

Plant Variety Protection (PVP) system in Poland

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History of PVP system in Poland

- National PVP system is operational, **since 1988**
- PL acceded to the 1991 Act of the UPOV Convention **on 15.08.2003**
- PL joined UPOV **on 11.11.1989**, after ratification of the 1978 Act of the UPOV Convention
- Presently, all genera and species are eligible to be nationally protected

Characteristic of PVP systems in Poland (1)

- Since Poland's accession to the EU, **National PVP (nPVP)** system **exists in parallel with Community PVP (CPVP)** regime
- **nPVP** offers variety protection on the **Polish territory, only**
- Since 2004, it is up to the breeder to decide what type of the protection to choose
- **nPVP** system is very popular with **domestic breeders**; almost all of plant varieties bred by Polish breeders are protected by nPBR titles

Characteristic of PVP systems in Poland (2)

- If the breeder sees a market for a new variety in more than two EU member states, the **CPVP is preferred**
- Any variety which is subject of a CPVP shall not be subject of a nPVP or any patent for that variety
- It is not prohibited that a **part of a variety** (eg. a gene coding of particular trait) **is protected by a patent**, whereas the **variety as such can only be protected with nPVR or CPVR**

Characteristic of PVP systems in Poland (3)

- **Research Centre for Cultivar Testing (COBORU)** is the **competent authority** for the nPVP administration in Poland
- Within the **nPVP** system, COBORU takes also care for the **technical examination** of candidate varieties
- The **register of protected varieties**, including those provisionally protected, is also kept by COBORU

Impact of the PVP system

The following phenomena can be considered as a consequence of the introduction of PVP in Poland

- **Increased access to foreign varieties/germplasm by breeders, farmers, and society**
- **Increase in the number of released varieties of agricultural crops of both foreign and domestic sector**
- **Improved characteristics of varieties important for Polish agriculture, consumers, and other end-users.**

Benefits of the UPOV System for Breeders

- Means of achieving return on investment
- Basis for national and international licencing agreement
- Protection for breeders in other UPOV member territories
- Benefit from priority date (first application date) in other UPOV member territories
- Breeder's exemption
- Simple and harmonized application and examination procedure

Benefits of the UPOV System for Members (1)

- Internationally accepted *sui generis* system
- Protection for Breeders in other UPOV members
- Benefit from priority date
- Cooperation in examination
- Legal and Technical guidance
- Awareness/Influence of future development

Benefits of the UPOV System for Members (2)

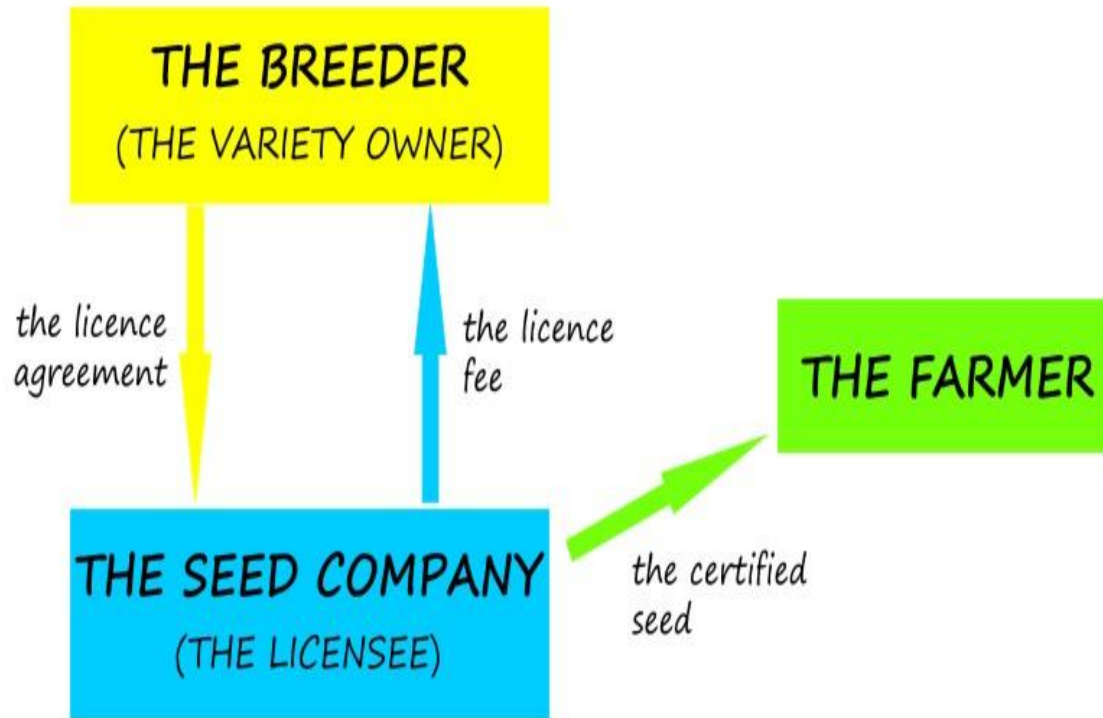
- **More domestic breeders**
- **More varieties available from domestic and foreign breeders**
- **Increased availability of improved varieties for farmers and growers**
- **Improved productivity and quality**
- **Improved international competitiveness**

