

Outcome of the Community Plant Variety Rights Regime Evaluation

DG SANCO



**ESA Annual Conference
18 October 2011**

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This presentation summarises the major findings of an evaluation undertaken by GHK for the European Commission and the options identified to address deficiencies in the system

This presentation :

- **Outlines the aims and objectives** of the evaluation.
- Provides a brief **description of the research method**.
- **Summarises the key findings** of the evaluation.

The purpose of the evaluation was to assess how well the CPVR *acquis* has met its objectives and its current strengths and weaknesses

The CPVR *acquis* was designed to address specific issues in the context of wider policy goals and societal needs:

- Increased innovation;
- Development of an efficient single market; and
- Improved economic, social and environmental sustainability.

The evaluation team was asked to assess:

- Whether the original objectives of the *acquis* have been met;
- Strengths and weaknesses of the current system; and
- Options to address future challenges for plant variety rights in the EU.

- Outline of the aims and objectives of the evaluation.
- A brief **description of the research method.**
- Summary of the key findings of the evaluation.

The evaluation method involved a combination of evaluation tools and included several phases

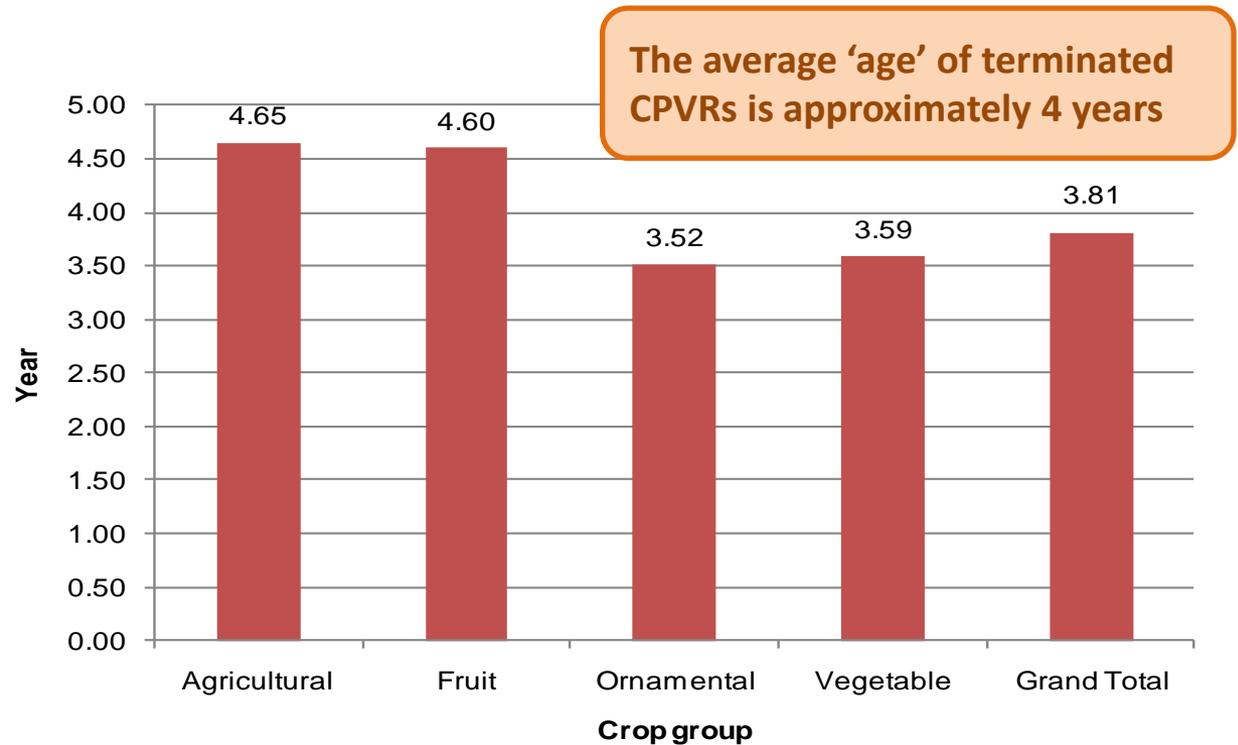
The evaluation method included:

- An **initial phase of desk research**.
- A **large scale consultative exercise** with government representatives, industry, NGOs and others in the EU through a questionnaire and in-depth interviews.
- A **data gathering exercise** that provided evidence to support the analysis.
- A **second consultation exercise** focused on plant breeders and growers;
- **Formulation of conclusions** to the evaluation questions where possible; and
- **Development of options** to address identified problems.

