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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Tenth Extraordinary Session

Geneva, April 23, 1993

EXAMINATION OF THE CONFORMITY OF THE LEGISLATION OF NORWAY
WITH THE UPOV CONVENTIONDocument prepared by the Office of the UnionIntroduction

1. By note verbale dated March 29, 1993, the Permanent Mission of Norway in Geneva requested the advice of the Council of UPOV, pursuant to Article 32(3) of the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"), on the conformity of the Norwegian Act of March 12, 1993, Relating to Plant Breeders' Rights (hereinafter referred to as "the Law") with the 1978 Act. An English translation of the Law was attached to the letter. The letter is reproduced in Annex I to this document and the English translation of the Law provided by the Permanent Mission of Norway is reproduced in Annex II.

2. Norway did not sign the 1978 Act. Under Article 32(1)(b) of that Act it must accordingly deposit an instrument of accession in order to become a member States of UPOV on the basis of that Act. Under Article 32(3), an instrument of that kind can only be deposited by Norway if it has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of the Council embodying the advice is positive.

Legal Basis for the Protection of New Varieties in Norway

3. The protection of new plant varieties in Norway will be governed by the Law and its implementing Regulations. It is intended that the Law should enter into force on September 15, 1993, by which date the implementing Regulations will have been prepared. An assurance has been received from Norwegian officials that the Regulations will not and cannot deviate from the provisions of either the Law or the 1978 Act.

4. An analysis of the Law follows in the order of the substantive law provisions of the 1978 Act. This analysis has been submitted to the Norwegian authorities whose observations have been incorporated in this document.

Article 1(1) of the 1978 Act: Purpose of the Convention

5. Article 1(1) of the 1978 Act provides that "the purpose of this Convention is to recognize and to ensure to the breeder of a new plant variety or to his successor in title ... a right." The first sentence of Section 1 of the Law provides that "a person who has bred a plant variety ... may, on application, be given the sole right to exploit the variety commercially as mentioned in Section 3." The purpose of the Law thus accords with the purpose of the Convention.

Article 2 of the 1978 Act: Forms of Protection

6. The Law provides for the granting of "breeders' rights" which constitute a "special title of protection" within the meaning of Article 2(1) of the 1978 Act. Section 1 of the Patents Act of Norway (Act No. 9 of December 15, 1967, as amended by Acts Nos. 35 of June 8, 1979, and 2 of February 8, 1980) provides, inter alia, that:

"Patents shall not be granted for: ...

"(2) to plant varieties or animal species or essentially biological processes for the production of plants or animals ..."

7. Norwegian legislation thus conforms with Article 2 of the 1978 Act.

Article 3 of the 1978 Act: National Treatment; Reciprocity

8. The third sentence of Section 1 of the Law provides that breeders' rights may only be granted to breeders who are resident or have their registered office in Norway or who are nationals of or are resident or have their registered office in a State which is a member of the International Union for the Protection of New Varieties of Plants. The Law contains no provisions concerning reciprocity and imposes no special condition on foreign breeders apart from the usual obligation for non-resident applicants to appoint an agent who can represent the applicant in all matters relating to the application.

9. The Law accordingly conforms in all respects with Article 3 of the 1978 Act.

Article 4 of the 1978 Act: Botanical Genera and Species Which Must or May be Protected

10. The second sentence of Section 1 of the Law provides that breeders' rights will be granted in respect of plant varieties belonging to those plant genera or plant species specified by the King of Norway (that is, in effect, by Regulation). The Government of Norway has given notice of its intention to apply the Law, in the first instance, to the list of genera and species contained in a letter dated March 29, 1993, from the Royal Norwegian Ministry of Agriculture to the Office of UPOV which is contained in Annex III. There is no doubt that Norway will conform with Article 4 of the 1978 Act.

Article 5 of the 1978 Act: Rights Protected; Scope of Protection

11. Section 3 of the Law describes the scope of the breeders' rights. It has the effect that the breeder's consent is required for the commercial exploitation of the variety by the production of plant material of the variety with a view to offering for sale or otherwise marketing it for propagating purposes, and by importing plant material of the variety or offering it for sale or otherwise marketing it, for propagating purposes. The scope of the law accordingly conforms with that required by the first sentence of Article 5(1) of the 1978 Act.

12. The Law further provides, in relation to ornamental plants, that the consent of the breeder is required to use plants or parts of plants of the protected variety for the purpose of the commercial production of cut flowers or other materials for ornamental purposes. This provision would seem to grant a more extensive right to the breeder than that required by the second sentence of Article 5(1) of the 1978 Act.

