



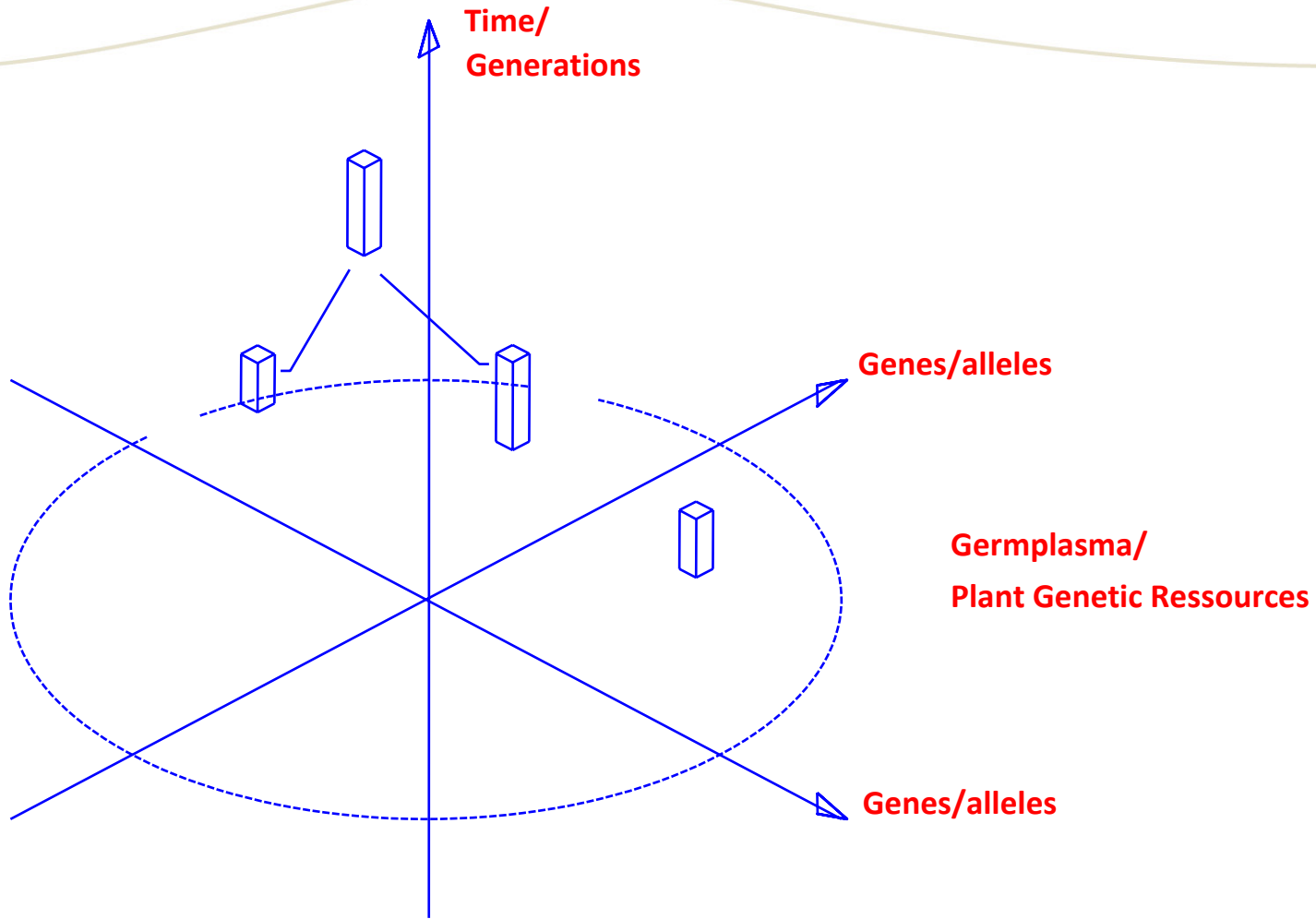
**Afdeling for Sortsafprøvning - Tystofte**  
**Rammebetingelser for udvikling inden for**  
**sorter og patenter**  
**eller ”Hvem har ret til at krydse hvem”**



# Definition of a variety

- “variety” means a plant grouping within a single **botanical** taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be
  - defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
  - distinguished from any other plant grouping by the expression of at least one of the said characteristics and
  - considered as a unit with regard to its suitability for being propagated unchanged

