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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Thirty-Seventh Ordinary Session****Geneva, October 23, 2003****EXAMINATION OF THE CONFORMITY OF THE BREEDER'S RIGHT ACT
OF THE REPUBLIC OF ICELAND WITH THE
1991 ACT OF THE UPOV CONVENTION***Document prepared by the Office of the Union*Introduction

1. By letter dated July 14, 2003, addressed to the Secretary-General of UPOV, Mr. Stefan H. Johannesson, Ambassador, Permanent Representative of the Republic of Iceland to the United Nations Office and other International Organizations at Geneva, requested the examination of the Act on Breeder's Right No. 58/2000, adopted by the Parliament of the Republic of Iceland (hereinafter referred to as "Iceland") and amended by Act No. 72/2003 ("the Law"), for conformity with the 1991 Act of the UPOV Convention ("the 1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains a translation of the law in English provided by the Government of Iceland.

2. Iceland did not sign the 1991 Act. Under Article 34(2) of the 1991 Act, it therefore has to deposit an instrument of accession in order to become a Contracting Party on the basis of the 1991 Act. Under Article 34(3) of the 1991 Act, an instrument of accession can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1991 Act and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in Iceland

3. In Iceland, the protection of new plant varieties is governed by the Law. An analysis of the Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

4. Article 1 of the Law provides for who is entitled to obtain protection in line with the notion of breeder, as defined in Article 1(iv) of the 1991 Act. The Law does not contain a definition of “variety.” It is recommended to include in the Law or Regulations a definition of variety in line with the definition in Article 1(vi) of the 1991 Act.

Article 2 of the 1991: Basic Obligation of the Contracting Parties

5. The Law provides for granting of a breeder’s right on the basis of an application filed with the Breeder’s Right Committee (Article 1 of the Law). The Law complies with Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

6. The Law applies to all genera and species. This information has been confirmed by a communication from the Ministry of Agriculture of Iceland dated September 11, 2003 (signed by Mr. Jon Skaptason for the Minister). The Law complies with Article 3 of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

7. The Law does not restrict access to protection to foreign nationals or residents. Article 3 of the Law specifies in paragraph 4 “where the applicant neither resides nor is established in this country or in any State Party to the Agreement on the European Economic Area [or the Agreement Establishing the European Free Trade Association], he shall have an agent residing, or who is established, in this country.” The Law thus complies with the provisions of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

8. The Law provides for the conditions for protection in Article 2 in a way which incorporates the essential elements of Articles 5 to 9 of the 1991 Act.

9. More precisely, Article 2(1) of the Law provides for the condition of distinctness with the appropriate explanation of common knowledge in the last paragraph of Article 2, which conforms with the requirements of Article 7 of the 1991 Act. It is recommended to clarify in the Law that the candidate variety needs to be “clearly” distinguishable.

10. Article 2(2) of the Law contains the condition of uniformity, but does not provide for the definition of uniformity. It is recommended to include this definition in the Law or the implementing Regulations in line with the contents of Article 8 of the 1991 Act.

11. It is recommended to modify Article 2(3) of the Law in order to introduce the definition of stability as provided in Article 9 of the 1991 Act.

12. Article 2(4) of the Law provides for the condition of novelty in line with the provisions of Article 6 of the 1991 Act. It is recommended to clarify in the Law that the grace periods provided in Article 2(4)(a) and (b) are counted from the date of the application.

Article 10 of the 1991 Act: Filing of Applications

13. Chapter II of the Law contains Articles 3 to 8 concerning applications. The Law contains no provisions in conflict with those of Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

14. Article 6(2) of the Law permits a claim for priority based upon an earlier application in another member of UPOV during the period of 12 months. It is recommended to specify in the Law or the implementing Regulations, that the period of priority shall be computed from the date of filing of the first application and that the day of filing shall not be included in that period. The Law thus conforms with Article 11(1) of the 1991 Act.

15. The Law gives the applicant three months to file the relevant documents and evidence concerning the first application, as required by Article 11(2) of the 1991 Act.

16. It is recommended to include in the Law or the implementing Regulations the substance of Article 11(3) of the 1991 Act, allowing the applicant claiming the priority of the first application to request that the examination of the variety be deferred by up to two years from the date of expiry of the priority period, or an appropriate time if the first application has been rejected or withdrawn.