13. The third sentence of Section 3 specifies that the consent of the breeder is not required for the use of a protected variety in the breeding of a new variety or its subsequent utilization but that the breeder's consent is required if repeated use of the protected variety is necessary in the commercial production of the protected variety. These provisions conform with Article 5(3) of the 1978 Act.

14. The Law accordingly conforms in all respects with Article 5 of the 1978 Act.

Article 6 of the 1978 Act: Conditions Required for Protection

15. Article 2 of the Law provides for the conditions of distinctness, homogeneity, stability and novelty in terms which conform with Article 6(1)(a) to (d) of the 1978 Act, while the provision of Article 6(1)(e) of the 1978 Act relating to denomination is satisfied by Sections 4 and 5 of the Law which thus conforms in all respects with Article 6 of the 1978 Act.

Article 7 of the 1978 Act: Official Examination of Varieties; Provisional Protection

16. Section 9 of the Law provides for the examination of the variety to establish whether it meets the conditions for protection specified in Section 2. The provisions entitle "the Plant Varieties Board" (the implementing authority in Norway) to omit the examination in full or in part if the variety has previously been examined in connection with an application for breeders' rights abroad or in other ways.

17. Section 25 makes provision for provisional protection during the period between the publication of the application for protection and the granting of the breeders' rights.

18. Accordingly, the Law conforms in all respects with Article 7 of the 1978 Act.

Article 8 of the 1978 Act: Period of Protection

19. Section 13 of the Law provides for protection for 25 years after the year when the right was granted in the case of vines and trees and for 20 years in the case of all other species, which periods exceed the minimum periods set out in Article 8 of the 1978 Act.

Article 9 of the 1978 Act: Restrictions in the Exercise of Rights Protected

20. Section 28 of the Law makes provision for the grant of compulsory licenses in circumstances which threaten the public interest. Section 28 incorporates by reference the provisions of Sections 49 and 50 of the Patents Act 1967 which have the effect of requiring that compulsory licenses be granted only to persons able to exploit a compulsorily licensed variety in an acceptable way and in accordance with the terms of the license and that such licenses should not prevent the breeder from exploiting the variety himself or from granting licenses. Section 50 of the Patents Act specifies that the compulsory license shall be granted by a court which shall be responsible for determining the compensation that shall be payable to the breeder.

21. Accordingly, the provisions of Section 28 taken together with the provisions of Sections 49 and 50 of the Patents Act conform with Article 9 of the 1978 Act.

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

22. Section 17 contains provisions enabling a Court to find a breeder's right null and void if the conditions relating to distinctness and novelty were not satisfied at the time of application. The provision also creates additional grounds for a declaration of nullity if a right has been granted to someone other than the person entitled to the grant or if the provisions relating to the species which are protected or the residence or nationality conditions of Section 1 are not fulfilled. Although not mentioned in Article 10(1) of the 1978 Act, these additional grounds for nullity would seem to be perfectly legitimate particularly since Article 21(1)(iii) of the 1991 Act of the UPOV Convention mandatorily requires Contracting Parties to nullify breeders' rights in these circumstances. Moreover, annulment of a breeder's right granted to a person who was not entitled to it is permitted in many member States while the fact that the annulment is decided upon by a Court offers breeders greater security than an administrative procedure. Section 17 provides that a law suit claiming that a breeder's right is null and void because it was granted to someone other than the person entitled to it may only be instituted by the person who claims the right. It further provides that the court may, at the request of that person, transfer the breeder's right to him so that in practice the majority of law suits of this nature would not result in nullity but in the transfer of the protection title to its true proprietor.

23. Section 18 requires the Plant Varieties Board to cancel the breeder's right in the circumstances contemplated by Article 10(2) and 10(3)(a) of the 1978 Act, while Section 16 provides for the lapse of the breeder's right if the annual fee is not paid.

24. The provisions of Sections 16, 17 and 18 are thus substantially in accordance with Article 10 of the 1978 Act.

Article 11 of the 1978 Act: Free Choice of the Member State in Which the First Application is Filed; Applications in Other Member States; Independence of Protection in Different Member States

25. The Law contains no provision contrary to Article 11 of the 1978 Act.

Article 12 of the 1978 Act: Right of Priority

26. The last paragraph of Section 2 of the Law makes provision for a right of priority in terms which conform with Article 12 of the 1978 Act. The provision grants the Government power to make Regulations specifying in detail the conditions for invoking priority. The Norwegian authorities have informed the Office of the Union that these conditions will include the matters covered by Article 12(2), (3) and (4) of the 1978 Act.

