

# **SANCO Framework Contract on Evaluation, Impact Assessment and Related Services**

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## **Evaluation of the Community Plant Variety Right Regime**

26/05/2010

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**Terms of reference**

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## A. CONTENT OF THE ASSIGNMENT

### **1. Purpose of the assignment**

The purpose of the assignment is to "Evaluate the European Union 'acquis' on the 'Community'<sup>1</sup> Plant Variety Right Regime" and its implementation in the Union so as to reflect the following:

- Has the aim of this “acquis” been reached?
- What about its strengths and weaknesses?
- What are the possible ways forward to address future challenges in the Plant Variety Right sector?

### **2. Context of the assignment**

#### **2.1. Description of the Policy Area to be evaluated**

##### **2.1.1. Scope of the current Community Plant Variety Right Regime**

- The existing Community Plant Variety Right (CPVR) regime aims at providing intellectual property rights, with respect to new varieties of plants on the whole territory of the European Community to breeders on request.

The CPVR regime is based on Council Regulation (EC) N° 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ L.227 of 1.9.1994, p. 1 – 30) and its implementing rules (see annex). It is operational since April 1995. (Hereinafter referred to as the "CPVR Regulation") The substantive part of the CPVR Regulation is based on the 1991 Act of the International Union for the Protection of New Varieties of Plants (the so-called "UPOV Convention").

- A plant variety protection right is a form of intellectual property akin to a patent;
- The scope of a CPVR is, to a high degree, similar to that of a patent, it has nevertheless its own specificities, such as:
  - The "breeder's exemption", according to which the CPVR shall not extend to acts done for the purpose of breeding for experimental purposes or for discovering and/or developing other varieties from protected varieties;
  - The "farmer's exemption", which gives farmers the right to use farm saved seeds of identified species provided for in the legislation, on their own holding without the consent of the right holders of the variety in question. (Note that the "Biotech" Directive 98/44/EC provides for the "farm saved seed" (FSS) exemption.)

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<sup>1</sup> Despite the entry into force of the TFEU, the Term of "Community Plant Variety Right" is maintained as such in the text as the basic Regulation (R. 2100/94) uses this term.

- On the basis of a single application to the Community Plant Variety Office (hereinafter referred to as the "CPVO"), a breeder may be granted a European Union-wide intellectual property right for a plant variety that is new, distinct, uniform and stable, with a variety denomination.

### **2.1.2. State of Play**

- Many of the new varieties of plants brought to the EU market are protected either at Union or at National level by Intellectual Property Rights;
- The CPVR regime works in parallel with 23 National Plant Variety Right regimes; it is up to the breeders, including breeders of third Countries, to decide, whether they wish to protect their new varieties of plants, and in the positive, whether they wish to do so at Union level or at National level. It has to be noted that there is a high tendency for the breeders to ask for a Union Protection rather than a National Protection of their new varieties of plants;
- At present more than 16.000 CPVR are in force;
- The CPVO in Angers (France), an autonomous European Agency with its own legal personality, implements the system. It is financially independent from the general budget of the European Union;
- In the plant sector, other forms of Intellectual Property Rights may be used to a certain degree (e.g. patent, trade-mark ...) but in the European Union, the Community Plant Variety Right or the National Plant Variety Right regimes are the only regimes to protect a variety of plant as such;
- Problems can occur where a plant variety is protected by a plant breeder's right and when the protected material includes a component protected by a patent. The CPVR Regulation was amended in 2004, followed by amendments in the implementing Regulation, to create a system of compulsory cross-licensing in cases where the patent holder and the holder of a CPVR cannot agree on the use of the variety/plant material protected;
- In the context of EU 2020<sup>1</sup>, there is an aim to improve the framework conditions for innovation and creativity, which, among others, include the modernisation of the EU's Intellectual Property system, as a tool to get more sustainable, social, smart and green economy, for the benefit of the civil society.

### **2.1.3. Description of the policy area to be evaluated**

The policy area to be evaluated is based on the CPVR Regulation. This basic Regulation sets up the following legislative rules and provisions on CPVR:

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<sup>1</sup> Commission Working Document: consultation on the future "EU 2020" strategy (COM (2009) 647 final of 24.11.2009)

1. Administrative and technical conditions governing the grant of a CPVR;
2. The subject-matter, including technical criteria necessary for a variety to be protected under the CPVR regime;<sup>1</sup>
3. The legal or natural persons who are entitled to file an application for a CPVR;
4. The scope of CPVR, i.e. the rights conferred on the holder of a CPVR;
5. The definition of essential derived varieties (EDV) and the effects of CPVR on these EDV;
6. The possible derogations from the CPVR regime:
  - The so-called "agriculture exemption" (or "farm saved seed" exemption) for a certain list of species;
7. The limitation and exceptions to the rights for the CPVR holder:
  - acts done privately and for non-commercial purposes;
  - acts done for experimental purposes;
  - acts done for the purpose of breeding or discovering and developing other varieties: the so-called "breeder's exemption";
  - compulsory licence.
8. The exhaustion of the CPVR;
9. The suitability and use of variety denominations, and limitation;
10. The duration, nullity, cancellation and termination of a CPVR;
11. The CPVR as an object of intellectual property including contractual exploitation rights, compulsory licensing and compulsory exploitation rights;
12. The CPVO:
  - The establishment of the CPVO for the purpose of the implementation of the CPVR Regulation;
  - The role of the CPVO, its legal status, its privileges and immunities, its management, its register and rules on access to documents, the role and function of its Administrative Council;
  - The function and competences of the President of the CPVO;
  - The appointment of senior officials of the CPVO;

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<sup>1</sup>More particularly:

- distinctness
- uniformity
- stability
- novelty
- appropriate and distinguishable denomination.

- The role and competences of the Board of Appeal of the CPVO (composition, independence, functioning (exclusion and objection));
  - Proceedings before the CPVO;<sup>1</sup>
  - The maintenance of CPVR by the CPVO (the continued existence of varieties, its possible amendment on variety denomination....);
  - The possible appeals from decisions of the CPVO as regards the application procedure<sup>2</sup> and as regards public access to documents;
  - The conditions governing proceedings before the CPVO;
  - The fees charged by the CPVO (application fees, examination fees, annual fees, special fees for appeal) and settlement of costs;
  - The registration of applications for CPVR by the CPVO, including public inspection, periodical publications, and the exchange of information between the CPVO and the National competent authorities and examination offices.
13. The budget and financial control of the CPVO, including its auditing;
  14. The civil law claims, infringements and jurisdiction in respect of a variety for which a CPVR has been granted;
  15. The Comitology procedure to assist the Commission as regards CPVR;
  16. The implementing rules of the CPVR Regulation (see annex) are a part of the policy area to be evaluated such as the calculation of the level of the fees to be paid by the right holders to the CPVO, the level of these fees, the implementation of the "farm saved seed" rules and the detailed implementation of proceedings before the CPVO;
  17. The CPVR regime has been in force now for 15 years and was never evaluated. It is therefore appropriate to evaluate if the system should be kept as it is, amended, or abandoned.

