



**CPVO**

Community Plant Variety Office

# **THE EU PVP SYSTEM**

## **a regional IP system for plant varieties**

### **Estonian Grain Forum**

### **Türi 12 March 2019**

**Dirk THEOBALD**

**Community Plant Variety Office**

# EU PVP system

## Outline

- Main features of the EU system for PVP
- The CPVO
- Technical aspects and set up of DUS testing
- Farm Saved Seed
- Benefits of a PVP system
- Statistics



## Main features of the EU PVP system

- The system for the EU protection of plant varieties was established by a Regulation of the European Community in 1994 (**EU 2100/94**)
- The intellectual property rights granted under this system are valid throughout the territory of the 28 Member States of the European Union



### EU / National

- The EU system co-exists with the national systems of the EU Member States (24 of 28 have a national system)
- It is the applicant's choice : national or EU plant variety rights
- The EU PVR protection cannot be combined with national PVR

# UPOV

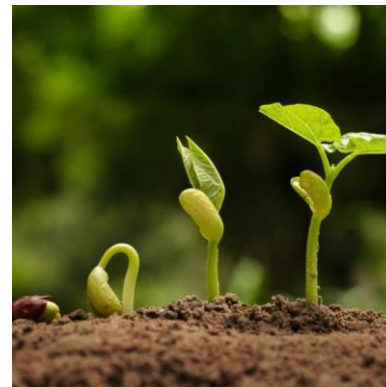
### UPOV

- The EU system is in line with the UPOV 1991 Act
- The EU is a full member of UPOV as an inter-governmental organisation (since June 2005)



## Main features of the EU PVP system

- Entitlement to file an application  
Any natural or legal person
- Duration of the EU right  
25 years - 30 for grapevine, trees and potato varieties
- Varieties of all botanical genera and species may be protected  
(+ 2.000 species)
- Provisional protection  
Covering the time from publication of the application until the grant of the Community right  
Not part of the duration of the right



- Plant varieties can not be protected by patents under the
  - European Patent Convention
  - EU Directive on patents for biotechnological inventions



Scope of the PVP protection:

The use of protected material **is subject to authorization** of the breeder:

- production or multiplication of the variety,
- conditioning for the purpose of propagation,
- offering for sale, selling or other marketing,
- exporting from or importing to the EU
- stocking for any of the purposes mentioned above





The Community system is tailored made for intellectual property protection for plant varieties

### Exemptions (article 15 of basic regulation)

- Breeders' exemption
- Farm saved seeds
- Experimentation purposes
- Acts done privately for non commercial purposes



# Advantages of the exemptions

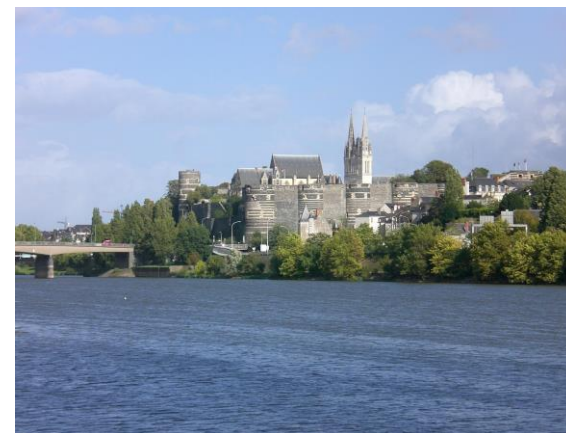
- **Breeder's exemption** [Art. 15(c) BR]:
  - Variety improvement is enhanced
  - Germplasm sources remain accessible to the community of breeders
  - Genetic basis for plant improvement is broadened and actively conserved
  - Opportunity for all breeders to share in benefits of breeding activities
- **Agricultural exemption** (Art. 14 BR):
  - Farmers are authorized to use for propagating purposes in the field the product of the harvest which they have obtained by planting, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a CPVR
  - Farmers shall pay an equitable remuneration sensibly lower than the amount charged for the licensed production of propagation material