PVP training opportunities in COBORU

Possible training course topics:

- **Implementation of the UPOV Convention**
- **Organization and operation of a national PVP system**
- **Technical examination of varieties (DUS testing) in agricultural, vegetable, fruits and ornamental species**
- **Variety denominations**
- **International cooperation in PVP matters with special reference to DUS tests**
- **Enforcement of PBR**

Enforcement of PBRs



Enforcement of PBRs

- Certified seed of protected varieties is produced by seed companies (licensees) solely on the basis of a written licence agreement between the seed company and the breeder being a holder of an exclusive right to the particular variety.
- A holder of agricultural land may, on possessed farm land, use for sowing the purchased certified seed without the necessity to make any additional remuneration to the breeder, that in turn is required for using the FSS ([agricultural exemption](#))

Enforcement of PBRs

- **After the end of the sowing season, the licensee settles accounts with the breeder, under the concluded agreement, by paying for him the license fee. Eligible licensees are required to affix labels on the bags, informing whether a particular variety is protected by an exclusive right and whether this variety can be used as FSS.**

The lack of such a label does not relieve the farmer of respecting the breeder's exclusive right to plant varieties and paying the FSS fee!

Enforcement of PBRs in Poland (1)

- In case of varieties protected by **nPVR titles**, the **Polish PVP Act** constitutes the legal system providing basic conditions regarding civil claims, infringements and jurisdiction
- In case of varieties protected by **CPVR titles**, additionally the following Community Acts are relevant:
 - ✓ **Basic Regulation 2100/94** - provides some basic conditions regarding civil claims, infringements and jurisdiction (Art. 94-107)
 - ✓ **Directive 2004/48/EC** on the enforcement of intellectual property rights
 - ✓ **Regulation 1383/2003** concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights

Enforcement of PBRs in Poland (2)

The enforcement of both **nPBRs** and the **CPBRs** is a **shared responsibility of:**

- the breeders
- breeders' organization (AGNAS) - collection of FSS remunerations
- national legislator (civil law and penal provisions)
- the judicial authorities (judicial environment to deal with infringement cases)
- national variety office (solid title of protection, information of interested circles)

Enforcement of PBRs in Poland (3)

- The breeders act against infringements with the **available legal means**
- The Polish PVP Act seems to create **adequate civil law and penal provisions** to enable the effective enforcement of PBRs
- However, we suffer from the **lack of specialised courts** to deal with PBRs infringement cases

Enforcement of PBRs in Poland (4)

- Polish national variety office (**COBORU**) provides a **solid title of protection** based on a high quality technical assessment of candidate varieties and service in carrying out of variety identification tests
- Furthermore, **COBORU regularly informs** breeders, producers, farmers and judicial authorities **of the implications of both nPBRs and CPBRs infringements**
- The final aim of our activities is **to raise awareness** of problems and solutions as regards the enforcement of PBRs (seminars, training courses, publications, etc.)

Farmers' privilege

(agricultural exemption) (1)

- The **National PVP Act** contains provisions which constitute the **basis for collection of FSS remunerations** for varieties protected both with nPVRs and CPVRs
- There exists an **obligation** for farmers **to provide information** about FSS use on their holding as well as obligation for seed processors to provide information on services rendered
- Furthermore, **clear penal provisions** are helpful in fighting with infringements of PBRs on the Polish territory

Farmers' privilege

(agricultural exemption) (2)

- Definition of **"Small farmer"**:
 - up to **25 ha**
 - up to **10 ha** - in case of Potato varieties
- Species covered (16):
 - **Field bean, Field pea, Barley, Linseed, Lucerne, Narrow leaved lupin, Yellow lupin, Oat, Durum wheat, Wheat, Triticale, Oilseed rape, Turnip rape, Common vetch, Rye, Potato**

Farmers' privilege

(agricultural exemption) (3)

- Based on National PVP Act of 2003
- There are no agreements between breeder or breeders' organization and the holders of agricultural land about the use of FSS
- **Breeders' organization** called **AGNAS** (Seed Agency) was established in 2003, and is responsible for the organization and collection of FSS remuneration
- AGNAS represents about 20 breeders of agricultural crops, of both domestic and foreign origin, operating in Poland