Article 13 of the 1978 Act: Variety Denomination

27. The provisions regarding variety denominations appear in Section 4 (obligation to propose a denomination in the application for breeders' rights), Section 5 (characteristics of the denomination), Section 20 (use of the variety denomination), Section 22 (penalties for improper use of a variety denomination) and Section 23 (damages in respect of losses arising from improper use of variety denominations). These provisions taken together enable Norway to conform with Article 13 of the 1978 Act.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

28. The Law contains no provision conflicting with the provisions of Article 14 of the 1978 Act.

Article 30 of the 1978 Act: Implementation of the Convention on the Domestic Level

29. Appropriate legal remedies for the effective defense of the breeders' rights are provided in Sections 22 to 25 of the Law. In addition, Section 23 of the Law provides for civil law protection in favor of the holder of the breeder's right in respect of losses arising from the violation of the provisions of the Law relating to variety denominations. Such violations are also the subject of penal sanctions under Section 22 of the Law. The requirements of Article 30(1)(a) of the 1978 Act are thus fully satisfied.

30. Section 26 of the Law provides for the creation of a Plant Variety Board and a Register of Plant Varieties, thus conforming with the provisions of Article 30(1)(b) of the 1978 Act.

31. Section 7 makes provision for the publication of applications and Section 10 for the publication of grants so as to conform with Article 30(1)(c) of the 1978 Act.

General Conclusion

32. In the opinion of the Office of the Union, the Law essentially conforms to the 1978 Act and will enable Norway to "give effect to the provisions of this Convention" as provided by Article 30(3) of the said Act.

33. The Council is invited to

(i) take a positive decision on the conformity of the Act Relating to Plant Breeders' Rights of Norway with the provisions of the 1978 Act, in accordance with Article 32(3) of that Act;

(ii) authorize the Secretary-General to inform the Government of Norway of that decision.

[Annexes follow]

C(Extr.)/10/2

ANNEX I



**PERMANENT MISSION
OF NORWAY
GENEVA**

Our date

Our reference

Officer in charge

Your date

Your reference

The Permanent Mission of Norway in Geneva presents its compliments to the The Council of the International Union for the Protection of New Varieties of Plants (UPOV) and has the honour to refer to Article 32 (3) of the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised in Geneva 10 November 1972 and 23 October 1978.

The Norwegian Government, wishing to become a party to the above mentioned Convention, hereby asks the Council of the International Union for the Protection of New Varieties of Plants to advise it in respect of the conformity of the Norwegian Act of 12 March 1993 Relating to Plant Breeders Rights with the provisions of the Convention.

Pursuant to Section 30, paragraph 2, the main parts of the Act will enter into force from such date as may be decided by Royal Decree. The Government will propose to the King that this date shall be 15 September 1993. The list of genera and species to be protected under the Act will shortly be forwarded to the Union by the Ministry of Agriculture.

Geneva, 29 March 1993



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[Annex II follows]

ACT
of March 12. 1993
Relating to Plant Breeders' Rights

Norwegian Ministry of Agriculture

ACT of March 12. 1993 Relating to Plant Breeders' Rights

CHAPTER 1 GENERAL PROVISIONS

§ 1. Plant breeders' rights. Scope

In accordance with the present Act, a person who has bred a plant variety or to whom the breeder's right has passed (the breeder) may on application be given the sole right to exploit the variety commercially as mentioned in § 3 (plant breeders' rights).

Breeders' rights are granted in respect of plant varieties belonging to those plant genera or plant species which the King has laid down that the Act shall apply to.

Breeders' rights may only be granted to breeders who

- a) are resident or have their registered office in this Realm or
- b) are nationals of or are resident or have their registered offices in a State which is a member of the International Union for the Protection of New Varieties of Plants.

The King decides in regulations or individual decisions that breeders' rights may be granted in other cases than mentioned in the first period.

§ 2. Conditions for breeders' rights . Priority

Breeders' rights may only be granted in respect of a variety

- a) which can be clearly distinguished from all other varieties known before the date of application, cf. the second paragraph
- b) which are sufficiently uniform, and
- c) which retain stable characteristics enabling the variety to be clearly distinguished from other varieties as mentioned under litra a when propagated as indicated by the breeder, and
- d) which have not been sold or offered for sale with the breeder's consent

- 1) in this Realm before the date of application, or
- 2) abroad more than six years before the date of application in the case of vines, trees and their stocks and more than four years before the date of application in the case of other plants.