# The CPVO

The EU Plant Variety Protection system is run by the  
Community Plant Variety Office (CPVO):

- Official Agency of the EU
- Based in Angers (France)
- Operational since 1995
- Around 50 staff members
- Independent legal status
- Fully self-financed



# The CPVO - Administrative Council

- The Administrative Council (AC) is made up of representatives of the **EU Member States**, a representative of the **European Commission** and **Observers**
- The Administrative Council is **responsible for**:
  - Monitoring the CPVO
  - Approval of the Budget
  - Approval of the Technical Protocols
  - Entrustment of Examination Offices





To be protected, a variety should :

- be **New**
- have a suitable **variety denomination**
- be **Distinct**
- be **Uniform**
- be **Stable**

} **DUS**



## Novelty

A variety shall be deemed to be **new** if at the date of application material of the variety **has not been sold or otherwise disposed** of to others by or with consent of the breeder

- Earlier than **1 year** before the application date, within the territory of the EU
- Earlier than **4 years (6 years** in the case of trees and grapevine) before the application date, outside the territory of the EU





## Variety denomination

- Each variety must be given an identification known as a **"denomination"**
- Parallel procedure for approval of the variety by specialised staff member
- Final decision on denomination at the time of granting
- Variety Finder : data base with search and similarity test tools



## Examination offices



- When the EU PVR system was created it has been decided to use the testing facilities already existing in the MS, for the assessment of the DUS criteria of candidate varieties
- Where no examination office within the EU is available for testing a particular species, the Office may collaborate with offices outside the EU




## Examination offices

- The DUS examinations are carried out by **entrusted** Examination Offices
- The Examination Offices must fulfil **quality requirements** (audits)
- The entrustment is made by the Administrative Council

Throughout the technical examination, **collaboration** between the technical expert of the CPVO and the examination office



## Examination offices

<a href="#">All</a>	Species name (1)	Entrustment type (2)	Fee group (3)	Examination cost (4)	Country (5)	Examination office (6)	End of entrustment date (7)	Remarks (8)	
<input type="checkbox"/>	<i>Avena sativa</i> L.	spring	4	1530	EE	Agricultural Research Center			
<input type="checkbox"/>	<i>Galega orientalis</i> Lam.		4	1530	EE	Agricultural Research Center			
<input type="checkbox"/>	<i>Hordeum vulgare</i> L.	spring	4	1530	EE	Agricultural Research Center			
<input type="checkbox"/>	<i>Lupinus polyphyllus</i> Lindl.		4	1530	EE	Agricultural Research Center			
<input type="checkbox"/>	<i>Phalaris arundinacea</i> L.		3	2430	EE	Agricultural Research Center			
<input type="checkbox"/>	<i>Pisum sativum</i> L.		4	1530	EE	Agricultural Research Center			
<input type="checkbox"/>	<i>Triticum aestivum</i> L. emend. Fiori & Paol.	spring	4	1530	EE	Agricultural Research Center			



### Attribution criteria for candidate varieties

- the **wish of the breeder**
- geographical origin of the variety
- willingness to carry out DUS tests on behalf of the CPVO
- existing bilateral agreements/centralized testing
- the total number of applications
- the proximity to the country where the breeder, the applicant or the procedural representative are located



## Technical Protocols

DUS examinations are carried out according to :

- CPVO Technical Protocols >200 TPs for all crop sectors
  - ✓ are based on the relevant UPOV guideline
  - ✓ are elaborated together with national crop experts
  - ✓ contain a compulsory list of characteristics
- UPOV Test Guidelines (TG) for species without CPVO TP
- National Guidelines for species without CPVO TP nor UPOV TG



# Farm Saved Seed



Tallinn 12 03 2019

## **UPOV 1991 - Article 15 (2)**

- Optional exception – to restrict the breeder’s right
- Within reasonable limits and
- Subject to the safeguarding of the legitimate interests of the breeder
- To permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the
  - protected variety or
  - an EDV or
  - a variety not distinguishable from the protected variety