UPOV 91 convention





# Article 14 - Scope of the Breeder's Right

- Production or reproduction
- Conditioning for the purpose of propagation
- Offering for sale
- Selling or other marketing
- Exporting
- Importing
- Stocking for any of the purposes mentioned in 1-6 above

And §14,2 to 5, harvested material, products, additional acts and EDV and other varieties



## Article 15 - Exceptions to the Breeder's Right and UPOV EXP-note – oct 2009

(1) - [Compulsory exceptions] The breeder's right shall **not** extend to

i. acts done privately and for non-commercial purposes,

ii. acts done for experimental purposes and

iii. acts done **for the purpose of breeding other varieties**, and, except where the provisions of Article 14(5) [EDV] apply, acts referred to in Article 14(1) to Article 14(4) in respect of such **other varieties**

- i. **GDE: commercialization of new created varieties does not require the authorization of the title holder of the original variety.**



## Article 15 - Exceptions to the Breeder's Right – UPOV EXP-note – oct 2009

(2) [**Optional exception**] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order 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 a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii).



# Hvem kan indgå i en plantekrydsning

- ”Egne planter/linier/selektioner”
- Efter aftale planter/linier/selektioner modtaget fra samarbejdspartner
- PNB-sort, hvor man kan erhverve plantemateriale – kommercielt tilgængeligt
- Sort optaget på CC uden PNB - kommercielt tilgængeligt



# Hvem kan indgå i en plantekrydsning

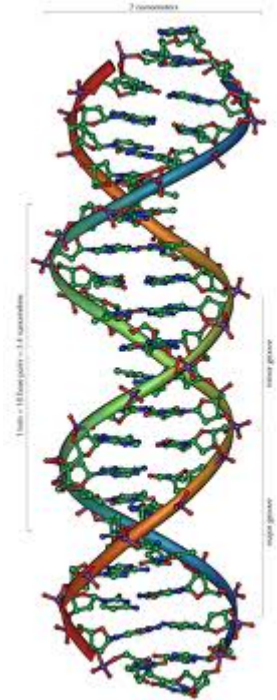
- Accessioner modtaget fra NorGen eller andre genbanker
  - smta (FAO ITPGR-FA)
  - Nordgen mta – arter, der ikke er del af FAO-ITPGR-FA
    - in the form received
    - minus patentability
  - Andre genbanker i resten af verdenen – egne mta
- CBD – ”vildt plantemateriale” adgang til genetiske ressourcer til andre arter end landbrugsplanter
  - Nagoya protocol
  - National lovgivning => variable betingelser
    - Sikrer adgang til plantemateriale og oplysningspligt hos modtager





# Hvem kan ikke indgå i en plantekrydsning

- PNB-sorter med bio- hhv plantepatent
  - Kun acceptabelt i DE, CH, FR, NL – juridisk fortolkning
    - Markedsføring kun uden patent i sorten eller
    - Efter kun efter aftale med patentejer
  - Generel EU-undtagelse ønskes fra forædler side
- Sorter under lovbestemt afprøvning





- EPO - patent
  - Ny, innovative og industrielt anvendelig
  - Forhindrer andre i at fremstille, bruge, sælge eller importere det patenterede objekt (claim)
    - Tysk ækvivalens betragtning
    - UK – ordret fortolkning
  - Udstedes på EU-plan
  - Håndhæves på national plan
    - Aktive gener
    - FSS-muligt – landbrugsundtagelsen
    - Forskningsundtagelse = forædlerundtagelse?
      - UK – fortolkning - nej
      - DE – fortolkning – måske - accept
      - Tvivlsom accept (NL, US domsafsigelser)
        - » ESA: Crossing and Selection
        - » Undtaget fra plantepatent – ikke formaliseret pt – ESA position



# Co-existens af PNB og biopatent

- Klare forskellen mht
  - Beskyttelsesgenstand
    - Sort hhv
    - Proces eller produkt
  - Betingelser
  - Rettigheder
  - Undtagelser
    - gælder kun, hvis de kan anvendes i begge systemer ellers er de underordnet til det andet system fx
      - Forædlerundtagelsen i patentsystemet
  - PNB-Patent reciprocitet
    - Compulsory license requires "significant technical progress or significant economic interest"



# CPVR, bio- eller plantepatent

- CPVO – EPO
  - EPO: Plantetyper, der ikke falder ind under CPVO-sortsdefinition kan patenteres
  - CPVO: All varieties can be protected – hybrids are also considered a variety as based on clearly identifiable parental components the hybrids reproduction is stable
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