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<sup>1</sup> More particularly:

- how to file an application
- conditions governing applications
- deadlines for application
- the right of priority
- the formal and substantive examinations of the application; the conduct of technical examinations, the content of the examination reports, the costs of the technical examination
- the objections to grant a right and the priority of new applications in the case of objections
- the decisions of the CPVO on applications: its refusal, its grant
- the approval of the CPVO on variety denominations before granting a protection.

<sup>2</sup> More particularly:

- decisions subject to appeal
- the persons entitled to appeal and to be parties to appeal
- the time limit and form for appeal
- the examination of appeal
- the decision on appeal
- the actions against decisions on the Board(s) of Appeal
- actions brought before the European Court of Justice.

## 2.2 Objectives of the CPVR regime

### 2.2.1. Global objectives<sup>1</sup>

In addition to the above § 2.1.1 on the scope of the CPVR regime, the global objectives of this regime are the following:

- To provide in a uniform manner a harmonised protection over all EU territory, and on a voluntary basis, of new plant varieties with an intellectual property right;
- To contribute to the competitiveness of the EU seed<sup>2</sup> and breeding industry and of the EU agriculture striking a fair balance between breeders and consumer rights and taking into consideration societal needs;
- To contribute to maintain and develop diversity in plant genetic resources and sustainable agriculture production through an effective Intellectual Property Protection of new varieties of plants;
- To create an incentive to breeders to invest in research and development for the creation of new varieties of plants, which satisfy existing and upcoming needs;
- To enable breeders to further exchange their new varieties of plants for breeding and experimentation and to offer a better protection against counterfeit, piracy or fraud acts;
- In connection with the international rules on plant variety protection, the CPVR regime aims at providing a balance between the need to supporting environmental, social and economic sustainability, by means of fostering the creation of new varieties of plants with new environmental, social and economical characteristics, and the direct economic interests of plant breeders.

Therefore, the functioning of the CPVR regime and the possible repercussions of the existing system on the users, farmers and other societal and economic factors should be evaluated within this context.

### 2.2.2. Specific objectives<sup>3</sup>

- The specific provisions of the CPVR regime in its current shape are the followings:

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<sup>1</sup> The official term "global objectives" refers to the fundamental needs of society that are addressed by a legislation regime.

<sup>2</sup> "seed" stands also for "vegetative propagating material"

<sup>3</sup> The official term "specific objectives" refers to specific aims of a legislation regime, at a lower level of abstraction than global objectives and related to desired impacts rather than the underlying needs.

- The scope of rights of the holder of a CPVR:

The following acts in respect of variety constituents or harvested material of a protected variety shall require the authorisation of the holder: production or reproduction (multiplication), conditioning for the purpose of propagation, offering for sale, selling or other marketing, exporting from the Union, importing to the Union, stocking;

- The limits of the effects of a CPVR which shall not extend for example to acts done privately and for non-commercial purpose, to acts done for experimental purposes, and to acts done for the purpose of breeding or discovering and developing other varieties;
  - The derogations from the CPVR regime, such as the authorisation for farmers to use on their own holding, for propagating purposes, the product of the harvest which they have obtained by planting or sowing of a variety of plant covered by a CPVR;
  - The technical criteria and testing protocols to grant CPVR to varieties: such CPVR shall be granted for varieties which are distinct, uniform, stable and new, with a suitable variety denomination;
  - The level of the fees to be paid by the holders of a right to the CPVO;
  - The role and the structure of the CPVO in charge of the implementation of the Regulation on the CPVR regime;
  - The implementing rules concerning the CPVR regime, including the entitlement to file an application for a CPVR and its costs;
  - The rules on the procedure to accept/refuse proposals and to define the requirements for suitable variety denominations;
  - The criteria to provide compulsory licensing in the public interest;
  - The duration of a CPVR;
  - Its compliance with the internationally recognised requirements (the UPOV Convention<sup>1</sup>, 1991 Act, the TRIPS<sup>2</sup> agreement, the ITPGRFA Treaty<sup>3</sup>).
- The CPVR regime has technical links with the seed and propagating material marketing Directives, and the evaluation exercise needs to take them into consideration (more particularly on variety denominations and technical examinations in the two sectors).

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<sup>1</sup> UPOV: International Union for the Protection of New Varieties of Plants.

<sup>2</sup> TRIPS: Agreement on Trade-related Aspects of Intellectual Property Rights

<sup>3</sup> International Treaty on Plant Genetic Resources for Food and Agriculture

### 2.2.3. Operational objectives<sup>1</sup>

1. Using the considerations provided in the CPVR Regulation, the operational objectives of the CPVR regime add up to the following:
  - To take decisions on applications for Community Plant Variety Protection to new varieties;
  - To implement the exact duties of the CPVO when granting a plant variety right, as defined in the CPVR Regulation.
  
2. Implementation of the CPVR regime:

The operational objectives of the CPVR regime are implemented by the following activities and interventions by the CPVO:

- To take decisions on applications for a CPVR;
- To make the formal and substantial examinations on each applications;
- To make sure that the fees for the granting and the keeping in force of a CPVR have been paid within the time-limits;
- To co-ordinate the conduct of technical examination, carried out on behalf of the CPVO by Examination Offices for each application;
- To decide on the results of the technical examination on Distinctness, Uniformity, Stability and Novelty of the candidate variety;
- To check the variety denomination of the candidate variety;
- To decide on the grant or refusal of CPVR applications;
- To decide on objections filed against applications for a CPVR;
- To establish an Official Register of the application for CPVR;
- To develop a quality assurance system to grant a CPVR;
- To participate actively to technical and training meetings, organised at national, community and international level on Plant Variety Rights;
- To develop efficient means of communication between the breeders and the CPVO to facilitate and speed up the application procedure and payments of application fees, the fees for technical examinations and the annual fees for protected varieties under the CPVR regime.