## **Agricultural Exemption**

### **Legal Basis**

- Basic Regulation (« BR »)  
Article 14 Council Regulation No 2100/94
- Implementing Rules (« IR »)  
Commission Regulation No 874/2009



## **Limitation of the Scope**

### **Article 14 Regulation 2100/94**

- Restrict the breeder's right
- Farmers are authorized to use for propagating purposes in the field,
  - on their own holdings,
  - the product of the harvest which they have obtained by planting on their own holding,
  - propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant variety right



## **Limitation of the Scope**

### **Article 14 Regulation 2100/94**

- Exception limited to
  - Fodder plants
  - Cereals
  - Potatoes
  - Oil and fibre plants
  
- Full list in Art. 14(2) BR



## **Conditions - Article 14(3) BR**

Subject to the safeguarding of the **legitimate interests of the breeder** (*UPOV Condition*) **and the farmer** (*BR*)

- No quantitative restrictions
- Processing allowed
- Farmers must pay remuneration for the use
- Small farmers are exempted
- Monitoring up to holders
- Information may be provided by official bodies



## Remuneration

Farmers shall pay an

- equitable remuneration
- sensibly lower than the amount charged for the licensed production of propagation material



## Remuneration

The fee can be determined in a contract between

- Individual farmers and holders
- A contract between organisations of farmers and holders can be used as a **guideline** if published in the CPVO Gazette



## Equitable Remuneration

If no contract :

- 50% of the amount charged for the
  - licenced production of propagating material
  - of the lowest category qualified for official certification
  - for the same variety in the same area



## **Cases C-7/05 to C-9/05,** *Saatgut-Treuhandverwaltungs GmbH v Deppe and others*

- One of the questions that arose in this case was whether 80% could be seen as « sensibly lower »
- 80% was mentioned in an agreement between organisations of farmers and breeders, but the contract had not been published in the CPVO Gazette
- The court answered this question in the negative



## Information - Farmers

- On request, farmers are required to provide relevant information to the holder
- The details of such information can be laid down in a contract
- If no contract, the information laid down in Art 8 IR shall be provided; such as
  - Amounts used
  - Who processed the material



## C-305/00

### *Schulin v Saatgut-Treuhandverwaltungs GmbH*

- The holder is only authorised to request information from a farmer if he has some **indication** that this farmer has used seed of a protected variety



## **C-182/01**

### *Saatgut-Treuhandverwaltungs GmbH v Jäger*

- Confirmed the Schulin ruling and
- Specified that limited liability companies, and not only associations/organisations, can represent holders under certain conditions



## **Information - Processors**

- On request, processors are required to provide relevant information to the holder
- The details of such information can be laid down in a contract
- If no contract, the information laid down in Art 9 IR shall be provided; such as
  - Amonts processed
  - Who commissioned the service



## **C-336/02**

### *Saatgut -Treuhandverwaltungsgesellschaft GmbH v Brangewitz GmbH*

- If the holder has an indication that a processor is processing farm saved seed of a protected variety the processor must provide information
  - not only to the farmer for whom the holder had an indication of use
  - but to all farmers for which the processor has processed the variety in question



## Information – Official bodies

- Upon written request,
- Official bodies may nevertheless withhold information on the use of a protected variety in the cases mentioned under Art 11(2) IR, such as
  - If the body is not involved in the monitoring of agricultural production
  - It is not allowed by law
  - The information is not available



## **Infringement in relation to FSS – Art. 17 & 18 IR**

- The holder may sue a farmer who does not fulfill his obligations
- If held liable the infringer may be ordered by the court to
  - stop the infringing acts
  - pay damages