Article 12 of the 1991 Act: Examination of the Application

17. Article 9 of the Law contains provisions relating to the examination of candidate varieties which conform with Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

18. Article 6(1) of the Law provides for provisional protection from the date of filing of the application. It is recommended to include further guidance on the implementation of Article 6(1) of the Law in the Regulations.

Article 14 of the 1991 Act: Scope of the Breeder's Right

19. Article 17 of the Law provides for the acts in respect of the propagating material that require the authorization of the breeder in line with Article 14(1) of the 1991 Act. Article 17 of the Law also includes provision concerning acts in respect of the harvested material in line with Article 14(2) of the 1991 Act. Article 16 of the Law indicates the varieties which are covered by the breeder's right, which includes, in addition to the varieties registered in accordance with the Law, essentially derived and certain other varieties in conformity with the provisions in Article 14(5) of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

20. Article 18 of the Law provides, in paragraphs 1, 2 and 3, the three compulsory exceptions required by Article 15(1) of the 1991 Act.

21. In order to fully incorporate the scope of the exception under Article 15(1)(iii) of the 1991 Act, it is recommended to add after "acts done for the purpose of breeding," in Article 18(3) of the Law, the following sentence: "The breeder's right shall not extend to acts done for the purpose of breeding other varieties, and, except where the provisions for essentially derived varieties and certain other varieties apply, acts contained in the scope of the breeder's right, in respect of those varieties that have resulted from the breeding activities."

22. Article 16(5) of the Law provides that "the Minister of Agriculture may establish rules prescribing that persons, who propagate varieties of particularly specified species solely to be used for private operating activities, should also pay licensing fee." If this provision intends to incorporate the optional exception in Article 15(2) of the 1991 Act, it is recommended to include further guidance in the implementation of this provision in the Regulations.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

23. Provisions for the exhaustion of the breeder's right, as provided in Article 16 of the 1991 Act, are included in Article 18(4) of the Law. In this regard, paragraph 4 includes the notion of regional exhaustion in conformity with Article 16(3) of the 1991 Act. It is recommended to complete the scope of the exhaustion rule to remove the word "propagating" in the first line of Article 18(4) and to include in the Law or the implementing Regulations the definition of "material" in line with the definition in Article 16(2) of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

24. Article 20 of the Law contains provisions concerning the grant of non-voluntary license by the Minister of Agriculture for reasons of public interest. This provision also indicates that the breeders would receive, in those cases, an equitable remuneration. Thus, the Law conforms with the requirements of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

25. The Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

26. Article 12 of the Law provides for the period of protection of 25 years subject to the payment of the annual fee and, for specified species and genera, for a period of 30 years. The Law thus provides for a period of protection beyond the minimum required, in conformity with Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denominations

27. The Law contains provisions on variety denominations in Articles 10 and 11. These provisions provide for the essential requirements under Article 20 of the 1991 Act.

28. Article 11(5) of the Law indicates: "The Minister of Agriculture may establish more express rules on variety denominations." It is recommended to include in the Law or the implementing Regulations concerning variety denominations the requirements of paragraphs 1(b), (4), (5), (6), (7) and (8) of Article 20 of the 1991 Act, in particular in relation to paragraph 4 of Article 11: "The Breeder's Right Committee may, in special cases and at the breeder's request, authorize a different denomination for a variety from that which was originally approved." This provision should be implemented in line with the obligation under Article 20(5) of the 1991 Act that provides that the same denomination should be registered in all members of UPOV unless the Breeder's Right Committee considers the denomination unsuitable in Iceland. As a consequence, a proposal, at the request of the breeder, of a different denomination from the one which was originally approved should only be considered by the Breeder's Right Committee if this change is justified because the original denomination is unsuitable in Iceland.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

29. Article 14(1) and (2) provides for the grounds to declare the nullity of the breeder's right in line with Article 21(1)(i) and (ii) of the 1991 Act.

30. The Law does not provide for a provision concerning the declaration of the nullity of the breeder's right if it has "been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled," as required by Article 21(1)(iii) of the 1991 Act. It is recommended to amend Article 14 of the Law in order to incorporate the provision under Article 21(1)(iii) of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

31. Article 14(2) of the Law refers to cases where "the Breeder's Right Committee may delete a variety from the official Register of Varieties." The first situation concerns the

renunciation by the breeder, the other situations indicated in sub-paragraphs 2, 3 and 4 comply with the grounds for cancellation as required by Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

32. Article 30(1)(i) of the 1991 Act requires that Contracting Parties should “provide for appropriate legal remedies for the effective enforcement of breeders’ rights.” Articles 25 and 26 of the Law provide for fines and damages in cases of offenses or infringements to the breeder’s rights. The Law thus conforms with Article 30(1)(i) of the 1991 Act.