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<sup>1</sup> The official term "operational objectives" refers to the concrete operational (practical) aims of a legislation regime, at a lower level of abstraction than global or specific objectives.

### 3. Enforcement of the CPVR Regime:

- The main principles of enforcement of CPVRs are found in the CPVR Regulation. However, enforcement relies to National Courts and competent Authorities applying EU and National legislation. The CPVR Regulation provides rules on jurisdiction and on certain sanctions.

As regards jurisdiction, there is no specific European Union Court established to judge in cases which deal with infringements of CPVRs. The CPVR Regulation provides with rules identifying in which Member State a case should be heard, referring, in essence, to the domicile of the plaintiff and the defendant. It is then up to each Member State to decide which national court(s) within its territory is competent to hear cases on the enforcement of a CPVR. The CPVR Regulation also provides for certain sanctions that a national court should issue in cases of infringement.

Subsequent to the adoption of the CPVR Regulation and its implementing rules, Directive 2004/48/EC of the European Parliament and of the Council has set up provisions on the enforcement of Intellectual Property Rights within the European Union including the CPVR regime. As the Basic Regulation, the Directive provides for, amongst other things, certain sanctions that a national court should issue in cases of an established infringement.

- Furthermore, Council Regulation (EC) N° 1383/2003 concerning customs actions against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights and its implementing rules, include plant varieties which are protected under the CPVR regime.
- Remark: It should be noted that Directive 2004/48 of the European Parliament and of the Council and Council Regulation 1383/2003 are not dealing exclusively with CPVR.

### 2.3. Challenge for the future as regards Community Plant Variety Rights

In connection with the above Chapter 2.2 on the objectives of the CPVR regime, the challenges for the CPVR in the future are the following:

- To ensure that the breeders have at their disposal a CPVR regime that allows them to exercise their rights effectively and efficiently;
- To ensure that the exercise of the rights granted complies with Union rules on Competition and do not favour the creation of monopolistic markets;
- To ensure that the grant of CPVRs does not lead to unreasonable costs for the users of new varieties;

- To enhance the already existing legal environment that contributes to the competitiveness of the breeding sector, stimulating future investment and the development of new varieties;
- To maintain and further enforce the achievements of the internal market, in particular, by ensuring adequate protection of new varieties of plants, within and, though it is outside the scope of the CPVR regime, outside the Union;
- To ensure compliance of the CPVR framework with international legal instruments such as the UPOV Convention, TRIPS, CBD, EPC, as well as the ITPGRFA Treaty;
- To ensure a positive impact on the final consumers and the EU economy as a whole;
- To respond to new challenges in terms of Intellectual Property created by the development of new breeding and reproduction techniques such as the creation of genetically modified (GM) varieties and other applications of biotechnology;
- In connection with the above-mentioned, to ensure that the various Intellectual property systems are effective and not conflicting and that their scope is well delimited;
- To choose for the future the most appropriate and effective Intellectual Property right regime to protect new varieties which is to the benefit of breeders and users of protected varieties taking into account regulatory, economic and cultural specificities of the EU.

### **3. Legal basis, budget and duration of activity / action**

- The CPVR Regulation is based on Article 308 of the EC Treaty (now Article 352 under the Treaty on the Functioning of the European Union (TFEU)). It is also based on the UPOV Convention as revised at Geneva on 19 March 1991.
- The budget of the EU Institutions does not support the CPVO which is directly financed with the fees paid by the breeders who want to protect their new varieties of plants at EU level. This office is totally self-financed since its creation in 1995 and had a yearly budget of about 13 million Euros in 2008.
- The policy area on CPVR is not subject to limitations in time but needs to be evaluated.

### **4. Instruments of the activity /actions**

In annex 1, a list of all the Community Plant Variety Rights legislation has been established, including its implementing rules; it includes also other EU legislation

on intellectual property with a direct link to Community Plant Variety Rights, such as:

- Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights;
- Council Regulation (EC) N° 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, and Commission Regulation laying down provisions for the implementation of this Council Regulation;
- Directive 98/44/EC of the Council and of the European Parliament on legal protection of biological invention.

## **5. Description of the assignment: purpose, objectives, scope, structure and methodology of the evaluation**

As stated in Chapter 1, with regard to the purpose of this evaluation, the CPVR acquis and its implementation in the Community will be evaluated, so as to establish objectively how effectively and efficiently the legislation has met its original objectives, and to identify its strengths and areas for improvement and its robustness with regard to potential new challenges affecting the EU plant breeding sector. To do so, specific objectives have to be set:

- 1. First**, this evaluation will focus on the effectiveness of the current CPVR regime. Therefore, it will analyse, in an independent way, the results of the existing CPVR regime as compared to the following acknowledged objectives that were set out by the Community when it was introduced:
  - Plant varieties posed specific problems as regards the industrial property regime which might have been applicable, and as a consequence, plant varieties needed a specific CPVR regime.
  - Industrial property regimes for plant varieties were not harmonised at Community level and therefore continued to be regulated by the legislation of the Member States, the content of which was not uniform; in such circumstances it was appropriate to create a Community regime, which, although co-existing with national regimes, would allow for the grant of industrial property rights, valid throughout the Community.
  - The implementation and application of the CPVR regime should not be carried out by the authorities of the Member States but by a Community Office with legal personality.
  - The CPVR regime should have regard to developments in plant breeding techniques including biotechnology, in order to stimulate the breeding and development of new varieties of all botanical genera and species.

- The new - at the time - CPVR regime had to comply with the internationally recognised requirements to protect a variety (i.e. distinctness, uniformity, stability, novelty and distinguishable variety denomination).
  - The CPVR regime had to be clearly defined, mainly as regards the rights of the holder of a CPVR, the duration of a CPVR, its exemptions, its derogations and the insurance that the full application of the principles of the CPVR regime should not be impaired by the effects of other systems and vice-versa.
- 2. The second objective** of the evaluation is to identify and explain the strengths and weakness of the current CPVR regime. To this end, as regards the weaknesses of the regime, the evaluation should provide a state of play in a modified legal and factual environment and clarify whether and, in the positive, which aspects of the current CPVR regime need to be improved.

In case where it will be considered appropriate, the evaluation would suggest potential options for amendments of the CPVR regime, including possible improvements. This aspect will have a strong focus on options and recommendations for the design of the future policy of the CPVR regime which is the third objective of this evaluation.

- 3. The third objective** of this evaluation as regards possible ways forward to identify and address future challenges in the CPVR regime, taking into account emphasis on innovation and new entrepreneurial culture.