The breeders' exemption and durations of protection are generally fit for purpose

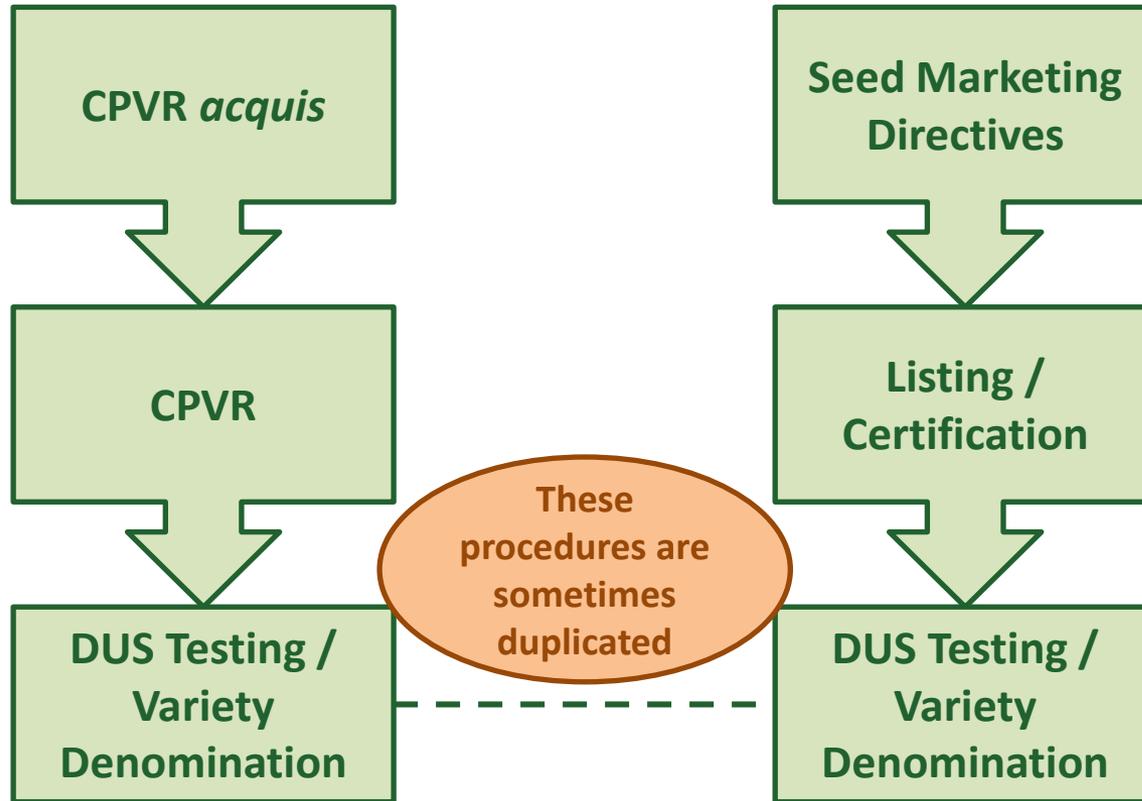
The breeders' exemption is one of the most important features of the system, encouraging competition and facilitating innovation

The durations of protection are appropriate, balancing incentives for innovation while ensuring further experimentation



Nonetheless, there are some areas of weakness, particularly pertaining to the agriculture exemption and enforcement opportunities for rights' holders