A plant variety is regarded as known according to litra a of the first paragraph if material from it has been offered for sale commercially or otherwise marketed or if it has been included in or reported to an official list of varieties, occurs in a generally available collection of references, is described in detail in a generally available publication, or has become known to the public in other ways. A variety described in an application for breeder's rights or for a patent or for inclusion in an official list of varieties in this Realm or in another State is also regarded as known from the date of application if the application results in the granting of breeder's rights or a patent or inclusion in the list of varieties.

If the breeder has applied for breeder's rights or a patent for a variety in one or more State which is a member of the International Union for Protection of New Varieties of Plants, and within twelve months applies for breeder's rights in respect of the variety in this Realm, the application in this Realm shall in respect of litra a and d of the first paragraph be regarded, if the breeder so requests, as having been filed on the same date as the previous application. The King issues regulations laying down in detail the conditions for invoking such priority and decides in regulations that priority may be invoked in other cases than those mentioned in the first period.

§ 3. Scope of breeders' rights

Breeders' rights mean that no one other than the breeder may without the breeder's consent exploit the variety commercially by

- a) producing plant material of that variety with a view to offering it for sale or otherwise marketing it for propagating purposes,
- b) importing plant material of the variety with a view to offering it for sale or otherwise marketing it for propagating purposes, or
- c) offering for sale or otherwise marketing plant material of the variety for propagating purposes.

In respect of ornamental plants, breeders' rights also imply that others than the breeder can not without the consent of the breeder use

plants or parts of plants of the variety in question for the purpose of commercial production of cut flowers or other materials for ornamental purposes.

The consent of the breeder is not required for the use of a protected variety in the breeding of a new variety or for the use of the new variety. The breeder's consent is required, however, if repeated use of the protected variety is necessary in the commercial production of the new variety.

The consent of the breeder is not required for use as mentioned in *litra b* and *c* of the first paragraph of plant material which has been placed on the market in the European Economic Area by the breeder or with the breeder's consent.

CHAPTER 2

APPLICATIONS FOR BREEDERS' RIGHTS AND THE PROCESSING OF APPLICATIONS

§ 4. Applications

Applications for breeders' rights in respect of a plant variety are submitted in writing to the Plant Varieties Board.

Applications must contain a description of the variety, specifying the characteristics which distinguish it from other varieties. Applications must contain a proposed denomination for the variety in question. The breeder's name and address shall be stated. If the applicant is not the breeder, the grounds for his title to the variety shall be stated.

Applications must mention such previous exploitation of the variety as according to *litra d* of the first paragraph of § 2 may be an obstacle to the granting of breeders' rights, or state that the variety has not been exploited in such a way.

The Plant Varieties Board may instruct the applicant to provide the plant material and give the information necessary for the examination of the variety according to § 9. An applicant who invokes priority according to the third paragraph of § 2 may not be instructed to do this as a step in his application procedure, and may not be instructed to do it earlier than four years after the expiry of the time limit for priorities, unless the application on which the priority is founded has been refused or withdrawn.

Applicants shall pay application fees as laid down in regulations.
Each application may only be for protection of one variety.

§ 5. Variety denominations

The denomination of a variety shall serve the purpose of distinguishing it from other varieties.

Terms may not be used as denominations of varieties which

- a) consist entirely of figures, except where this is an established practice for designating such a variety,
- b) may be misleading,
- c) are against the law or contrary to good order or likely to give offence,
- d) may be confused with a denomination entered in the Register of Plant Varieties, proposed in an application for breeder's rights, entered in a register of protected varieties in a foreign State as the denomination of another variety of the same or a closely related species, or already in use as the denomination of a variety or of the propagating material of a variety of the same or a closely related species,
- e) may be confused with a trade mark, name, style or other distinguishing mark to which someone other than the applicant has the right, preventing the denomination from being registered as a trade mark for plant material or similar kinds of goods, or
- f) may be confused with a trade mark for plant material or similar kinds of goods to which the applicant has the right.

If the applicant has applied for protection of the variety in a foreign State which is a member of the International Union for the Protection of New Varieties of Plants, the same denomination shall be used for the variety in this Realm as in the foreign State unless the denomination used in the foreign State conflicts with the first or second paragraph or for some other reason is unsuitable as the denomination of a variety in this Realm.