33. Article 30(1)(ii) of the 1991 Act requires that Contracting Parties should “maintain an authority entrusted with the task of granting breeders’ rights ...” Article 22 of the Law provides that the Minister of Agriculture will appoint the members of the Breeder’s Right Committee in charge of implementing this Law. The Law thus conforms with Article 30(1)(ii) of the 1991 Act.

34. Article 30(1)(iii) of the 1991 Act requires that Contracting Parties should publish information concerning applications and grant of breeders’ rights and proposed and approved denominations. Article 7(3) of the Law provides for the publication of the applications in the National Gazette. Article 12(4) of the Law indicates that the registrations concerning breeders’ rights shall be published in the National Gazette. It is recommended to clarify in the Law or the implementing Regulations that the publication of the application should also include the publication of the proposed denomination and that the publication of the registration should also include the publication of the registered or approved denomination. The provisions of the Law satisfy the essential requirements of Article 30(1)(iii) of the 1991 Act.

General Conclusion

35. The Office of the Union therefore suggests that the Council may wish to advise the Government of Iceland that the Law, in its main provisions, incorporates the substance of the 1991 Act, but that it still needs some amendments, as provided in paragraphs 9, 11, 12, 21, 23 and 30 of this document, in order to fully conform with the 1991 Act. Once the amendments are incorporated in the Law, Iceland may deposit its instrument of accession to the 1991 Act.

36. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.

[Annex I follows]

ANNEX I



PERMANENT MISSION
OF ICELAND

International Union for the Protection of
New Varieties of Plants (UPOV)
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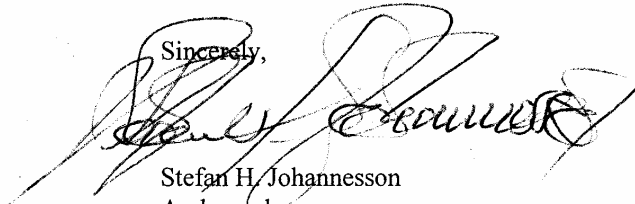
Dear Secretary-General Idris,

I have the pleasure to inform you that on 19 May 2000, the Parliament of the Republic of Iceland adopted an Act on Breeder's Right No. 58/2000.

The Republic of Iceland intends to adhere to the International Convention for the Protection of New Varieties of Plants, UPOV Convention of December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (Act of 1991).

Pursuant to the provisions of Article 34(3) of the 1991 Act, I would appreciate if the Council of UPOV could examine the conformity of the legislation of Iceland with the provisions of the 1991 Act.

Sincerely,



Stefan H. Johannesson
Ambassador
Permanent Representative

Enclosures:

The Breeder's Right Act and Official translation of the Law into English.

[Annex II follows]

ANNEXE II / ANNEX II / ANLAGE II / ANEXO II

BREEDER'S RIGHT ACT

No 58 of 19 May 2000

Date of entry into force 26 May 2000. Amended by Act No 72/2003 (Date of entry into force 10 April 2003).

CHAPTER I

General ProvisionsArticle 1

A person who has bred, or discovered and developed a new variety (a variant or a strain of a plant species) or another person who has acquired the person's right, a breeder, can, in accordance with the present Act, acquire exclusive right to exploit it for professional reasons. A right concerning a variety (breeder's right) is granted on the basis of an application filed with the Breeder's Right Committee, cf. Article 22.

The Minister of Agriculture is responsible for the implementation of the present Act.

Article 2

Breeder's right may be granted when a variety is:

1. distinct, i.e. it is distinguishable from any other variety the existence of which is a matter of common knowledge at the time of the filing of the application, cf. paragraph 2;
2. Sufficiently uniform;
3. stable with respect to the characteristics used to distinguish it from other varieties, cf. paragraph 1, when being propagated using the method specified by the breeder; and
4. new, i.e. propagating material of the variety or its harvest has not, with the breeder's consent, been sold or offered for sale to the public or otherwise disposed of for purposes of exploitation for professional reasons:
 - a) in this country, for a longer period than one year, or
 - b) abroad, for a longer period than four years, yet for six years in the case of trees or of vines.