**4. Consequently:**

- As concerns the structure of the evaluation, the contractor, apart from answering the evaluation questions, should first develop a "reference model" for describing the current CPVR regime including:
  - Legal basis;
  - Objectives;
  - Responsibilities attribution (including Community added value);
  - Instrumentation of the policy (via the CPVO and brand on the outcome of the recent evaluation of this Office);
  - Infrastructure (including examination offices working on behalf of the CPVO);
  - Management procedures and comitology;
  - Administration burden to stakeholders;
  - Budget.
- In support of the design and development of a possible new EU policy and strategy on Plant Variety Right, the evaluator is required to present different options, with an analysis of their relevance, and make recommendations on these options.
- For all options, a judgement should be provided concerning the choice for a certain recommendation in comparison with other options. This should be based on the:
  - Relevance to the CPVR objectives and the problems identified;

- Coherence with wider economic, social and environmental objectives;
- Interaction with other existing and planned Community interventions, in particular, in the seed marketing sector and on Intellectual Property Rights;
- Support by the stakeholders (seed and plant breeding industry, farmers, relevant NGOs, etc.) as well as by Member States;
- Pros and cons of the options;
- Cost / benefit analysis of different options ;
- Reduction of administrative burden and simplification of work.

## **5. Methodology**

The methodology of this evaluation must be drawn by the evaluator, taking into account the objectives and scope above and the establishment of good practice. The evaluator is expected to develop and implement a methodology that ensures that all the sub sectors of the CPVR "acquis" are sufficiently well covered by the evaluation and that clear conclusions can be drawn with regard to the effectiveness and the utility of the current provisions of the CPVR "acquis".

The evaluator is required to clearly detail the methodology and the different steps of the evaluation design:

- Desk research and review of data from the already available resources (listed in Annexes);
- Surveys, interviews and case studies:

The sample should be representative, i.e. have sufficient coverage (in terms of countries and actors involved), but at the same time it must be manageable to fit within the timetable for this evaluation exercise.

It should show a balance in terms of geographical cover (north/south countries, old/new, large/small EU Member States).

Direct interviews at least with the main stakeholders (ESA, CIOPORA, ISF, COPA-COGECA, UPOV, CPVO, EPO, NGOs...), representatives of National Competent Authorities (at least from Denmark, France, Germany, The Netherlands, Poland, Czech Republic, Romania, Spain, United Kingdom) and the main Commission Directorate Generals involved with CPVR (DG AGRI, DG DEV, DG ENTR, DG ENV, DG SANCO, DG TRADE, DG MARKT, SEC GEN, LEGAL SERVICE) will be necessary. Replies to the questions will be based on questionnaires and case studies established from the data collected at least in the above mentioned EU Member States.

The evaluator is expected not to restrict itself to these minimum requirements. Proposals for additional methodological tools that may contribute to meeting the objectives of the evaluation in a more satisfactory manner will be considered positively when evaluating the proposals.

## **6. Scope of the evaluation**

1. The civil society (breeders, farmers, retailers and consumers) would expect their governments to stimulate and facilitate the agriculture as a whole (seed

industry, breeders, farmers and the marketing chains), as this is a major employer and provides economic benefits for society. In this regard, it should be investigated whether citizens are in favour of Plant Variety Rights (PVR) measures, and whether these rights are regarded as they would protect economic growth, novelty in the plant sector and employment in this sector.

Also, the impact of PVRs on consumers and users should be analysed. More particularly, light should be shed on the impact the PVRs may have on the consumers, e.g. as regards the quality and prices of the protected plants, as well as on the extent of protection - for the users of new varieties of plants as regards their characteristics.

2. The evaluation study will concern the entire CPVR "acquis", its implementation and its enforcement in the Community and the infrastructural and budgetary support for the "acquis". It should be measured, among other criteria, through the evolution of the number of protected varieties at EU level, compared with the evolution of the number of varieties protected at National level, and on the satisfaction of the stakeholders (breeders, seed-industry, farmers, EU and National Authorities, EU consumers and EU citizens concerned with food and feed chain activities and the environment protection).
3. The evaluation should study the impact of the CPVR "acquis" on the producers (small, medium size and large enterprises) and the various users (small, medium size and large users) of protected varieties at EU level, as well as on the EU consumers and more generally on the Agriculture and the genetic resources of the EU.
4. It should have a forward looking component which also will have to examine options to ensure that the "acquis" supports a harmonious further development of agriculture, horticulture and forestry and make recommendations accordingly.
5. The evaluator will address the relationship to related Community regimes and more particularly with the EU seed marketing regime.
6. The evaluation should also take into account and study the impact of the CPVR on agricultural sustainability.
7. The reference period for the evaluation will be 1994 – 2009, from the start of the Community Plant Variety Right regime.

## **7. Evaluation questions**

It is not the purpose of this evaluation to review if the criteria for protection should be kept, since DUS requirements and the need to designate a variety denomination are set out in UPOV and in the "seed marketing Directives"; The evaluator should evaluate instead if the application of these criteria have been made in an

appropriate manner (for instance, is the present practise when assessing minimum distances between candidate and reference varieties optimal?).

For each of the CPVR legislative rules and provisions, including its implementing rules, the evaluator shall analyse all the effects of the CPVR "acquis", intended and unintended, positive and negative, and specify the reasons with concrete examples in the cases where the objectives were not met (e.g. flaws in the system, poor implementation, unbalanced cost/benefit ...).

The detailed questions hereunder are offered as a non-exhaustive list and are based on the legal provisions of the CPVR Regulation and its implementing rules. They must be answered by the evaluator and directly reflected in the proposed questionnaires and conducted interviews.

## **7.1. Lessons from the past: the general "Acquis" framework:**

The evaluator should analyse whether the effects induced by the adoption of European Union legislation on CPVR corresponds with its objectives as outlined in the CPVR acquis and in particular on the following items:

### **a. Harmonisation**

To what extent has the CPVR "acquis" harmonised at Community level industrial property regimes for plant varieties?

