

ESA\_03.0099

**ESA Recommendation**

on

**Variety Denominations  
and  
Prior Rights of Third Parties**

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**Background:**

Council Directive 2002/53/EEC on the common catalogue of varieties of agricultural species and 70/458/EEC for vegetable crops underline for the need to adopt rules on the suitability of variety denomination and refer to the application of Art 63 of Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights. Guidelines have been provided by the Community Plant Variety Office and by Commission Regulation (EC) No. 930/2000 establishing implementing rules for the suitability of variety denominations.

Art. 63 of Council Regulation (EC) No. 2100/94 sets out, amongst others, the following impediment for the designation of a variety denomination: “use precluded by the prior right of a third party.”

Commission Regulation (EC) No. 930/2000 provides for this impediment as well but restricted to the prior right in the case of a trademark. This situation has led to a debate in view of the protection of geographical indication and designation of origin for agricultural products and foodstuffs as established in Council Regulation (EEC) No.2081/92, whether this protection could be regarded as a prior right precluding the use of a variety denomination.

It has to be noted that Council Regulation (EEC) No. 2081/92 excludes the registration of a plant variety denomination as geographical indication.

Some Member-States are setting-up national rules in order to prohibit the use of geographical names, either concerning their own territory or the EU, for varieties.

**ESA recommendation:**

Having regard that apparently there is a lack of coherence in different legal pieces regulating the case of plant variety denomination prior rights of third parties and that legal certainty is needed,

ESA recommends that the Commission provides for

harmonized implementation rules on plant variety denominations throughout the EU with regard to designations of origin or geographical indications.

ESA underlines the absolute need to respect the general basic principles for legislative measures, especially as concerns the exclusion of retroactivity of any new legal provision.

This is the more relevant before the following background:

- A variety denomination is not linked to the maintainer or proprietor of that variety but to the variety as such.
- Denominations of varieties that have already been marketed or listed in a national catalogue and/or the European Catalogue may not be modified in order to avoid misleading the consumer and the seed business.
- The renewal of the registration period does not change the variety and thus should not trigger a denomination change.