

PORTUGAL

Decree-Law No. 213/90*

of June 28, 1990

Article 1

Object

- (1) This Decree-Law establishes the legal regime governing breeders' rights in new plant varieties.
- (2) Those botanical species the plant varieties of which may be the subject of breeders' rights shall be specified by order of the Minister of Agriculture, Fisheries and Food.

Article 2

Plant Varieties Eligible for Protection

Breeders' rights may be accorded solely in respect of those plant varieties which, according to the definition to be laid down by order of the Minister of Agriculture, Fisheries and Food, are deemed to be distinct, homogeneous, stable and new.

Article 3

Content of Plant Breeder's Rights

- (1) The breeders' rights in a plant variety confer on their owner exclusive entitlement to produce and market plants of that variety or the corresponding reproductive or vegetative propagating material.
- (2) Plant breeders' rights shall not prevent the use of the protected plant variety as initial or basic material for the production of other varieties, except where its repeated or systematic use is necessary.

Article 4

Term of Plant Breeders' Rights

* Portuguese title: Decreto-Lei No. 213/90 de 28 de Junho
Translation by the Office of the Union of the text published in the *Diário da República - 1 Série*, No. 147 of June 28, 1990, on pages 2727 and 2728.

- (1) Plant breeders' rights shall have a limited term which shall be a minimum of 15 or 20 years, depending on whether they relate to herbaceous plants or to woody plants.
- (2) Terms may differ according to species or group of species.

Article 5

Lapse of Plant Breeders' Rights

Plant breeders' rights shall lapse, *inter alia*:

- (a) when their term has expired;
- (b) when fees due have not been paid;
- (c) when the new plant variety no longer displays the characteristics required by this Decree-Law and the Regulations under it;
- (d) when the breeder or the actual owner so requests;
- (e) when it is demonstrated that the holder of the rights is not the lawful owner thereof.

Article 6

National Registry of Protected Varieties

- (1) The National Registry of Protected Varieties (*Centro Nacional de Registo de Variedades Protegidas--CENARVE*) is hereby created, to operate within the framework of the National Institute of Agricultural Research (*Instituto Nacional de Investigaçao Agrária--INIA*), the current President of which shall direct it.
- (2) CENARVE shall be responsible for taking the necessary action for the implementation of this Decree-Law.
- (3) The President of INIA, in his capacity as Director of CENARVE, shall be assisted, in the exercise of the functions conferred on him by this Decree-Law, by a Technical Board, the membership of which shall be laid down by order of the Minister of Agriculture, Fisheries and Food.
- (4) The members of the Technical Board shall carry out their functions without remuneration.

Article 7

Offenses

(1) The production, marketing and use of plant varieties in breach of the provisions of Article 3 of this Decree-Law and the Regulations for which it provides shall constitute an offense punishable with a fine of 20,000 to 500,000 escudos.

(2) Negligence shall be punishable.

(3) Where liability for the offense lies with a legal entity, the maximum amounts of the fines shall be 6,000,000 escudos in the case of a fraudulent act or 3,000,000 escudos in the case of an act committed by negligence.

(4) Forty per cent of the proceeds from fines imposed shall be paid to INIA, and the balance to the State Treasury.

Article 8

Fees

For the purposes of registration with CENARVE and the keeping of its Register, the persons and entities concerned shall pay fees, the amount of which shall be set in accordance with paragraph (2) of Article 38 of Decree-Law No. 5-A/88 (of January 14, 1988).

Article 9

Regulations

The technical provisions for the implementation of this Decree-Law shall be approved by order of the Minister of Agriculture, Fisheries and Food.