### **b. The CPVR as an appropriate regime**

To what extent can the CPVR "acquis" be considered as an appropriate EU regime which, although co-existing with national regimes, has allowed for the grant of industrial property rights valid throughout the Community? In particular:

#### **i) CPVR protection: conditions, scope, limitations and duration**

- 1) How does the evaluator assess the application of the criteria for a CPVR protection (e.g. the application of DUS requirements and the need to designate a variety denomination as set out in the "UPOV" Convention)?
- 2) Are the rights conferred on the CPVR holders, and their limitations and exceptions appropriate?
- 3) Are the derogations from the CPVR regime (the so called "agriculture exemption" or "farm-saved seed exemption") and the "breeder's exemption" appropriate and satisfactory? What are the possible ways forward to enhance the system in this regard?
- 4) Is the duration of protection appropriate in order to fulfil the needs it aims to satisfy? What criteria should the legislator take into account when establishing the duration? The evaluator should suggest different options for the duration of protection of new varieties of plants, taking into account the different targets, analysing the pros and cons for the EU breeding industry but also for the EU citizens and the EU economy as a whole.

For this purpose, the evaluator should compare the CPVR regime with other Intellectual Property regimes and in particular its duration<sup>1</sup> (e.g. with European Patent Convention regime, Community Registered Designs, Copyright, author's rights, performers' rights, trade-marks ...).

## **ii) Role and effectiveness of the CPVO**

1) To what extent is a system where the implementation and application of the CPVR "acquis" is not carried out by the authorities of the Member States but by a Union Office with legal personality, the "Community Plant Variety Office" effective?

2) To what extent does the Community Plant Variety Office (CPVO) "play its role", as defined in the CPVR Regulation, both in terms of the procedure for the granting of a CPVR as well as in terms of technical criteria (DUS) used for deciding to grant a CPVR?<sup>2</sup> The evaluator should analyse to what extent the private sector itself should contribute to the effort to carry out the technical DUS tests to grant the protections of new varieties of plants; the evaluator should propose various options duly argued in this respect.

3) Do the proceedings before the CPVO for the breeders fulfil their role?

4) Does the Board of Appeal of the CPVO fulfil its role?

## **iii) Enforcement**

1) Is the EU legislation on the enforcement of CPVR appropriate and how has the legislation been applied by national courts?

2) To what extent are the Jurisdiction and procedure in legal actions, relative to civil law claims, appropriate and reasonable?

3) Is there coherence between the sanctions laid down in the CPVR Regulation and the enforcement Directive 2004/48?

## **c. Effects of the CPVR on stakeholders**

To what extent is the CPVR "acquis" beneficial for all users of varieties protected at EU level and what are its consequences on the small, medium sized and large plant breeding industry, as well as on the small, medium sized and large farms and on EU citizen/consumers?

## **d. The CPVR as a stimulating tool for the EU breeders**

To what extent has the CPVR "acquis" facilitated the protection of new varieties of plants in the EU, stimulated the breeding and development of new varieties and improved protection compared with the situation before 1994 for all plant breeders, without, however, unjustifiably impairing access to protection generally or in the case of certain breeding techniques?

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<sup>1</sup> Remark: The CPVO has on request of breeders' organisations created a WG on a possible extension of the duration of protection. The CPVO would be happy to provide data collected in this respect to the evaluator.

<sup>2</sup> For these questions, the evaluator will refer to the conclusions of the current external evaluation by the CPVO on the role and management of this Office; he/she is not asked to double the work of analysis already made in this area.

As regards future developments, the evaluator should place the CPVR regime in the context of the development of the new biotechnology techniques for breeding.

**e. The CPVR and its impact on biodiversity, EU agriculture and the EU seed sector**

- 1) The evaluator will consider what is the impact of the CPVR "acquis" on the preservation and the erosion of plant genetic resources in EU.
- 2) To what extent has the CPVR "acquis" contributed to a harmonious development of the EU agriculture including in particular the EU seed sector?
- 3) As regards the technical links between the seed marketing Directives and the CPVR "acquis": what is the impact of such links?<sup>1</sup>

**f. Interactions with National law and International law**

- 1) To what extent does the CPVR "acquis" have an impact on the protection of new varieties of plants at National level?
- 2) How does the evaluator assess the impact of the CPVR "acquis" at international level, in particular, on the legal systems of third countries? The evaluation should also explain a possible extension of the CPVR regime to the EFTA countries.

## **7.2 Strengths and Weaknesses of the current CPVR "acquis"**

**a. Impact of CPVR on the interests of the stakeholders**

To what extent does the CPVR "acquis" strike a fair balance with regard to the interests of the various EU stakeholders' groups (breeders, small, medium size, big seed industry, small, medium size, large farms, seed processors, national experimental offices, EU consumers ...)? More particularly:

**i. Holders rights**

The evaluator should develop the strengths and weaknesses of the CPVR provisions on the rights of the holders and its limitations. In this frame the "Essential Derived Variety" concept must be considered.

**ii. Breeder's exemption and agriculture exemption**

- The evaluator should develop the strengths and weaknesses of the CPVR provisions on the derogations from the CPVR regime and on the limitations of the effects of a CPVR. In particular, he will focus on the "breeder's exemption" and on the "agriculture exemption", with their strengths and weaknesses.
- As regards the "agriculture exemption":

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<sup>1</sup> For this question, the evaluator should base his analysis on the conclusions of the 2007/2008 external evaluation on the Seed and Propagating Material Sector: he/she has not to duplicate the work already done in this matter.

The evaluator will consider the list of plants to which the "agriculture exemption" applies, the definition of "small farmers" (the necessity to maintain this concept or not) of "equitable remuneration" and of "own holding" in such "agriculture exemption".

The evaluator will consider also:

- the effectiveness of and – if necessary – ways to improve the information system between farmers using protected farm saved seed (FSS) on their own holdings and the holders of a right, in order for the latter to recuperate their legitimate and "equitable remuneration" from farmers using FSS;
- the role of the National Authorities to provide such information;
- the notion of "equitable remuneration" and how it is perceived by the various stakeholders and Member States as well as the technical arrangements between breeders association and farmers association to determine the level of this equitable remuneration and the way to collect the royalties.

The evaluator will carefully analyse the implementation of the Agriculture exemption in the MSs and compare also the CPVR regime to the National Plant Variety Regimes in the EU.

### **iii. Cost of the CPVR**

The evaluator should explain whether the costs for the different stakeholders (breeders, farmers, examination offices, Member States and the CPVO) involved in the CPVR "acquis" are reasonable and proportionate: he/she will explain the methodology used on how to best evaluate if the costs are reasonable and proportionate. He/she will explain the added value of this payment to all the stakeholders and actors of the CPVR regime<sup>1</sup>.