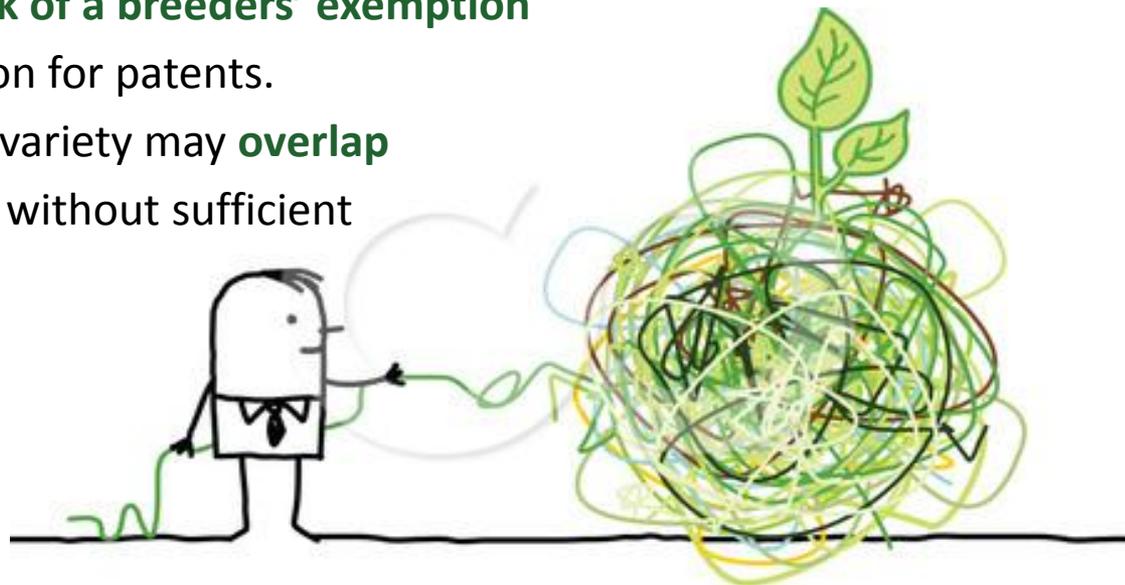
Interactions between the CPVR *acquis* and Seed Marketing Directives result in duplicate procedures



A 'one key, several doors' approach, supervised by CPVO, with one procedure used for each purpose, would remedy this duplication

The overlap between CPVR and patent protection is a major concern

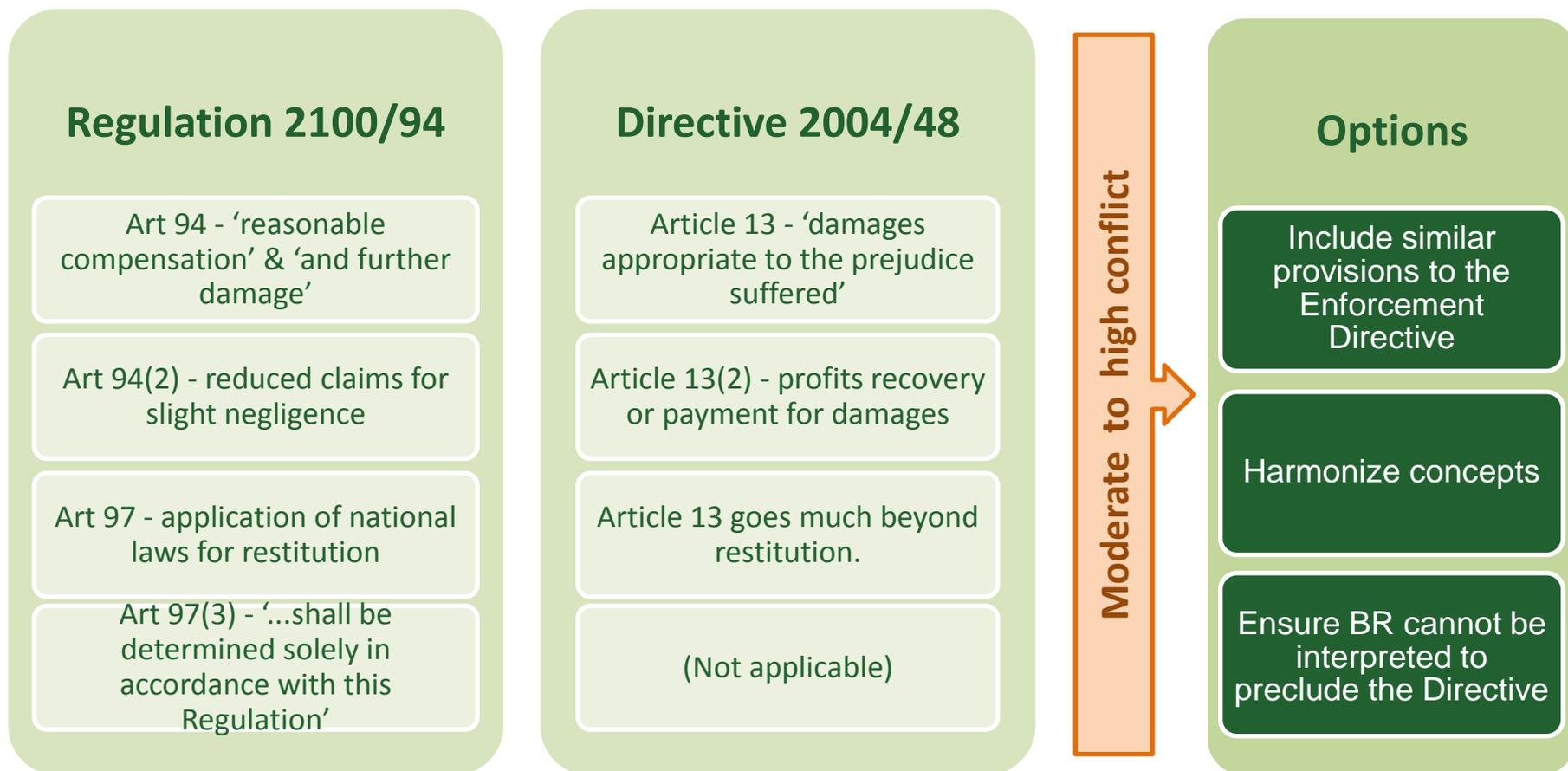
- This is the case **particularly as patents become more prevalent** in agricultural research.
- **Concern is focused on the lack of a breeders' exemption** and limited research exemption for patents.
- **Determining** whether a plant variety may **overlap** with a patent **can be difficult** without sufficient legal and technical expertise.