§ 6. Provisional examination of the application

If the application and denomination of the variety fail to satisfy §§ 4 and 5, or if the application indicates some other reason why it should not be granted, the applicant shall be invited to comment or make corrections within a given time limit.

If the applicant fails within the time limit to comment or to make good errors or omissions to which his attention has been drawn, the application shall be shelved. Examination of the application is resumed if, within four months of the expiry of the time limit, the applicant comments or makes corrections and in addition pays the fee for resumed examination laid down in regulations.

If, after the applicant has commented or made corrections, an obstacle remains to the granting of the application on which the applicant has had the opportunity to comment, the application shall be refused unless the Plant Varieties Board finds that the applicant should be sent a further inquiry.

§ 7. Publication of applications

If the application and the denomination of the variety satisfy §§ 4 and 5 and the application shows no other reason why it should not be granted, the Plant Varieties Board shall publish a notice of the application.

§ 8. Transfers of applications

If someone shows to the satisfaction of the Plant Varieties Board that he and not the applicant has the title to the variety, the Committee shall on his request transfer the application to him. He shall pay a new application fee.

Until a request for a transfer has been finally decided, both the applicant and the person requesting the transfer shall be allowed to take whatever action is necessary to prevent the application from being shelved or refused. Public notices relating to the case shall state that a transfer has been requested.

§ 9. Examination of the variety

The Plant Varieties Board shall see that the variety is examined to establish whether it meets the conditions in *litra a to c* of the first paragraph of § 2. The Committee may decide to omit the examination in full or in part if the variety has previously been examined in connection with an application for breeder's rights abroad or in other ways.

Applicants shall pay for examinations according to rules issued in regulations.

§ 10. Continued processing. Registration and announcement of breeder's right

When the examination of the variety has been completed, processing of the application is resumed. § 6 applies correspondingly. The Plant Varieties Board may direct the applicant to state whether the variety is protected or protection has been applied for in other States and if so what the plant breeding authority of the State in question has notified the applicant concerning the examination of the application.

If a breeder's right is granted, the variety is entered in the Register of Plant Varieties. The decision to grant the right is published, with an invitation to the public to present objections to the granting of the right within a given time limit.

If an application is shelved or refused after it has been published according to § 7, this must be announced when the decision is final. The same applies if an application is withdrawn after having been published.

§ 11. Reconsideration

If an objection to the granting of a breeder's right is submitted in writing to the Plant Varieties Board before the time limit laid down according to the second paragraph of § 10, the application shall be reconsidered with a view to deciding on the objection. § 6 applies correspondingly. The reconsideration of the application shall be announced and registered in the Register of Plant Varieties. The decision shall when final be announced and registered.

§ 12. Appeals and lawsuits

If the Plant Varieties Board's final decision is in the applicant's disfavour, the applicant may appeal the decision to the Board of Appeals of the Norwegian Patent Office. If the application is granted following reconsideration, the person who raised the objection may appeal the decision. Decisions by the Plant Varieties Board concerning a request for the transfer of an application may also be appealed to the Board of Appeals of the Patent Office. The appeal must be lodged with the Plant Varieties Board within two months after the date when notification of the decision was sent to the person concerned. The appellant must pay an appeals fee as laid down in regulations.

If the Board of Appeals refuses an application following an appeal, the applicant may institute legal proceedings concerning the refusal within two months of the date when notification of the refusal was sent him.

CHAPTER 3.

DURATION OF BREEDERS' RIGHTS.

ANNUAL FEES

§ 13. Duration of breeders' rights

A breeder's right may be kept in force up to the end of the twentieth calendar year after the year when the right was granted, and for twenty-five years in the case of vines and trees.

For the breeder's right to be kept in force for the calendar years following the year when it was granted, an annual fee must be paid as laid down in regulations.

§ 14. Payment of annual fees

The due date for payment of the annual fee is the first working day of the calendar year to which it applies. The annual fee may not be paid more than six months before the due date. The annual fee for the first calendar year after the year in which the breeder's right was granted falls due at the earliest two months after notification of the granting of the right was sent to the breeder.

On payment of an additional fee as laid down in regulations, annual fees may be paid up to six months after the due date.

The King issues regulations governing respite or exemption from annual fees.

CHAPTER 4

EXPIRY OF BREEDERS' RIGHTS, ETC

§ 15. Renunciation

If the breeder renounces his breeder's right in writing to the Plant Varieties Board, the Board shall declare the right expired.