For the purposes of the evaluation, it must be highlighted that there are 2 different types of costs that should be considered by the evaluator: the costs incurred by the public authorities at European and National levels and the costs incurred by the operators:

= Costs incurred by the public authorities:

- o At European level: the functioning of the CPVO and its CPVR activities per species or group of species of plants, including variety denomination control.

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<sup>1</sup> The evaluator should develop the strengths and weaknesses of the role of the CPVO in the CPVR "acquis". As an evaluation on the CPVO is currently carried out (see footnote N° 1, p. 18) and as a satisfaction survey of the CPVO has already been launched 5 years ago by this Office, the evaluator should not overlap with these exercises but will take them into consideration in his/her analysis.

- At National level: the functioning of the National examination centres for testing varieties for the CPVO as regards DUS (Distinctness, Uniformity and Stability) and the control of these technical tests.

In this regard, the following questions should be analysed:

- i. What opportunities do public authorities see to reduce these administrative and technical costs, as some of these costs, such as the DUS tests, are also carried out at national level for listing varieties in the frame of the seed marketing Directives?
- ii. What opportunities do the breeders as holders of a CPVR and all the actors in the system (EU Institutions, National Authorities, farmers, end-users...) see to reduce the following costs?

= Costs incurred by the breeders:

- The administrative costs of the implementation of the CPVR "acquis" by the breeders, including filing an application, the fees to pay to the CPVO (registration fees, examination fees, annual fees, electronic application, electronic registration ...);
- The technical and experimental costs, before a variety is proposed by a breeder as a candidate variety to be protected according to the CPVR regime;
- The practical cost by the holders of a right to recuperate their equitable remuneration from farmers using the product of protected seeds in their holdings.

#### **iv. Implementation and enforcement of the CPVR acquis**

The evaluator should develop the strengths and the weaknesses of the implementation and of the enforcement of the CPVR "acquis" by the right holders vis-à-vis the users of protected varieties and by the National Courts.

#### **v. The CPVR regime and the National PVR systems**

The evaluator should enquire the stakeholders on the strengths and weaknesses of the CPVR regime compared with the National PVR systems of the Member States.

### **b. Impact of CPVR on EU and MSs**

To what extent can we consider that the CPVR "acquis" satisfies the need of the Union and the Member States and what is the interaction between the CPVR and other national IP protection systems? (From social, economical, agricultural and environmental points of view). More particularly:

- What is the added value of the CPVR "acquis" compared with the European patent system, the Trade-mark system and other "sui generis" Intellectual Property systems?
- What is the impact of the CPVR "acquis" on the National Plant Variety Rights system of the EU Member States?

#### **c. Interaction of CPVR with other EU policies**

To what extent is the CPVR "acquis" coherent or overlapping with the EU's policies (e.g. consumer policy, environmental policy, agriculture policy, trade policy ...) as managed by DG SANCO and other relevant DGs (DG TRADE, DG TAXUD, DG ENV, DG MARKT, DG ENTR, DG DEV...).

#### **d. Interaction of CPVR with other international instruments**

To what extent do the intervention's objectives support or contradict those of other related interventions, among others, on the question of biodiversity, on the international Treaty of Plant Genetic Resources for Food and Agriculture, on the Union programmes on the conservation, characterisation, collection and utilisation of genetic resources in agriculture, on the legal protection of biotechnological inventions, on the seed marketing Directives, on EU market organisations, on EU environmental policy, on EU trade policy, on geographical indications?

### **7.3 Options for the future – sustainability of the CPVR regime**

#### **What are the possible different options for the future to address the problem areas identified and the EU new challenges?**

As a result of the overall analysis of the CPVR regime, the evaluator is required to present different options, including the "status quo" option (i.e. keeping the current CPVR regime as it is) as well as potential options to amend the "acquis", including possible improvements to its structure and analyse the relevance and implication of every option.

For each of the options, the evaluator should analyse the stakeholders' level of support, their feasibility, their administrative burdens, their associated costs and their economical, environmental, social and international consequences.

## **B. REPORTING AND DELIVERABLES**

### **1. Reporting and deliverables**

The evaluator will deliver different reports at various key stages of the evaluation process: inception report, intermediate report, draft final report and final report. Each report should be written in English. The report will be addressed to the Commission who will be assisted by a Steering group consisting of Commission officials and experts from the CPVO.

### **2. Inception report**

This report will describe the intervention, providing the current intervention logic.

It will describe the evaluator's understanding of the evaluation objectives, issues and questions.

This document will present in detail how the method proposed by the evaluator is going to be implemented and in particular how the method will answer each evaluation question and provide a judgement.

It will include the draft questionnaires which the evaluators will use to obtain information from the different stakeholders for approval by the steering group.

This document will provide the steering group with the opportunity to make a final check of the feasibility of the method proposed and the extent to which it corresponds with the information needs outlined in the terms of reference.

The inception report will be submitted at the latest 6 weeks after the signature of the contract.

### **3. Interim report**

This report will provide information about initial analyses of data collected. The evaluator may already be in a position to provide preliminary answers to some of the evaluation questions. This report will provide the steering group with the opportunity to check whether the evaluation is on schedule and whether the evaluation has actually focused on the specified information needs.

The interim report will be submitted at the latest 5.5 months after the signature of the contract.

### **4. Draft final report**

This document will provide the conclusions of the evaluator in respect to the evaluation questions in the terms of reference. These conclusions will be clearly based on evidence generated through the evaluation. Judgements provided should be clear and explicit.

The draft final report will also contain exploratory recommendations developed on the basis of the conclusions reached by the evaluator.

The structure of the draft final report will respect the structure set up by common Evaluation Standards and include an executive summary (synthesis of main analyses and conclusions, added value of the proposals including cost/benefits), main report (presenting in full the results of the analyses, conclusions and recommendations), technical annexes (one of which will be the Task Specification), and a draft one-page summary on the Key Messages of the evaluation.

The draft final report will be submitted at the latest 9 months after the signature of the contract.

## **5. Final report**

The final report will take into account the results of quality assessment and discussions with the steering group about the draft final report insofar as they do not interfere with the autonomy of the evaluator in respect to their conclusions.

The final executive summary and Key Messages page will be part of it.

## **6. Quality criteria**

The contents of the report have to be relevant (rigorous analysis, obeying to quality standards and delivered in a timely manner). The report has to be structured and comprehensible.

It should mention its sources and the information collected should be compatible with the tools used. Hypotheses and structure of reasoning should be logical and interpretation of results should be explicitly made clear.

Conclusions and recommendations shall not be influenced by personal or partial opinion. They shall be understandable, useful and sufficiently detailed.