## **Evaluation of the CPVR System**

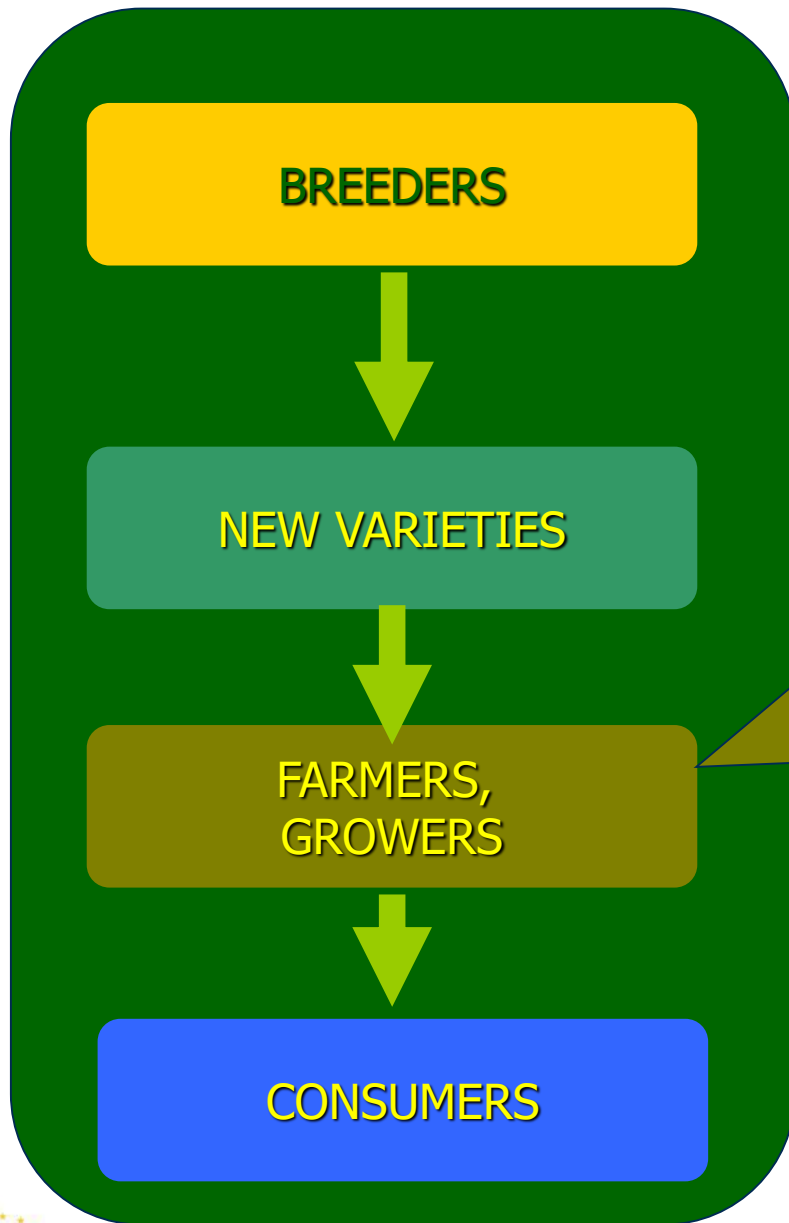
- FSS rules could be improved so as to ensure that holders acquire the necessary information on the use of FSS
- Obligation on farmers to answer yes/no on the question if they used FSS



