



Brussels
6 January 2011
ESA_11.0049

POSITION

ON PLANT IP PROTECTION AND BIODIVERSITY

ESA acknowledges farmer's rights as mentioned in Article 9 of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (IT PGRFA), taking into account the contribution of farmers to the conservation and development of genetic resources. In this respect ESA emphasises that Article 9 of the IT PGRFA does not give an unconditional right to farmers to save, use, exchange and sell farm saved seed, but merely states that Article 9 does not intend to limit any rights that farmers are granted at national level. Subsistence farmers in developing countries however are not prohibited to exchange seed with or sell seeds to other subsistence farmers as according to the UPOV 1991 Convention the protection conferred by a plant breeders' right does not extend to acts done privately and for non-commercial purposes.

Disclosure of origin in applications for IP protection

ESA believes that if origin has the meaning of "country of origin" in the sense of the CBD, the disclosure of origin would be impractical and very often not possible. Indeed, it is extremely difficult and in most cases impossible to trace the origin of a genetic resource. Moreover, it is also very difficult to determine when and where genetic resources, in the form received, have developed these distinctive properties. ESA proposes to solve this problem by providing information on the "source" of the genetic material, i.e. that the applicant should be obliged to say from where the genetic resource was obtained. Normally the applicant knows and is allowed to indicate this with the following possible exception:

In the breeding community, one reason why the "source" could not be known is that the genetic material is a historical part of the breeder's nursery and that there is no record of the original source.

⇒ In case the "source" of the genetic material is not known, the applicant may reasonably be asked to explain why not.

Further the disclosure needs to be specific and should only apply to those genetic resources which are covered by the IP rights.

ESA is concerned about the trend that numerous countries adopt regulations to impose the disclosure of origin in patent and PVP laws. This is creating a significant burden on applicants, especially small and medium enterprises which normally lack legal experts to deal with such requirements.

The disclosure of the “source”, in the meaning as summarised in the following paragraph, should be an administrative requirement only and thus, the failure to disclose, could not invalidate the title of protection. (The disclosure of the “source” would not be a criterion of protection). Non-compliance or fraud should be sanctioned by civil and/or criminal law measures. / Misappropriation should be prosecuted by the provider country.

To facilitate the disclosure process, ESA suggests a central clearing house process which would allow applicants with a single, standardized declaration (similar to the declaration for biomaterial deposits under the Budapest Treaty) to satisfy the legal requirements for all countries. Ideally such clearing house should be associated to the WIPO.

In summary, ESA could accept the disclosure of the “source” of the genetic material, in the sense of where the material has been obtained from, when it is known.

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.

ESA European Seed Association – Rue du Luxembourg 23 – B 1000 Brussels
T. +32 (0)2 7432860 - secretariat@euroseeds.eu

FOLLOW US ON