The quality of the evaluation report will be evaluated by the Steering Group according to the following criteria (see also standard quality checklist of SANCO):

- Relevance of the content
- Adequacy of the methodology
- Reliability of the data
- Solidity of the analysis
- Credibility of the results
- Validity of the conclusions
- Usefulness of the recommendations
- Clarity

## **7. Organisation, access to data and timetable**

(deadlines for reports, meetings to be organised, quality assurance)

### **7.1. Organisation**

The evaluation shall be carried out and completed within 12 calendar months.

The management of the project is under the responsibility of the Deputy Director-General of the Directorate-General for Health and Consumers.

A Steering Group is created to advise the Deputy Director-General on the execution of the evaluation project. It is composed of members of the Commission services and one representative of the CPVO. The Steering Group will supervise the evaluation process in order to ensure that it will be conducted in line with the Terms of Reference. The Steering Group will take any decision required to ensure the effectiveness of the evaluation process in that respect and will provide guidelines to the evaluation team as and when required. The Steering group will advise the Deputy Director-General to approve the inception, intermediate and final reports delivered by the evaluators.

The role of the Steering Group will be:

- To approve the selected evaluation team
- To monitor the structuring phase of the evaluation which will, through the inception report, propose to the Steering Group how to carry out the evaluation in operational terms
- To facilitate the access to the data and information needed by the evaluators
- To validate the methodology, the assessment tools and techniques to be utilised
- To monitor compliance to the time frame set for the evaluation
- To control the quality of the work and reports delivered by the evaluators.

The Steering Group meetings are scheduled to take place after the reception of the Steering Group launch note, the inception note, the interim report and the draft final report. The evaluation consortium team leader will participate to these meetings. Prior to each meeting, the notes and reports will be circulated to the Steering Group members for comments. If during the evaluation process, the Steering Group is unable to resolve any issues, it will promptly seek guidance from the Deputy Director-General of the Directorate General for Health and Consumers.

The dissemination of the evaluation results and the implementation of recommendations fall under the responsibility of the Deputy Director-General.

## **7.2. Access to data**

Access to data and information will be broadly given to the contractor, who will also gather opinions of interested parties (European Commission, stakeholders and other relevant persons and organisations) through interviews.

Key stakeholders include inter alia Member States' National policy Units, National Plant Variety Rights Organisations, Official examination Centres, International Institutions (UPOV, OECD, TRIPS, WIPO...), and relevant interested groups (consumers, plant breeders, manufacturers, retailers, farmers, foresters, traders, logistic companies, industrial companies, insurance companies, ...), relevant Commission services concerned with intellectual property (DG MARKT, DG TRADE) and with the plant variety sector (DG AGRI, DG ENV, DG ENTR, DG RELEX, SEC GEN) and the relevant European Agency concerned with CPVR: the CPVO in Angers (F).

The contractor may propose other tools for data collection and analysis as they may see fit including desk research, questionnaires, workshops, etc.

### 7.3 Timetable

- Evaluation by contractor: April 2010 – April 2011
- Presentation of evaluation outcome to the Commission: End May 2011

Date	Event/Stage	Action by
08.06.2009	Internal kick-off	SANCO DDG Advisor, E1, A2 and 01
End July 2009	First draft of terms of reference (ToR) circulated	Evaluation manager (EM)
End September 2009	Availability of the Budget.	SANCO E1
October 2009	Communication strategic plan	SANCO 01
October 2009	Invitation letters to Steering Group (ISSG) members	EM
Mid November 2009	Deadline reply to invitation letter by ISSG members	
23 November 2009	1st mtg of the ISSG: Presentation of the evaluation: its aim and scope; discussion of Draft terms of reference and Dissemination Plan	ISSG members
10 December 2009	Revised ToR circulated	EM
15 December 2009	2nd mtg of the ISSG: continued discussion of Draft terms of reference if needed	ISSG members
End December 2009	Proposal for ToR finalised	EM
20 January 2010	ToR of the evaluation discussed in the Audit Committee	EM
25 January 2010	ToR sent to Evaluators	EM

1 March 2010	Evaluators submit their proposals	Evaluators
Until 15 March 2010	Proposals analysed, selection of the evaluator and amendment of the selected proposal as necessary	EM
March 2010	Relevant Council WP and SC updated on progress with the evaluation	EM
Mid March 2010	Draft specific contract prepared	Financial cell
End March 2010	Details of contract with the external evaluator discussed and contract signed	EM + evaluator
4 May 2010	3rd mtg of ISSG: Kick-off mtg, External evaluator present	ISSG members
Mid May 2010	Inception report submitted by Evaluator and circulated to ISSG for comments	
Mid June 2010	Inception report accepted by Commission	ISSG members
November 2010	Interim Report circulated to ISSG members	External evaluator
End November 2010	4th mtg of ISSG: Discussion of Interim report	ISSG members + External evaluator
End December 2010	Relevant Council WP and SC updated on progress with the evaluation	EM
End February 2011	Draft Final Report circulated to ISSG members	External evaluator
March 2011	5th meeting of ISSG: discussion of draft final report	ISSG members + External evaluators
April 2011	Adoption of the final evaluation report	ISSG members
End May 2011	Presentation of results of	

	the evaluation	
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## **8. Special requirements**

Given the very much specialised nature of the subject matter that has to be evaluated, the evaluation team is expected to comprise at least one member with specific expertise in the sector of Intellectual Property Rights, including Plant Variety Rights, and one member with specific knowledge on seeds, or, as a minimum, with a thorough knowledge of plant production.

In the context of the assignment, data will have to be collected of a confidential nature, such as research and development on plant breeding, and expenditure made by stakeholders as part of the administrative costs for complying with certain provisions of the EU legislation. These data shall be handled with due confidentiality.