CONCLUDING REMARKS

- PVP systems functioning in Poland illustrates that both **national** systems and **regional** PVP regime can **coexist smoothly in parallel**
- Nevertheless, **nPVP system** (1300 varieties protected) plays important role in our seed sector and is much more **preferred by domestic breeders** than CPVR regime
- Enforceability provisions in **our PVP Law**, especially on FSS use, are **more adapted to national conditions** than the relevant CPVP provisions

GENERAL REMARKS ON ENFORCEMENT

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

Examples of breeders' organization -for collection of FSS remunerations (1)

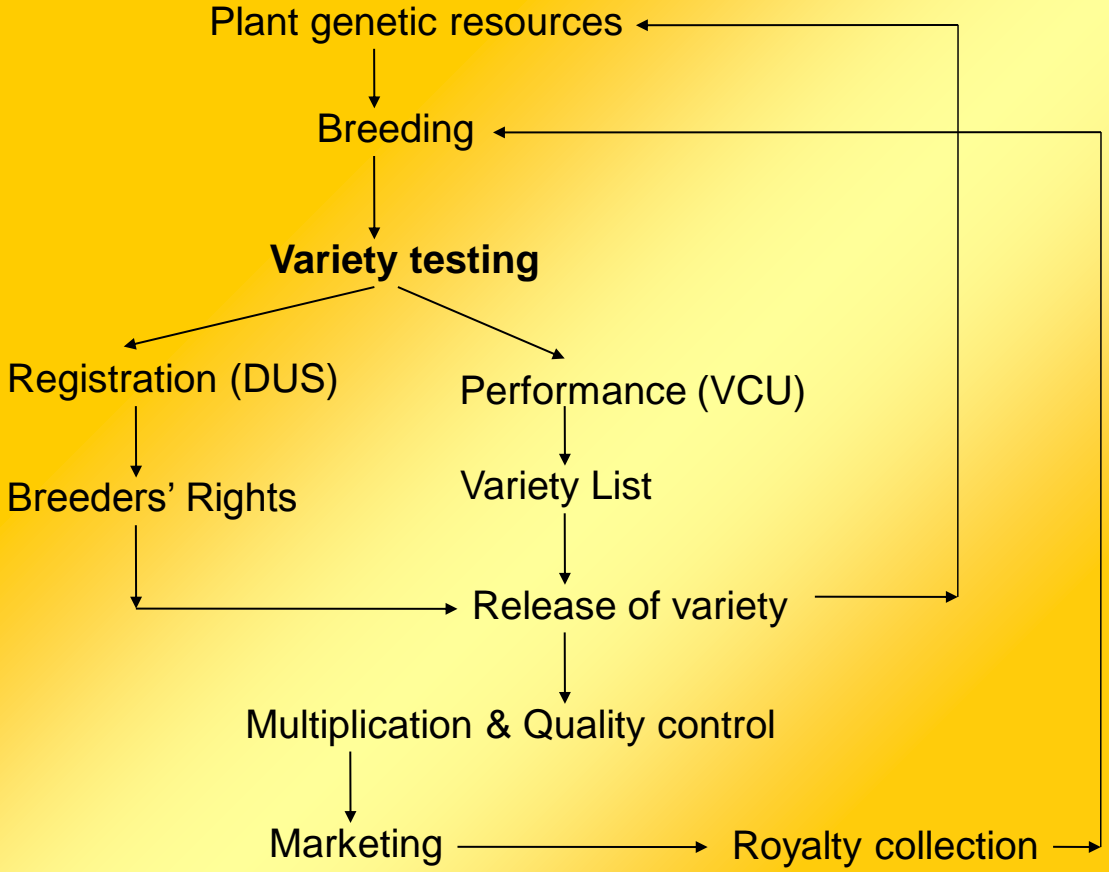
- **France -SICASOV** benefits from a specific structure that ensures economic, legal and financial management services related to the production of vegetal varieties under license.
- **Germany - Saatguttreuhandverwaltungs-GmbH (STV)** is acting on behalf of approximately 50 plant breeding companies to enforce plant variety protection rights.

Examples of breeders' organization - for collection of FSS remunerations(2)

- **Czech** - Variety Owners' Cooperative (DRUVOD)
- **Slovakia** - Variety Owners' Cooperative (REMUNA)
- **Poland** - Agencja Nasienna (AGNAS)

- Agencies for ornamental plants as:
 - NL** - Breederplants, Plantipp, VIP for plants, Van Vliet New Plants
 - UK** - Genesis Plant Marketing, Plants for Europe

PLANT VARIETY CHAIN



**THANK YOU FOR YOUR
ATTENTION**