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CPVO could provide more information regarding plant-related patents and their implications for particular plant varieties

Tensions exist between the infringement procedures laid down in the CPVR Basic Regulation and the EU Enforcement Directive



These tensions could be resolved by amending Articles 94 and 97 of the Basic Regulation where they conflict with the Directive

Extending the CPVR *acquis* to EFTA countries would benefit breeders in the EU and EFTA countries

An extension of the CPVR *acquis* to EFTA countries:

- Harmonises plant variety rights between the EU and EFTA countries
- Aligns with the current CPVR *acquis*, but requires changes to the legislation
- Is consistent with EU seed marketing legislation
- Covers a larger number of countries with one CPVR
- May improve EU breeding industry competitiveness

CPVR



Extend the CPVR *acquis* to EFTA countries

There are no standardised protocols or thresholds to determine EDVs making disagreements more difficult to resolve

- **There are no standardised protocols** developed by CPVO or Member States;
- **Some instruments have been developed** by ISF and CIOPORA for a few species;
- Disagreements may be resolved by national courts, but in some cases, **different courts have interpreted similar cases differently**;
- **Protocols can be used as evidence in EDV cases**, which can help to reduce different court interpretations;
- **Thresholds will need to be adjusted for each species** to balance the need to catch plagiarism but avoiding spurious cases;
- Rapid innovation in EDV determination methods and techniques **requires regular review for any instruments established**.

CPVO could play a greater role in assisting industry develop standardised approaches to determining EDVs for the most economically important species

European Court of Justice rulings limit breeders' ability to request information on FSS use

- **European Court of Justice rulings limit CPVR holders' ability to request information from farmers:**
 - ❖ *Schulin v Saatgut* established that a breeder could not request FSS information from a farmer without prior evidence of its use;
 - ❖ *Schulin v Jager* confirmed the earlier ruling; and
 - ❖ *Saatgut v Brangewitz* established that, similarly to *Schulin*, information could not be obtained from a seed processor regarding FSS use without prior evidence.
- This makes it more **difficult for breeders to exercise their right** to collect royalties on farm saved seed.
- **Stakeholders prefer a flexible approach to any resolution** so that each MS can develop its own system.

Amending the Basic Regulation to obligate growers to answer 'yes' or 'no' to a request as to whether they have used farm saved seed would relieve the burden on breeders to discover its use

Enforcement provisions are satisfactory in principle but are not uniformly implemented; they are a major concern for rights holders

There are 3 main problems:

1. Fraudulent marketing
2. Illegal planting
3. Failure to pay FSS royalties

These problems persist because:

- Evidence is difficult to collect
- Illegal materials are imported from third countries
- National authorities are unwilling to assist
- National enforcement procedures vary
- Infringement cases are expensive & outcomes are uncertain



Improved resolution of enforcement issues could be provided through designated competent courts in each MS or an EU-level competent court

There is scope to improve the provisions extending to harvested material in the case of unauthorised use

- UPOV 1991 and CPVR Regulation extend the **breeder's ability to enforce rights against unauthorised multiplication** of the protected variety, but **only if the harvested material is:**
 - ❖ Obtained through unauthorised use of protected propagating material; and provided that
 - ❖ The breeder has no opportunity to exercise the right in relation to the propagating material.
- **The definition is not sufficient** in the Basic Regulation, resulting in uncertainty for breeders on the scope of this right.
- This could be **remedied by providing clarification regarding protection** for harvested material.