The existence of a variety shall be deemed to be a matter of common knowledge provided it has been sold or offered for sale to the public, entered in an official register of varieties, or it is a matter of common knowledge by other means. Where a variety has been characterized in an application for a breeder's right, a patent application, or an application for its entry into an official register of varieties in this country or in another state, its existence

shall be deemed a matter of common knowledge from the time of the filing of the application onward. This will only apply given the aforementioned applications have lead to approval.

CHAPTER II

Application

Article 3

An application for the entry of a variety into an official register of varieties shall be filed in writing with the Breeder's Right Committee.

An application for a variety shall comprise a characterization of the variety and specify in particular what distinguishes it from other varieties. It shall also include a suggested denomination for the variety together with the name and address of its innovator. The applicant's name, identification number and address shall also be indicated.

Where the applicant and the innovator are not the same person the applicant shall verify his or her authority to apply for a breeder's right.

Where the applicant neither resides nor is established in this country or in any State Party to the Agreement on the European Economic Area [or the Agreement Establishing the European Free Trade Association]¹ he shall have an agent residing, or who is established, in this country.

The Breeder's Right Committee may instruct the applicant to provide, within a prescribed period, any information required to process his or her application. The Breeder's Right Committee may also instruct the applicant to provide, within a prescribed period, documents and material for examination, cf. Article 9.

The applicant shall pay an application fee of ISK 30 000.

Article 4

On receipt of a valid application it shall be entered into the Breeder's Right Committee's Diary without delay and a copy of the application, together with an inscription containing the date of entry into the Diary, shall be forwarded to the applicant.

The Diary shall be open to the public with the exception of information on lines forming a hybrids variety and their characterization, provided the applicant has insisted that such information will be kept secret.

Article 5

If, within a prescribed period of time, the applicant does not provide information, or documents and material requested be the Breeder's Right Committee in accordance with the fifth paragraph of Article 3, the Committee may delete the application from the Diary.

Article 6

From the date of application onward the applicant has the right of protection of a variety preceding that of others who subsequently apply for protection of the same variety.

On request submitted by the applicant the Breeder's Right Committee can deem the application to have been received concurrently with the first application for breeder's right in any Member State of The International Union for the Protection of New Varieties of Plants (UPOV), provided the first application was filed during the last twelve months before the date of application in this country. Such request shall be included in the application and evidence produced of the receipt of the first application within three months from the date of application in this country.

Article 7

As soon as possible, after the entry of an application into the Breeder's Right Committee's Diary, the Committee shall conduct a preliminary examination to determine if a variety fulfils the conditions of protection.

If the Committee is of the opinion, on having concluded the examination, that the conditions have been fulfilled it shall publish a notification in the National Gazette, including an appeal to possible interested parties to object against the registration of the variety within a prescribed period.

On the other hand, if the Committee is of the opinion that conditions have not been fulfilled the applicant shall be given time to submit observations. The application shall be notified in the National Gazette, provided the applicant's observations have changed a conclusion drawn earlier.

Article 8

If, on the basis of observations submitted, the Breeder's Right Committee decides to delete an application from its Diary and cancel the examination, a notification shall be published to that effect in the National Gazette.

The Breeder's Right Committee will not rule on questions concerning the applicants right to a variety. The Committee shall call the parties attention to the fact that matters of dispute may be presented to a Court of Law. Where the Committee is notified of a court action the application shall be inscribed accordingly.

CHAPTER III

Examination and Registration

Article 9

The Breeder's Right Committee shall, before a variety can be protected and subject to Article 21, determine whether the variety is in compliance with the conditions for protection,

cf. Article 2, by way of a special examination if necessary, and whether it has the distinctive characteristics specified in the application.

The applicant may be required to make a payment to the Committee owing to its examinations expenses, cf. the first paragraph of this Article. Such a payment shall in no case exceed ISK 30 000.

Article 10

Where a variety is deemed to be in compliance with the conditions for protection, the Breeder's Right Committee shall register it in the official register of varieties under an approved variety denomination, cf. Article 11.

