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ESA is the voice of the European seed sector. ESA's members are national associations and individual companies active in research, breeding, production and marketing of seeds of agricultural and ornamental plant species. ESA represents more than 7000 seed businesses in the EU and beyond.

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POSITION

ON PROTECTION OF HYBRIDS AND ACCESS TO PARENTAL LINES

According to the definition of a variety in Article 1 (vi) UPOV 1991, UPOV provides for the protection of all types of varieties, including hybrids as such. In addition, the protection of hybrids can be covered through the protection of parental lines.

Protection of hybrids through protection of parental lines

UPOV 1991 extends the scope of the PBR on protected varieties to other varieties whose production requires the repeated use of a protected variety (e.g. hybrids). Therefore the production and exploitation of hybrid varieties falls under the scope of protection of its parental lines.

As a result of this it is established that, regardless of whether the seed of the non-protected hybrid is produced in another territory, even without PBR, seed of the hybrid can only be imported, marketed or sold in a country where a parental line of the hybrid is protected, with the prior authorization of the holder of the right.

On the other hand the scope of protection of a hybrid protected through the protection of parental lines does not extend to the use of that hybrid for the production of other hybrids.

ESA is of the opinion that vegetative multiplication of a hybrid should fall within the scope of protection of a parental line.

Access to parental lines

Following the concept of Article 15 (1) (iii) UPOV 1991 regarding the exceptions to the Breeder's Right, it is clear, that the PBR does not extend to acts done for the purpose of breeding other varieties and to acts such as the production or selling of propagating material of these other varieties with the exception of essentially derived varieties. As there is no obligation for breeders to market their protected varieties under UPOV, there is no positive right that provides for access to protected parental lines of the marketed hybrid.