

PLANT VARIETY PROTECTION



UPOV

Gazette and Newsletter
of the International Union
for the Protection of
New Varieties of Plants

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The International Union for the Protection of New Varieties of Plants (UPOV) – an intergovernmental organization established by the International Convention for the Protection of New Varieties of Plants – is the international forum for States and Organizations interested in plant variety protection.

UPOV Mission Statement

To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

Plant Variety Protection is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only – although some items are quadrilingual (English, French, German and Spanish) – at irregular intervals, usually at a rate of two issues per year. Requests for addition to the mailing list may be placed with:



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Hawthorne

Crataegus spp. Mexico is the centre of origin of this species. Its name in Mexico (Tejocote) comes from the Nahuatl *Texocotl*, which literally means fruit-stone. The most common use is traditionally during Christmas time, eating fresh or in a punch. With its fruit, which has calcium, iron, vitamins C and B complex, candies, beverages, preserves, jam and marmalade are made. Its wood is used to make handcrafts and handles, and used for firewood. It is also used as an ornamental, as rootstock, or to elaborate cosmetics and pectin, and to provide shade. Its leaves, by infusion, are used for medical proposes: such as diuretic, for hypertension and insomnia. The boiled fruit is used as a remedy for colds, coughs, pneumonia and bronchitis.

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GAZETTE

NEW MEMBERS OF UPOV

EUROPEAN COMMUNITY

On June 29, 2005, the European Community (EC) became the first intergovernmental organization to join the International Union for the Protection of New Varieties of Plants (UPOV) when it deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for the European Community one month after the deposit of its instrument of accession, i.e. on July 29, 2005. The European Community became the fifty-ninth member of the Union.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to all genera and species.

The accession of the EC is a milestone in the history of UPOV and promises to help strengthen the system of plant variety protection around the world and to broaden international cooperation in this area.

Community plant variety rights within the EC are administered by the Community Plant Variety Office (CPVO) in Angers, France. With more than 2,600 applications per year, the CPVO receives the highest number of requests for variety protection among the members of UPOV. The CPVO provides for one application, one examination and one title of protection that is valid and enforceable in all 25 member States of the European Union.

ALBANIA

On September 15, 2005, the Government of Albania deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The Convention entered into force for Albania one month after the deposit of its instrument of accession, i.e. on October 15, 2005. Albania became the sixtieth member of the Union.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to the genera and species listed below:

1.	Wheat	12.	French bean
2.	Barley	13.	Peas
3.	Oats	14.	Lentil
4.	Rye	15.	Alfalfa
5.	Maize	16.	Clover
6.	Tomato	17.	Rye-grass
7.	Cucumber	18.	Apple
8.	Pepper	19.	Pear
9.	Sunflower	20.	Plum
10.	Potato	21.	Peach
11.	Sugar beet	22.	Grapevine

EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

CHINA

The Office of the Union received, on December 23, 2004, a notification concerning the extension of the list of genera and species eligible for protection and administered by the State Forestry Administration as follows:

78 genera or species	Date of Publication
Populus tomentosa, Paulownia, Cunninghamia lanceolata, Magnolia, Paeonia suffruticosa, Prunus mume, Rosa, Camellia	April 22, 1999 (8 genera or species)
Populus, Salix, Castanea mollissima, Eucalyptus, Juglans, Zizyphus jujuba, Diospyros kaki, Prunus armeniaca, Ginkgo biloba, Vernicia, Taxus, Rhododendron, Prunus persica, Lagerstroemia indica, Prunus triloba, Chimonanthus praecox, Osmanthus fragrans	February 2, 2000 (17 genera or species)
Pinus L., Picea A. Dietr., Taxodium, Sabina Mill., Liriodendron L., Chaenomeles L., Acacia Willd., Sophora L., Robinia L., Syringa L., Forsythia Vahl, Buxus L., Euphorbia L., Acer L., Hippophae L., Ailanthus Desf., Bambusa Retz. Corr. Schreb., Indocalamus Nakai, Phyllostachys Sieb. et Zucc., Calamus L., Daemonorops Blume	December 2, 2002 (21 genera or species)
Cycas L., Thuja L., Podocarpus L'Hérit. ex Pers., Betula L., Corylus L., Castanopsis Spach., Ulmus L., Zelkova Spach., Morus L., Ficus L., Paeonia L., Manglietia Blume, Michelia L., Parakmeria Hu et Cheng., Cinnamomum Trew., Machilus Nees, Loropetalum R. Br., Pterocarpus Jacq., Zanthoxylum L., Clausena Burm. f., Cotinus Mill., Euonymus L., Koelreuteria Laxm., Ampelopsis Michx., Parthenocissus Planch., Punica L., Hedera L., Ardisia Sw., Fraxinus L., Lycium L., Catalpa L., Lonicera L.	October 14, 2004 (32 genera or species)