If a request for a transfer has not been finally decided, or if legal proceedings have been instituted concerning a transfer or there is a distraint upon the breeder's right, it shall not be declared expired until the question of the transfer has been finally decided or the distraint has ceased to apply.

§ 16. Non-payment of the annual fee

If the annual fee is not paid according to §§ 13 and 14, the breeder's right expires from and including the beginning of the calendar year for which the fee is not paid.

§ 17. Nullity or transfers after lawsuits

A breeder's right granted in contravention of § 1 or litra a or d of the first paragraph of § 2 shall be found null and void by a court of law.

A lawsuit claiming that a breeder's right is null and void because it was granted to someone other than the person entitled to the variety may only be instituted by the person who claims the right. The court may instead on his request transfer the breeder's right to him.

§ 18. Cancellation decided on by the Plant Varieties Board

The Plant Varieties Board shall decide to cancel a breeder's right if

- a) the breeder is no longer able to supply the Plant Varieties Board with material for the propagation of the variety with the characteristics which it was stated to have when the breeder's right was granted, or
- b) the breeder fails within a given time limit to supply the propagating material or the documents or information needed by the Plant Varieties Board for verifying the maintenance of the variety.

§§ 6 and 12 apply correspondingly.

§ 19. Announcement and registration of expiry etc.

When a breeder's right has finally expired or been found null and void according to §§ 15 to 18, the Plant Varieties Board shall announce this and note the expiry in the Register of Plant Varieties. The same applies to the transfer of a breeder's right.

CHAPTER 5

THE USE, ALTERATION AND CANCELLATION OF A VARIETY DENOMINATION

§ 20. Use of a variety denomination

Anyone who commercially offers propagation material of a protected variety for sale or otherwise markets it must apply the registered variety denomination to the variety. The registered variety denomination shall be used also after the protection has expired.

A variety denomination registered for one variety may not be used as the denomination of another variety of the same or a closely related species or of propagating material of such a variety. The same applies to denominations which can be mistaken for the registered variety denomination.

§ 21. Changing and cancelling variety denominations

If a variety denomination has been registered in contravention of § 5 and the error has not been corrected, the Plant Varieties Board shall on the basis of a proposal from the breeder announce and register a new variety denomination. The same applies if a variety denomination no longer satisfies *litra b* and *c* of the second paragraph of § 5.

The Plant Varieties Board may decide that a registered variety denomination which is no longer in use shall be struck from the Register of Plant Varieties if the breeder's right has expired and the breeder so requests or there are other reasons for doing so.

CHAPTER 6

LEGAL PROTECTION

§ 22. Penalties

Deliberate infringement of the sole right conveyed by a breeder's right or assistance in such infringement is punishable by fines or imprisonment for up to three months.

Deliberate or grossly negligent violation of the provisions governing the use of variety denominations in § 20 is punishable by fines.

Public prosecution only takes place at the request of the offended party.

§ 23. Damages

Whoever deliberately or negligently infringes a breeder's right is obliged to pay damages for the exploitation of the variety and damages for further losses resulting from the infringement. The damages may be reduced if little blame attaches to the infringement. If the infringement is committed with due care and in good faith, the court may order the person concerned to pay a reasonable amount of damages for the losses caused by the exploitation.

Whoever deliberately or negligently violates the provisions relating to variety denominations in § 20 is obliged to make good the loss resulting from the violation. The damages may be reduced if little blame attaches to the violation.

§ 24. Surrender and destruction of plant material

To prevent continued infringement, the court may upon request and where reasonable decide that the plant material to which the infringement relates shall be surrendered for payment to the party offended by the infringement or that the plant material shall be destroyed.

The first paragraph may not be applied to a person who has acquired the plant material with due care and in good faith and has not himself committed an infringement.

§ 25. Temporary legal protection

Insofar as an application results in the granting of a breeder's right, the provisions in § 3 relating to the sole right of the breeder and the provisions in § 23 relating to damages for infringement also apply to the period between the publication of the application according to § 7 and the granting of the breeder's right.

CHAPTER 7

MISCELLANEOUS PROVISIONS

§ 26. The Plant Varieties Board and the Register of Plant Varieties

The composition of the Plant Varieties Board, its registered office, and its right to delegate decisionmaking powers etc. are laid down by the King. More detailed provisions governing applications for breeders' rights, their processing, availability to the public of the documents in each case, and restitution if deadlines are exceeded etc. are issued in regulations.