## ***Benefits of a regional PVP system***

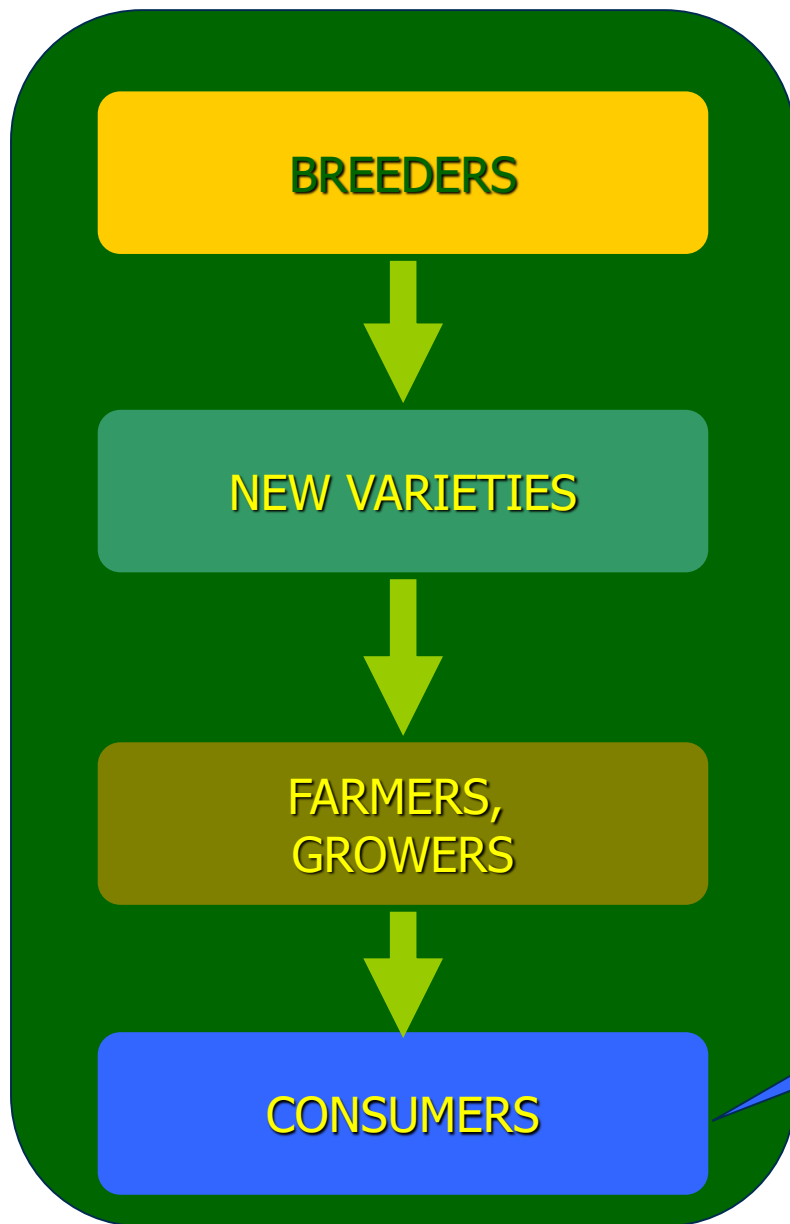
- Choice: national or EU application
- Reduced costs
- Efficiencies in the application procedure
  - ✓ Administrative work reduced
  - ✓ Time saving
- Higher transparency
  - ✓ Technical work is harmonised
  - ✓ Centralised Denomination testing
  - ✓ IT tools
- Higher legal certainty / stronger protection:
  - ✓ Centralized examination, objection and appeal instead of different national procedures with the possibility of different outcomes





