positions, and then all 3 meet in trilogues to negotiate the final text.



Major shortcomings of Council Regulation (EC) No 2100/94

- Farmers' rights to seeds are not being respected
- The CPVO Variety Finder does not provide sufficient legal certainty for breeders and farmers (breeding techniques, Intellectual Property)
- DUS reduces Diversity – uniform varieties
- The exception for acts done privately and for non-commercial purposes is not being implemented due to a lack of definition
- Plant breeders' rights prevent farmers from carrying out breeding work
- Under the current system, farmers are treated as criminals
- Once plant variety rights expire, varieties are often no longer available to other breeders
- Simply amending plant variety rights makes no sense – they must be revised in conjunction with patent law.

Conflict over enforcement of breeders' rights against farmers

breeders seeking royalty income from protected varieties VS farmers reclaiming their right to save and reuse seed.

The seed industry wants:

1. Better access to farm data

- what varieties farmers grow, how much seed they save, farm acreage, seed cleaning records,
-> by: mandatory declarations, stronger reporting obligations, data-sharing systems involving seed processors and grain collectors.

2. Obligations on seed cleaners

- mandatory recordkeeping, compulsory disclosure of clients, stronger liability rules.
-> This has already produced legal disputes in several EU countries.

3. More harmonized inspections and sanctions

- harmonized EU enforcement standards, more effective penalties, easier collection of royalties, better judicial remedies.

4. Digital traceability systems

- digital certification, electronic seed passports, traceability databases, data interoperability across the supply chain.
-> This will create extensive monitoring of farming practices.



When Saving Seed Becomes a Crime

A study on the criminalization of farmers exercising their right to save, use, exchange and sell seeds under plant breeders' rights laws

KARINE PESCHARD



Study Launch

When Saving Seed Becomes a Crime

Karine Peschard, PhD
Geneva Graduate Institute
March 2026

THE PUSH FOR CRIMINAL ENFORCEMENT



“AIB has taken the fight against PVP and PBR infringers to the next logical step by treating these violations **as the crime** that they are. By using the existing **criminal statutes** to target the organized **crime** groups and immoral farmers, growers, and breeders who illegally infringe on (PBR), AIB hopes to weed out those who would compromise the vegetable seed industry.”

- Former AIB General Manager (2022)

