



**CPVO**

Community Plant Variety Office

# EU Legislation on Enforcement

Martin EKVAD  
President

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# Summary

1. The Basic Regulation: limited CPVO role
2. The Enforcement Directive
3. The Customs Regulation



## 2. Council Regulation 2100/94 ("BR")

- Infringing acts in relation to the variety
- Infringing acts in relation to variety denominations
- Injunctions
- Compensation for damages
  
- Competent Court
  
- Prescription
- Penalties



# Council Regulation 2100/94

- The role of the Office is, and should be, limited;
- An active role could jeopardize the impartiality of the Office;
- The Office participates as observer to the EU Observatory on infringements of IPRs;
- Article 91: the Office, Examination Offices, courts and authorities should give assistance to each other:
  - Open files (Articles 33a and 88 BR);
  - Provide samples or an opinion on request from a national court;
  - Access to growing facilities.



# Enforcement Directive 2004/48/EC of 29/04/2004

- Adopted 29 April 2004
- Transposition deadline: 29 April 2006
- No change in substantive IP rights
- “TRIPS plus” and “best practices”



# Scope

- IPR rights as defined by:
  - EU law and/or
  - Laws of the Member States
- Commission has published a list of IP rights (Statement 2005/295/EC)
- Plant variety rights on that list



# Measures

Contains provisions *inter alia* on:

- General obligations
- Evidence and preserving evidence
- Right of information
- Provisional and precautionary measures
- Corrective measures
- Damages and legal costs
- Publication of judicial decisions



# 3. Customs Regulation

- Council Regulation (EC) No 608/2013 (OJEU L181 of 29.06.2013) of 12.06.2013 concerning customs enforcement of IPRs and repealing Council Regulation (EC) No 1383/2003;
- Commission Implementing Regulation No 1352/2013 of 4.12.2013



# Major features of the new Regulation

- The new Regulation:
- expands the range of IPR infringements covered
- adjusts procedures in order to reduce administrative burdens and costs
- ensures that high quality information is provided to customs so as to enable better risk management
- includes measures to ensure that the interests of legitimate traders are protected



# Extended protection

- The list of IP rights has been extended to **COVER**: topographies of semiconductor products, trade names and utility models, as well as devices that are 'primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of technological measures';
- Community plant variety rights and national plant variety rights (Article 2(1)(h)(i))



# Scope (Article 1 of the Regulation)

- The Regulation applies to goods suspected of infringing an IPR in the following situation:
  - Declared for release for free circulation, export or re-export;
  - Entering or leaving the customs territory of the EU;
  - Placed under a suspensive procedure or in a free zone or free warehouse



# Submission of the application

- A Union application may be submitted only with respect to IPRs based on Union law producing effects throughout the EU;
- CPVRs have unitary effect throughout the EU;
- Therefore Union applications can be filed with respect to CPVRs;
- In such cases the application shall specify the Member States in which customs action is requested.



# A simplified procedure for the destruction of the goods

- The applicant has to confirm to the Customs authority that an infringement of an IPR took place (within 10 working days of notification of the Custom's communication, reduced to 3 days for perishable goods;
- The holder of the goods has to confirm his agreement to the destruction. No agreement or no opposition considered as "implied consent"
- If not, the goods will be released



# Simplified Procedure (Article 23 Regulation)

- In case of non agreement by the holder of the goods, the applicant has to start infringement proceedings to determine whether an IPR has been infringed.
- The simplified procedure is to be adopted by all EU Member States, and is no longer optional.



# Early release of goods (Article 24 of the Regulation)

- When an infringement proceedings to determine infringement of a PVR has been started, the holder of the goods may ask the early release of the goods upon condition that:
  - A guarantee is provided;
  - The judicial Authority does not authorize precautionary measures;
  - All customs formalities have been completed.



# Final remarks

The EU legislator is active in the field of enforcement on IPRs (the Observatory).

Legal tools are available to right holders.

Rights of defendants must be taken into account.

Member States must implement and apply EU legislation.

The role of the Office is and should be limited with regard to infringement cases.



Thanks for your attention !