The Breeder's Right Committee can reject an application for registration of a variety if the applicant does not answer, within a prescribed period, the Committee's plea to propose a denomination of the variety or propose a new denomination for it, if the Committee holds the belief that the proposed denomination does not meet the conditions imposed.

Where an action has been brought before a court of law, cf. the second paragraph of Article 8, a note to that effect shall be entered into the official register of varieties.

Article 11

An approved denomination shall be applied to designate a variety, which shall be maintained even when the variety is no longer protected.

The denomination may not consist solely of figures except where this is an established practice for designating varieties of the species in question. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder. It must be different from every denomination, which already designates an existing variety of the same plant species or of a closely related species.

An additional denomination may be used in relation to the variety denomination.

The Breeder's Right Committee may, in special cases and at the breeder's request, authorize a different denomination for a variety from that which was originally approved.

The Minister of Agriculture may establish more express rules on variety denominations.

Article 12

On having registered a variety the Breeder's Right Committee will issue a breeder's right document and deliver it to the applicant against the payment of a registration fee of ISK 3 000. This document is valid for one year and is renewable one year at a time for up to 25 years.

Protection in accordance with a breeder's right document is renewed by way of a payment of the annual fee to the Breeder's Right Committee. The annual fee is due on the date of issue of the breeder's right document. The annual fee for each year from the first year of payment until the 10th year of payment is ISK 3 000. The fee for each year from the

11th year until the 25th year is ISK 6 000. The fee for each year from the 26th year until the 30th year is ISK 9 000.

Notwithstanding the first paragraph of this Article the Minister of Agriculture may provide for a longer period of validity with respect to a breeder's right document concerning specified species and genera, thus allowing a variety to be protected for up to 30 years.

A registration notice shall publish in the National Gazette.

Article 13

Subsequent to registration the Breeder's Right Committee may check the breeder's compliance with the requirement to preserve the variety in a satisfactory manner. For this purpose, and within the period prescribed by the Committee, the breeder shall provide the Committee with necessary material for propagation of the variety in question.

Article 14

The Breeder's Right Committee shall declare a breeder's right granted by it null and void when it is established:

1. that a variety does not comply with the conditions of being distinct and new, laid down in subparagraphs 1 and 4 of the first paragraph of Article 2, at the time of the grant of the breeder's right;
2. that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, a variety does not comply with the conditions of being sufficiently uniform and stable, laid down in subparagraphs 2 and 3 of the first paragraph of Article 2, at the time of the grant of the breeder's right.

The Breeder's Right Committee may delete a variety from the official register of varieties if:

1. the breeder files a request with the Committee to that effect;
2. the annual fee is unpaid;
3. a variety does no longer comply with the conditions of being sufficiently uniform and stable, laid down in subparagraphs 2 and 3 of the first paragraph of Article 2;
or
4. the breeder does not answer, before the end of a prescribed period, the Committee's plea to:
 - a) provide it with necessary material for propagation of the variety for the purpose of surveillance subsequent to registration, or

- b) propose a new variety designation, where the Committee has, subsequent to registration of the variety, established that an approved designation does not comply with rules laid down by the Minister of Agriculture.

A variety shall be deleted from the official register of varieties two months after the breeder has been notified in a verifiable manner of the decision of the Breeder's Right Committee, unless he files a lawsuit before the end of that period.

Article 15

Where a variety has been deleted from the official register of varieties it will not be registered anew. The Breeder's Right Committee shall publish a notification to that effect in the National Gazette together with justifications.

CHAPTER IV

Breeder's Right

Article 16

Breeder's right comprises:

1. varieties registered in accordance with the present Act;
2. any other plant groupings, which are not clearly distinguishable from the registered variety;
3. varieties essentially derived from the registered variety, where the protected variety is not itself an essentially derived variety; and
4. varieties the production of which requires the repeated use of the registered variety.

For the purposes of subparagraph 3 of the first paragraph above, a variety shall be deemed to be essentially derived from another variety when:

1. it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
2. it is clearly distinguishable from the initial variety; and
3. except for the differences, which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Article 17

Breeder's right entails that others may not perform the following acts in respect of the propagating material of the protected variety without the authorization of the breeder:

1. exploiting of the material commercially for the purposes of production, propagation, or conditioning for the purpose of propagation;
2. importing or exporting, offering for sale, selling or other marketing; or
3. stocking for any of the purposes mentioned in subparagraphs 1 and 2 above.