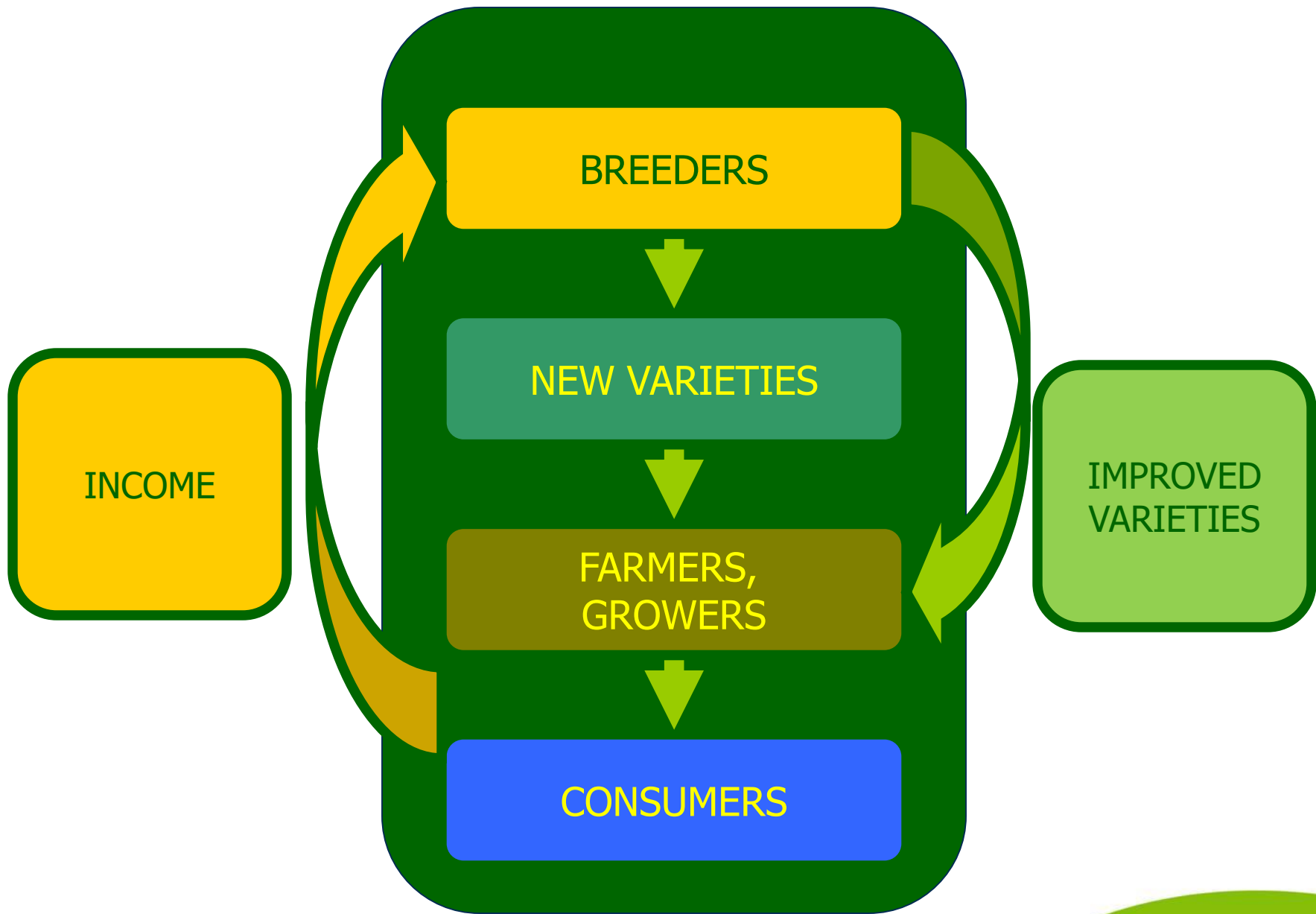
- Yield
- Profitability
- Resistance to pests and diseases
- Stress tolerance
- Harvestability
- Crop quality
- Input efficiency
- Variety diversity
- New markets ...etc.





- Reduced food cost
- Efficient land use
- Nutritional quality, taste etc.
- Storage quality
- Diversity of products





# Benefits of PVP system

## Economic Study 2000-2013

### The economic, social and environmental value of plant breeding in the European Union

– Results achieved so far\* –

Steffen Noleppa  
HFFA Research GmbH



\* This research has been initiated and financially supported by ETP. The results of the study are the sole responsibility of the author and have never been influenced by the initiator and supporter of the study.

October 13<sup>th</sup>, 2015, Vienna

### Without plant breeding:

- ✓ EU would have moved from being net EXPORTER to net IMPORTER in all major agricultural crops (including wheat and barley)
- ✓ European farmers would be 30% worse off
- ✓ Europe would need an extra 19 million hectares of farmland to produce the same amount of food

Plant breeding has increased wheat harvest by 15%



## **EU SYSTEM IN NUMBERS**

- ✓ ca. **65 000** applications received
- ✓ ca. **51 000** titles granted
- ✓ ca. **27 000** titles in force
- ✓ ca. **2 100** different botanical taxa



Thank you  
for your attention!

Questions?

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