SURVEILLANCE THE CASE OF THE ORRI MANDARIN



Photo credit: eComercio Agrario

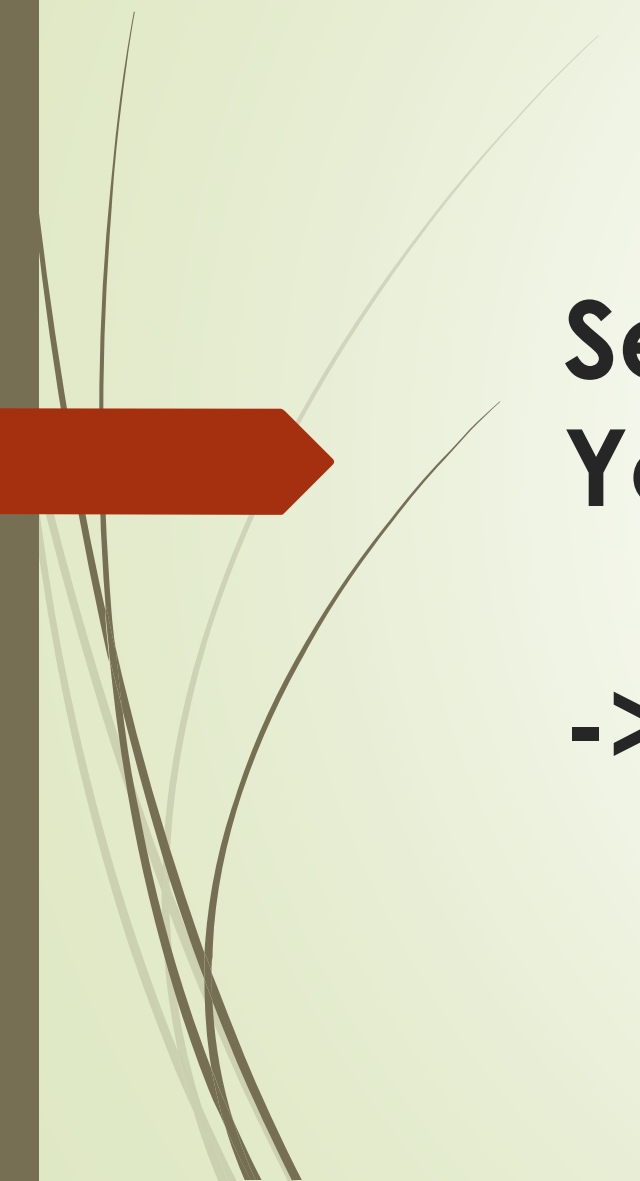


“A pioneering control system to monitor and defend industrial property rights (...) It combines state-of-the-art technological tools (...) capable of identifying, in the field and in real time, suspicious plots.”

- 150 lawsuits as of 2025
- First prison sentence in 2020
- Destruction of 40 000 fruit trees

COMPARATIVE ANALYSIS OF SELECTED COUNTRIES' LEGISLATION

- Out of 15 countries
 - 5 only provide for civil remedies
 - 10 also provide for criminal sanctions
- Criminal sanctions vary considerably
 - From one year to up to 15 years in prison
- PBR infringement subject to criminal sanctions
 - In the PBR/PVP law
 - In the Criminal Code



**See the whole Webinar at our
Youtube-Channel**

-> APBREBES / Youtube

The impact of the UPOV requirement in Free Trade Agreements of the EU

APBREBES & Both ENDS • December 2021

The EU's push for intellectual property rights on seeds and its impact on developing countries



For APBREBES and Both ENDS, an agreement negotiated 30 years ago by a few industrialised countries is not a basis for shaping the global agriculture of tomorrow. Times have changed. The EU should therefore stop requiring developing countries to adopt the 1991 Act of the UPOV Convention through trade agreements or any other related activities.

This policy brief is an abstract of the report 'Plant variety protection & UPOV 1991 in the European Union's Trade Policy: Rationale, effects & state of play'.

10 free trade agreements (FTAs) and 3 association agreements signed by the EU and its trading partners required protection of plant variety rights under the terms of the 1991 UPOV Act, while 15 association agreements formally require accession to the 1991 Act.(2021)

Each Party shall protect plant variety rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV Convention) as lastly revised in Geneva on 19 March 1991". or



Ongoing negotiations with the EU

The case of the Philippines

- ▶ Current PVP Act
“The Certificate of Plant Variety Protection shall not extend to: [...] d) **The traditional right of small farmers to save, use, exchange, share or sell their farm produce of a variety protected under this Act, except when a sale is for the purpose of reproduction under a commercial marketing agreement. [...] This provision shall also extend to the exchange and sell of seeds among and between said small farmers:** Provided, [t]hat the small farmers may exchange or sell seeds for reproduction and replanting in their own land.”
- ▶ In its comments, UPOV noted, among other things, **that “The exchange and sale of seeds among and between the said small farmers in their own land, as provided in the third sentence of Section 43(d) of the Law, go beyond the exception of Article 15(2) of 1991 Act.”** UPOV also calls for the Section to be amended.



Ongoing negotiations with the EU

The case of the ESA 5 (Zimbabwe, Madagascar, Comores, Mauritius, Seychelles)

➤ Current Act of **Zimbabwe**:

(d) a farmer who derives at least eighty per centum of his annual gross income from farming on communal land or on resettlement land as defined in section 2 of the Rural District Councils Act [Chapter 29:13] may

(i) (ii)
multiply the seeds of any prescribed plant; and exchange with any other such farmer—

A.
any prescribed plant which he has grown or reproduced on his land;

-> To be in line with UPOV this article needs to be deleted.



The Case of Malaysia

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Among other things, Malaysia would have to make the following adjustments to join UPOV:

- Delete: “any exchange of reasonable amounts of propagating materials among small farmers.”
- the sale of farm-saved seeds in situations where a small farmer cannot make use of the farm-saved seeds on his own holding due to natural disaster or emergency or any other factor beyond the control of the small farmer, if the amount sold is not more than what is required in his own holding. (-> only by license)
- that in the same law, Farmer Varieties are also protected (with different criteria).
- the disclosure of the source of the material used