The breeder may make his or her authorization subject to conditions, including the payment of an equitable licensing fee.

The Minister of Agriculture may establish rules prescribing that persons, who propagate varieties of particularly specified species solely to be used for private operating activities, should also pay licensing fees.

Persons who for commercial purposes propagate varieties or sell propagating material of varieties shall provide the breeder with the necessary details for the purposes of the collection of licensing fees.

The provisions of paragraph one to four above also apply to harvested material of a variety obtained through the exploitation of its propagating material, where the breeder has not:

1. authorized the said exploitation; and
2. had the opportunity to use his or her right in accordance with the first paragraph above.

The conditions imposed by the breeder, in accordance with the second paragraph above, shall only apply to the use and provision referred to in the first paragraph above. The conditions shall be reasonable and all producers shall receive equal treatment.

Article 18

Breeder's right does not extend to:

1. use for private but not professional reasons;
2. use in experiments;
3. acts done for the purpose of breeding;
4. use of propagating material of a variety marketed by the breeder or his or her agent in the European Economic Area [or in a State Party to the Agreement Establishing the European Free Trade Association], provided that the above mentioned use does not involve:

- a) further propagation of the variety in question,
- b) an export of material, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

Article 19

The Breeder's Right Committee shall, after being requested to do so, examine whether conditions imposed by the breeder for his or her approval, in accordance with the second paragraph of Article 17, comply with the sixth paragraph of that Article.

Article 20

Where the breeder has not guaranteed plentiful supply of propagating material of the protected variety in this country on favourable terms, to the extent and by the means necessary in order to secure sufficient domestic production of foodstuffs and other widespread public interest, the Minister of Agriculture may authorize a person, who wishes to exploit the variety, to do so. The provisions of Articles 49 and 50 of the Patent Act No 17/1991, as amended, apply, where appropriate, to non-voluntary licensing with respect to varieties. The Minister may require breeders to provide licensees with the necessary propagating material of the variety against equitable remuneration.

Article 21

From the date of application until the date of registration in the official register of varieties, breeders may impose conditions, in accordance with the second paragraph of Article 17, provided they submit notification to that effect to the Breeder's Right Committee. In that case the protection period, in accordance with Article 12, is authentic from the date of registration of the said notification in the Breeder's Right Committee's Diary. The provisions of Articles 11 and 20 shall apply in a similar way in the application period.

In the event that a cultivator pays licensing fee before the application has been dealt with, the fee shall be credited to a deposit account under the breeder's name. The amount shall become accessible once the variety has been registered. If the application is rejected, the fee shall be reimbursed at a certain rate of interest.

Every person is free to use a variety for propagation purposes, where an application for the protection of that variety has been withdrawn or rejected. Cultivators, who have used the variety in the application period, will acquire the same status as if they were using an unprotected variety.

CHAPTER V

Administration

Article 22

The Minister of Agriculture will appoint the members of the Breeder's Right Committee for four years at a time whose duty is to implement Chapters II to IV of the present Act.

The Committee shall be composed of at least three members and five members at the most. At least one member of the Committee shall be an expert in the cultivation and breeding of exploitable plants and another an expert in the field of property right.

Article 23

Decisions of the Breeder's Right Committee, based on Chapters II to IV, shall not be subjects of recourse to other administrative bodies.

Article 24

[Where a breeder neither resides nor is established in this country, in any State Party to the Agreement on the European Economic Area or a State Party to the Agreement Establishing the European Free Trade Association, matters can be referred to his or her agent.]¹ Where the breeder or his or her agent cannot be reached, the provisions of the Civil Proceedings Act or the Act on the Publication of Law and Administrative Affairs shall be observed, as appropriate.

Article 25

A person, who deliberately restricts the right of a breeder pursuant to the present Act or pursuant to rules based on it, shall be fined.

A legal person, who commits such an offence, may be sentenced to pay monetary damages.

Article 26

A person, who deliberately or negligently restricts the right of a breeder, shall pay an equitable fee for the exploitation of a variety and compensations for other damages caused by his or her restrictions.

CHAPTER VI

Entry into Force and Other Provisions

Article 27

The Minister of Agriculture may, in the framework of Regulation, lay down more express provisions on the implementation of the present Act.

Article 28

The present Act shall enter into force forthwith.

[Fin de l'annexe II et du document/
End of Annex II and of document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]