



# Development of Intellectual property challenges at french level

(Plant Breeders'rights, patents and Farmers'rights)

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- Plant Breeders' rights is the only way to protect varieties in Europe.
- Plant Breeders' rights may be endangered for 2 reasons :
  - ➔ the emergence of patents in plants through development of biotech inventions,
  - ➔ an extensive understanding of Farmers' rights.



- If varieties can't be protected by patents, patents may be used for genes and species.  
Not only in Europe but in a big part of the world.



- During many years, except in France and Germany, european legislation was ambiguous :

varieties were protected by plant Breeders'rights, but if they include a patented invention, there was no free access for breeding to the variety ; no more breeding exemption.



- Through unitary patent there is introduction for 25 EU countries of a partial breeding exemption :

You may use freely a variety including patented inventions without payment to or even authorization of the owner(s) for breeding purposes.

But, if some patents are still actives in the new variety, you need to find an agreement with owner(s) of the patents.



- The limitation of patents regarding what we call « native traits » is still under discussion.

France and ESA are in favor of a no patent legislation on native traits.



- Regarding Farmers' rights Europe is facing 2 challenges :
  - ➔ how to proceed to implement farm save seeds provisions with some money back to the breeders ?
  - ➔ How to avoid more and more difficulties of access to GR as source of breeding ?



- EU has a farm save seed provision since 1994, and the starting of a european Breeders'rights certificate.  
But this provision, opened for 21 species for which FSS is a tradition, is based on voluntary declaration of Farmers.  
Till now, a minority of EU countries –after 20 years- are implementing this provision.





- In France, for 13 years in wheat, and for 2 years in other small grain cereals and potatoes plants, we are implementing a different way : Farmers are paying some fees for Breeders when they sale their harvest.

For now, it's working and brings 25 % more money to Breeders.



- But the new challenge is the possible evolution of ITPGRFA and the implementation of Nagoya Protocol :
  - regarding IT the debate is about the possible introduction of upfront payment,
  - Regarding Nagoya the debate is about the due diligence obligations and the consequences of MAT on breeding exemption of varieties belonging to species, which are not included in the multilateral system of the Treaty.



- To conclude, the increasing number of member countries of UPOV is a very good news, but we need to take care that plant Breeders' rights, which have showing their efficiency, would not be caught between the patent's rock and the Farmers' rights hard place.



Thanks