The Register of Plant Varieties is kept by the Plant Varieties Board. The Register is public. Anyone may request certified transcripts. Concerning annotations in the Register and the effect of annotations, § 44 of the Patents Act applies correspondingly. More detailed provisions concerning the Register and fees for transcripts and annotations are issued in regulations.

§ 27. Agent

An applicant who is not resident or does not have his registered office in this Realm must have an agent who is resident or has his registered office in this Realm and who can represent the applicant in all matters relating to the application. If the holder of a breeder's right is not resident or does not have his registered office in this Realm, he must have an agent who is resident or has his registered office in this Realm and can on his behalf receive notifications from the Plant Varieties Board and announcements and other procedural communications.

Exceptions from the obligation for foreign breeders to have Norwegian agents may be laid down in regulations.

§ 28. Compulsory licences

If the breeder omits to arrange for the offer for sale or marketing of propagating material of the protected variety on reasonable terms and on the scale indicated for reasons of food supplies or the public interest, and there are no reasonable grounds for the omission, a person wishing to exploit the variety may sue for and obtain a compulsory licence to do so. §§ 49 and 50 of the Patents Act apply correspondingly. The court may order the breeder to supply the holder of the compulsory licence with necessary propagating material of the variety.

§ 29. Provisions relating to legal proceedings

Lawsuits concerning the right to a plant variety for which a breeder's right has been applied for, lawsuits concerning the transfer of breeders' rights, and lawsuits as mentioned in the second paragraph of § 12, § 17, the second paragraph of § 18 cf. the second paragraph of § 12, and § 28 shall be brought before the Oslo City Court.

The Oslo City Court is the venue for applicants and holders of breeders' rights whose places of residence or registered offices are not in this Realm.

§§ 64 to 66 of the Patents Act apply correspondingly.

§ 30. Entry into force etc.

The Storting consents to Norway's accession to the International Convention for the Protection of New Varieties of Plants adopted on 2 December 1961 and amended on 10 November 1972 and 23 October 1978.

The Act shall enter into force from such date as the King shall decide. The first paragraph of § 30 shall nevertheless enter into force immediately.

From the date when the present Act enters into force, other Acts shall be amended as follows:

- 1) Act no. 7 of 2 July 1910 relating to the Norwegian Patent Office shall be amended as follows:

In the first paragraph of § 2, a new third period shall read:

The Board of Appeals also decides appeals against decisions by the Plant Varieties Board as mentioned in § 12 and § 18 cf. § 12 of the Act relating to Plant Breeders' Rights.

The present third period becomes the fourth period.

The second period of the first paragraph of § 5 shall read:

Of the members, three shall be technical, commercial or *agricultural experts* and two shall be legal experts.

The second and third paragraphs of § 5 shall read:

The decisions taken by the Board of Appeals are not bound by the facts available when the decision by the *first instance* was taken.

If a fact is adduced which was not considered *in the first instance*, the Board of Appeals may refer the matter to *the first instance* for re-consideration.

2) Subsection 5 of § 273 of Act no. 6 of 13 August 1915, the Civil Procedure Act, shall read:

suits relating to patents, circuit diagrams for integrated circuits, *plant breeders' rights*, trade marks and designs,

3) Litra b of the second paragraph of § 3-4 of Act no. 2 of 8 February 1980, the Liens Act, shall read:

rights to trade marks, patents, *designs, circuit diagrams for integrated circuits and plant breeders' rights* and acquired copyrights including rights to performances of works by performing artists,

[Annex III follows]

ANNEX III/ANNEXE III/ANLAGE III

**PROPOSED LIST OF GENERA AND SPECIES*/LISTE PROPOSEE DES GENRES ET ESPECES*/
VORGESCHLAGENES ARTENVERZEICHNIS***

<u>Latine</u>	<u>Norwegian</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Agrostis spp.	Kvein	Bentgrass	Agrostis, Agrostide	Straussgras
Allium cepa L.	Løk	Onion	Oignon	Zwiebel
Allium cepa L. var. aggregatum G. Don	Poteløk	Potato Onion	Oignon patate	Kartoffel- zwiebel
Allium schoenoprasum L.	Grasløk	Chives, Asatsuki	Ciboulette, Civette	Schnittlauch
Alstroemeria spp.	Alstroemeria	Alstroemeria, Herb Lily, Peruvian Lily	Alstroemère, Lis des Incas	Inkalilie
Avena sativa L.	Havre	Oats	Avoine	Hafer
Begonia spp.	Begonia	Begonia	Bégonia	Begonie
Beta vulgaris L. spp. vulgaris var. altissima Doell	Sukkerbete	Sugar Beet	Betterave sucrière	Zuckerrübe
Beta vulgaris L. spp. vulgaris var. conditiva Alef.	Rødbete	Red Beet, Beetroot, Garden Beet	Betterave rouge, Betterave potagère	Rote Rübe
Brassica napus L. var. oleifera Metzg.	Raps	Swede Rape	Colza	Raps
Brassica napus L. var. napobrassica Rchb.	Kålrot	Swede	Chou-navet, Rutabaga	Kohlrübe
Brassica oleracea L. convar. botrytis (L.) Alef. var. botrytis	Blomkål	Cauliflower	Chou-fleur	Blumenkohl
Brassica oleracea L. convar. capitata (L.) Alef. var. capitata	Hvitkal	Cabbage	Chou pommé	Kopfkohl