Expand the scope of protection for harvested materials by amending the definition of protection, in line with UPOV 1991

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Thank You!



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Desk research included a literature review and analysis of data from a variety of sources



Relevant materials reviewed included EU legislation ; court cases; CPVO reports; industry position papers and report; and academic literature.

Additional data were collected from CPVO, UPOV, FAO, Eurostat and industry.

- CPVO data on CPVRs, costs, technical reports, and number of CPVR-related court cases in EU MS.
- UPOV data at Member State and EU level;
- FAO data on the international seed market and trade in seed and crops;
- Eurostat data on EU farm sizes and agricultural holdings.
- Data and statistics provided by industry, including estimates of farm saved seed use; royalty collection levels; and value of the seed market and trade in seeds and crops

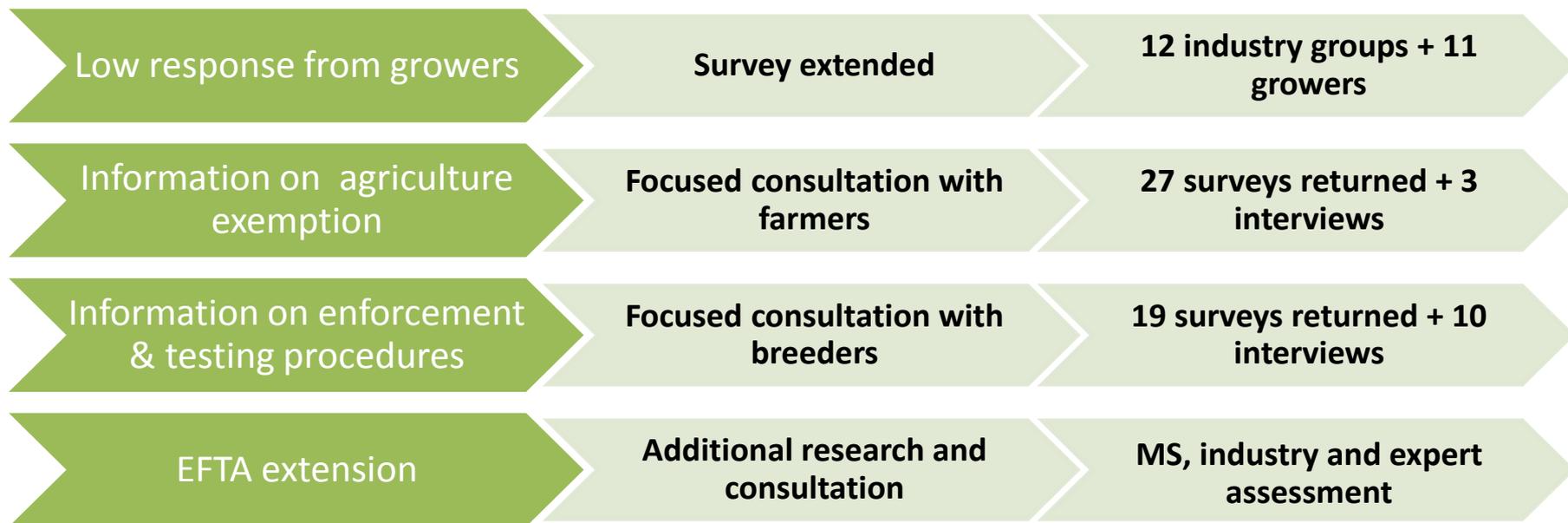
The first phase of the consultation focused on collecting a diverse set of stakeholder views from across the EU



- The consultation ran for **eight weeks** (Sept – Oct 2010)
- We conducted stakeholder **surveys and interviews**
- **Focused interviews** were conducted with:
 - Nine Member States (CZ, DE, DK, ES, FR, NL, PL, RO, UK);
 - CPVO representatives;
 - Breeders, growers, traders and seed processors; and
 - EPO, NGOs, European Commission DGs and special services.
- **169 surveys were completed**, covering:
 - Representatives from 26 out of 27 Member States;
 - Representative organisations for breeders, growers, traders and seed processors;
 - Individual breeding companies; and
 - NGOs.

We also carried out some further, carefully targeted, consultations and additional research

We identified information gaps in the first consultation phase and conducted the following additional research and consultations:



GHK also considered a set of additional issues and options

