

ESA Statement

WIPO – UPOV Symposium
on
Intellectual Property Rights in Plant Biotechnology
24.10.2003
Geneva

October 2003

ESA_03.0295

It is ESA's position* that UPOV 1991 provides the best existing intellectual property system tailored to protect plant varieties per se.

The UPOV Convention 1991 not only offers the most suitable *sui generis* system for the protection of plant varieties; it also offers its Member States many possibilities to adapt their local legislation to their local needs, e.g. as regards an exception to this intellectual property right in order to allow farmers to carry out certain well-specified acts falling within the scope of the rights, subject to safeguarding the legitimate interest of the breeder.

A cornerstone of the UPOV Convention is the guaranteed access to genetic variability by the free use of protected commercialised plant varieties for the purpose of further breeding work, known as the "Breeders' Exception".

ESA is deeply concerned about suggestions putting that cornerstone at risk at this point for the following reasons:

- It would raise concerns in particular in new Member States
- It would render accession discussions with candidate UPOV Member States more difficult
- It would encourage countries to develop other *sui generis* systems than UPOV based systems for the protection of plant varieties
- It would render the UPOV system as an effective *sui generis* system more vulnerable to attack in the discussions on Article 27.3 (b) of the TRIPs Agreement
- Last but not least, it would impair the balance between the UPOV Convention and the International Treaty on Plant Genetic Resources for Food and Agriculture (IT)

The International Treaty (IT) is extremely important for ESA as it provides for a multilateral system which meets the objectives of the Convention on Biological Diversity for plant genetic resources for food and agriculture, including access and benefit sharing, in a practical way.

ESA is therefore strongly opposed to any proposal aiming at restricting or even deleting the Breeders' Exception and which may impair the delicate balance between UPOV and the IT.

* ESA Position on Plant Variety Protection Systems (doc. reference no. ESA_02.0009)
ESA Position on the EC Communication on the review of Art. 27.3 (b) TRIPs Agreement
(doc. reference no. ESA_02.0085.4)