* The list is still incomplete. The final list will contain the genera and species mentioned.

La liste est encore incomplete. La liste définitive contiendra les genres et espèces mentionnés.

Das Verzeichnis ist noch unvollständig. Die endgültige Fassung wird die erwähnten Gattungen und Arten enthalten.

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<u>Latine</u>	<u>Norwegian</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
<i>Brassica pekinensis</i> (Lour.) Rupr.	Salatkål ^o	Chinese cabbage	Chou de Chine, Pé-tsai	Chinakohl
<i>Brassica rapa</i> L. var. <i>rapifera</i> Metzg.	Nepe	Turnip	Navet	Herbstrübe, Mairübe
<i>Brassica rapa</i> L. var. <i>oleifera</i> Metzg.	Rybs	Turnip rape	Navette	Rübsen
<i>Chrysanthemum</i> spp.	Krysantemum	Chrysanthemum	Chrysanthème	Chrysantheme
<i>Cucumis sativus</i> L.	Agurk	Cucumber, Gherkin	Concombre, Cornichon	Gurke
<i>Dactylis glomerata</i> L.	Hundegras	Cocksfoot, Orchard Grass	Dactyle	Knäulgras
<i>Daucus carota</i> L.	Gulrot	Carrot	Carotte	Möhre
<i>Euphorbia pulcherrima</i> Willd. ex Klotzsch	Julestjerne	Poinsettia	Poinsettia	Poinsettie, Weihnachtsstern
<i>Festuca</i> spp.	Svingel	Fescue	Fétuque	Schwingel
<i>Hordeum vulgare</i> L.	Bygg	Barley	Orge	Gerste
<i>Lactuca sativa</i> L.	Salat	Lettuce	Laitue	Salat
<i>Lolium</i> spp.	Raigras	Ryegrass	Ray-grass	Weidelgras
<i>Malus</i> spp.	Epletre	Apple	Pommier	Apfel
<i>Pelargonium</i> spp.	Pelargonia	Pelargonium	Pelargonium	Pelargonie
<i>Phaseolus</i> spp.	Bønne	Bean	Haricot	Bohne
<i>Phleum pratense</i> L.	Timotei	Timothy	Fléole	Lieschgras
<i>Pisum sativum</i> L.	Erter	Pea	Pois	Erbse
<i>Poa</i> spp.	Rapp	Meadow-grass, Bluegrass	Pâturin	Rispengras
<i>Prunus</i> spp.	Plommer	Plum	Prunier	Pflaume
<i>Pyrus</i> spp.	Paerer	Pear	Poirier	Birne
<i>Rhododendron</i> spp.	Rododendron	Rhododendron, Azalea	Rhododendron, Azalée	Rhododendron, Azalee
<i>Ribes</i> spp.	Rips	Currants, Gooseberry	Cassis, Groseilliers	Johannisbeere, Stachelbeere
<i>Rosa</i> spp.	Roser	Rose	Rosier	Rose

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<u>Latine</u>	<u>Norwegian</u>	<u>English</u>	<u>Français</u>	<u>Deutsch</u>
Saintpaulia ionantha H. Wendl.	Saintpaulia	African Violet	Saintpaulia	Usambara- veilchen
Secale cereale L.	Rug	Rye	Seigle	Roggen
Solanum lycopersicum L.	Tomat	Tomato	Tomate	Tomate
Solanum tuberosum L.	Potet	Potato	Pomme de terre	Kartoffel
Trifolium spp.	Kløver	Clover, Trefoil	Trèfle	Klee
Triticum aestivum L.	Hvete	Wheat	Blé	Weizen
Vicia sativa L.	Forvikke	Common Vetch	Vesce commune	Saatwicke

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