In addition, personal data of the members of the Standing Committees, mentioned in Annexes 2 to 5 will be processed by the evaluator in accordance with Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

## **9. Annexes to the Task Specifications**

1. List of CPVR acquis in force (the Basic Regulation, the implementation texts and closely related texts on CPVR)
2. Useful web-links
3. Acronyms used in the Terms of Reference

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# ANNEX 1

## List of EC-legislation governing plant breeder's rights

### I. Council Regulations

1. Council Regulation (EC) N° 2100/94 of 27 July 1994 on Community Plant Variety Rights  
Official Journal L 227, 01/09/1994 p. 0001–0030
  - 1.1. Corrigendum of Council Regulation (EC) N° 2100/94 of 27 July on Community Plant Variety Rights  
Official Journal L 111, 20/04/2001, p. 0031–0031 (F, FI, NL only).
  - 1.2. Council Regulation (EC) N° 2506/95 of 25 October 1995 amending Regulation (EC) N° 2100/94 on Community Plant Variety Rights  
Official Journal L 258, 28/10/1995 , p. 0003-0004
  - 1.3. Rectification, Official Journal L 111, 20/04/2001, p. 31
  - 1.4. Council Regulation (EC) N° 807/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to Committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity)  
Official Journal L 122, 16/05/2003, p. 0036-0062
  - 1.5. Council Regulation (EC) N° 1650/2003 of 18 June 2003 amending Regulation (EC) N° 2100/94 on Community Plant Variety Rights  
Official Journal L 245, 29/09/2003, p. 0028-0029
  - 1.6. Council Regulation (EC) N° 873/2004 of 29 April 2004 amending Regulation (EC) N° 2100/94 on Community Plant Variety Rights  
Official Journal L 162, 30/04/2004, p. 0038-0039
  - 1.7. Council Regulation (EC) N° 15/2008 of 20 December 2007 amending Regulation (EC) N° 2100/94 on Community Plant Variety Rights  
Official Journal L 8, 11/01/2008, p. 2
  - 1.8. Act concerning the conditions of accession of the Czech Republic, the Republic Of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded  
Official Journal L 236, 23/09/2003, p. 840 (derogation for the Republic of Lithuania).
2. Council Regulation (EC) N° 2470/94 of 17 December 1996 providing for an extension of the terms of a Community Plant Variety Right in respect of potatoes  
Official Journal L 335, 24/12/1996, p. 0010-0010

## II. Commission implementing measures

1. Commission Regulation (EC) N° 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) N° 2100/94 as regards the fees payable to the Community Plant Variety Office  
Official Journal L 121, 01/06/1995, p. 0031-0036
  - 1.1. Commission Regulation (EC) N° 329/2000 of 11 February 2000 amending Regulation (EC) N° 1238/95 establishing implementing rules for the application of Council Regulation (EC) N° 2100/94 as regards the fees payable to the Community Plant Variety Office  
Official Journal L 037, 12/02/2000, p. 0019-0020
  - 1.2. Commission Regulation (EC) N° 569/2003 of 28 March 2003 amending Regulation (EC) N° 1238/95 establishing implementing rules for the application of Council Regulation (EC) N° 2100/94 as regards the fees payable to the Community Plant Variety Office  
Official Journal L 082, 29/03/2003, p. 0013-0016
  - 1.3. Commission Regulation (EC) N° 1177/2005 of 20 July 2005 amending Regulation (EC) N° 1238/95 establishing implementing rules for the application of Council Regulation (EC) N° 2100/94 as regards the fees payable to the Community Plant Variety Office.  
Official Journal L 189, 21/07/2005, p.26-27
  - 1.4. Commission Regulation (EC) N° 2039/2005 of 14 December 2005 amending Regulation (EC) N° 1238/95 establishing implementing rules for the application of Council Regulation (EC) N° 2100/94 as regards the fees payable to the Community Plant Variety Office.  
Official Journal L 328, 15/12/2005, p.33
  - 1.5. Commission Regulation (EC) N° 572/2008 of 19 June 2008 amending Regulation (EC) N° 1238/95 as regards the level of the annual fee and the fees relating to technical examination, payable to the Community Plant variety Office, and the manner of payment  
Official Journal L 161, 20/06/2008, p.7-10
2. Commission Regulation (EC) N° 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) N° 2100/94 as regards proceedings before the Community Plant Variety Office (recast)  
Official Journal L 251, 24/09/2009, p.3-28
3. Commission Regulation (EC) N° 1768/95 of 24 July 1995, establishing implementing rules on the agricultural exemption, provided for in Article 14(3) of Council Regulation (EC) N° 2100/94 on Community Plant Variety Rights  
Official Journal L 173, 25.07.1995, p. 14 – 21
  - 3.1. Commission Regulation (EC) N° 2605/98 of 3 December 1998, amending Regulation (EC) N° 1768/95, establishing implementing rules on the agricultural

exemption provided for in Article 14(3) of Council Regulation (EC) N° 2100/94 on Community Plant Variety Rights  
Official Journal L328, 04.12.1998, p. 6-7

### **III. Other Texts on Intellectual Property Rights**

1. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights  
Official Journal L 195, 02/06/2004, p. 16-25
2. Council Regulation (EC) N° 1383/2003 of 22 July 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  
Official Journal L 196, 02/08/2003, p. 0007
3. Commission Regulation (EC) N° 1891/2004 of 21 October 2004 laying down provisions for the implementation of Council Regulation (EC) N° 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  
Official Journal L 328, 30/10/2004, p. 0016-0049
4. Council Decision N° 2005/523/EC of 30 May 2005 approving the accession of the European Community to the International Convention for the Protection of new varieties of plants, as revised at Geneva on 19 March 1991  
Official Journal L 192, 21/07/2005, p. 63
5. Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological invention.  
Official Journal L 213, 30/07/1998, p. 13.



## ANNEX 2

### Useful Web-links

- CIOPORA: <http://ciopora.org>
- COMMISSION: <http://ec.europa.eu>
- CPVO: <http://www.cpvo.europa.eu>
- EPO: <http://www.european-patent-office.org>
- ESA: <http://www.euroseeds.org>
- ISF: <http://www.worldseed.org>
- UPOV: <http://www.upov.int>

## **ANNEX 3**

### **Acronyms used in the Terms of Reference**

- BEUC: Bureau Européen des Unions de Consommateurs
- CBD: Convention on Biological Diversity
- CIOPORA: Communauté Internationale des Obtenteurs de Plantes Ornamentales et fruitières de Reproduction Asexuée
- CPVO: Community Plant Variety Office
- CPVR: Community Plant Variety Rights
- DUS: Distinctness, Uniformity, Stability
- EDV: Essentially Derived Variety
- EFTA: European Free Trade Association
- EPC: European Patent Convention
- EPO: European Patent Office
- ESA: European Seed Association
- OHIM: Office for Harmonisation in the Internal Market
- PCT: Traité de coopération en matière de brevets
- TRIPS: Trade Related Aspects of Intellectual Property Rights
- TFEU: Treaty on the Functioning of the European Union
- UPOV: International Union for the Protection of New Varieties of Plants
- WTO: World Trade Organisation