

## Access to genetic material continues to demand attention

Intellectual property rights are necessary because breeders can recoup their investments and are therefore able to continuously invest in the development of new varieties. Breeders should also not be unnecessarily hindered in their access to genetic material. After all, the development of a successful variety requires many crosses between plants that together possess the desired properties.

Breeders' rights offer a good solution for this situation through the full breeding exemption. Plantum is committed to further improving breeders' rights legislation at home and abroad and encouraging other countries to endorse and effectively implement the right. This is achieved by participation in international discussions at CPVO or UPOV level\*, and through bilateral contacts in third countries.

About twenty years ago, patent law was introduced to the breeding sector. Patent law does not provide a full breeding exemption. To create and maintain an ideal innovation climate, access to genetic material must be guaranteed. Plantum has been committed to wide access to genetic material for all breeders for years now. This way, we can maintain the valuable diversity of companies in the Dutch sector in the future.

### BREEDERS' RIGHTS

Breeders' rights have been used for almost 100 years to reward breeding companies for developing a new variety. Breeders' rights give a company the exclusive right to propagate and sell its new variety for a certain period. Other breeders may freely use this protected variety for further breeding. This so-called breeding exemption allows people to build on each other's varieties, resulting in increasingly better varieties. Under certain conditions, growers can reuse their self-produced starter material from certain crops. In the Netherlands, this applies to grains and potatoes. Internationally, the UPOV 1991 Convention is the standard for breeders' rights legislation. The interpretation of this document is often based on the explanatory notes. Plantum contributes to the revision of these documents where possible.

### DERIVED VARIETIES

Essentially Derived Varieties (EDV) are varieties that, as a result of the breeding history, show great similarity to an older variety. This concerns colour mutants, for instance. The concept was included in UPOV 1991 in response to new breeding methods. Breeders' rights must offer conventional breeders enough opportunity to recoup their investments. The speed with which new breeding methods can be used, making use of a variety from complex breeding efforts, puts this under pressure. The EDV concept tries to find a balance between the different interests. The interpretation of the concept in the current explanatory notes is not sufficiently successful in this regard. Plantum advocates a broader interpretation of the EDV concept to prevent an erosion of breeders' rights.

### HARVESTED MATERIAL

Since the UPOV 1991 Convention, harvested material also falls under the protection offered by breeders' rights. The condition for this is that the rights holder had 'no reasonable opportunity' to exercise his right to the starter material. An overly strict interpretation of this hinders the actual effect of breeders' rights. Plantum argues for a revision of a number of explanatory notes to clarify the intention of the UPOV 1991 Convention on this point.

\* CPVO: Community Plant Variety Office, UPOV: International Union for the Protection of New Varieties of Plants



### SMALL-SCALE FARMERS

A few years ago, Plantum, Euroseeds and Oxfam together published a report, calling for further clarification of the concept of private and non-commercial use within the UPOV 1991 Convention to prevent breeders' rights from having a blocking effect on small-scale farmers in developing countries that reuse seeds and exchange them locally. UPOV has now set up a working group to work this out.

### PATENTS AND ACCESS TO GENETIC MATERIAL

According to laws and regulations, and the interpretation of the European Patent Office, it is possible to protect breeding methods other than crossing and selection and the products thereof with a patent. This has been causing concerns within the sector for some time now. These concerns are further increased by the expected rise in the number of patents following the emergence of new breeding methods. Plantum considers it of great importance that the discussion about the effect of patent law in plant breeding is resumed.

### MAINTAINING INNOVATIVE POWER

Plantum's current patent position – the introduction of a full breeding exemption in patent law – still corresponds to the concerns experienced and problems identified by breeders. That is why Plantum's governing board has reconfirmed this position in 2023. At the same time, attention is paid to the capacity of companies to recoup research investments. The Netherlands has a great diversity of big and small propagation and breeding companies. This diversity contributes to the sector's innovative power.

Achieving our position will not be an easy process. In the meantime, however, the sector has not stood still. For example, a group of vegetable seed companies has set up the International Licensing Platform Vegetables. Members of this patent platform guarantee each other worldwide access to each other's patents, provided that a reasonable fee is paid for this access. A similar system for agricultural crops was recently launched in Europe: the Agricultural Crop Licensing Platform. In this way, the roughest edges of patent law are provisionally ironed out for participating companies in the relevant crops.

Plantum's starting point in this patent discussion will always be that we must work towards a system in which plant breeders are optimally enabled to supply the market with increasingly better plant varieties. This is the only way in which the sector can continue to play its crucial role in achieving the sustainability goals of the Netherlands, the EU and the UN.