MODIFICATION OF FEES**SOUTH AFRICA****REGULATIONS RELATING TO PLANT BREEDERS' RIGHTS: AMENDMENTS**

The Ministry of Agriculture, acting under section 44 of the Plant Breeders' Rights Act No. 15 of 1976, has made the regulations in the Schedule.

SCHEDULE*Definition*

1. In this Schedule "the Regulations" means the Regulations published by Government Notice No. R.1186 of 12 September 1997, as amended by Government Notices Nos. R. 1582 of 28 November 1997, R. 867 of 3 July 1998, R. 1285 of 16 October 1998, R. 323 of 19 March 1999, R. 604 of 14 May 1999, R. 1271 of 29 October 1999, R. 392 of 20 April 2000, R. 690 of 14 July 2000, R. 1978 of 3 November 2000, R. 387 of 18 May 2001, R. 667 of 27 July 2001, R. 548 of 10 May 2002 and R. 409 of 28 March 2003 and R. 65 of 8 April 2004.

Substitution of Table 2 of the Regulations

2. The following table is hereby substituted for Table 2 of the Regulations with effect from 1 April 2005:

No.	Purpose	Amount
1.	An application for the grant of a plant breeder's right	R1000,00 each
2.	A claim to give priority in terms of section 8(2) of the Act to an application for the grant of a plant breeder's right	R600,00 each
3.	An objection to the grant of a plant breeder's right	R4000,00 each
4.	Examination fee for a plant breeder's right: Category A (agronomic, vegetable and pasture crops and annual ornamentals)	R1700,00 each
5.	Examination fee for a plant breeders' right: Category B (fruit, vines, citrus and perennial ornamentals)	R2200,00 each
6.	Provision of results of tests and trials undertaken by the registrar, to the appropriate authority in a convention country or an agreement country	Tariff to fluctuate with exchange rate
7.	Annual fee for a plant breeder's right	R200,00 each
8.	An application for the issue of a compulsory licence in respect of a plant breeder's right	R200,00 each
9.	Notice of the transfer of a plant breeder's right	R600,00 each
10.	An application for the alteration of supplementation of the denomination approved for a variety	R1200,00 each
12.	An objection against the intended termination of a plant breeder's right	R600,00 each
13.	A notice of the voluntary surrender of a plant breeder's rights	Free
14.	Inspection of the register of plant breeder's right	Free

15.	Inspection of a document submitted to the registrar in connection with an application for the grant of a breeder's right	R300,00 per occasion
16.	A certificate of any particulars in the register or of any document in connection with an application for the grant of a plant breeder's right	R300,00 per certificate
17.	A copy of any particulars in the register of a document submitted to the registrar in connection with an application for the grant of a plant breeder's right	R8,00 per application plus R0,95c per photocopy
18.	Submission of appeal against any decision or action taken by the registrar in terms of the Act	R3500,00 each

TARIFFS FOR SERVICES PROVIDED IN TERMS OF THE
PLANT BREEDER'S RIGHTS ACT OF 1976

The Registrar of Plant Breeders' Rights hereby makes known for general information that, with effect from 1 April 2005, tariffs for services provided by the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976) be amended to the extent set out in the Schedule hereto.

Nature and service, goods or supplies provided	Tariff
1. Varietal examination of samples	
(I) Category A (Agronomic, vegetables, pasture, crops and annual ornamentals)	R1700,00 each
(II) Category B (Fruit, vines, citrus and perennial ornamentals)	R2200,00 each

Mrs. M. Vosges
Registrar of Plant Breeders' Rights

NEWSLETTER

CASE LAW

This section has been created to publish information on case law relevant to plant breeders' rights. The Office of the Union welcomes the submission of summaries of recent decisions and/or, if possible, a direct link to the full text of the decision. Please send your contributions to: upov.mail@upov.int.

Disclaimer: The views expressed in the summaries under this section and/or in the contents of Court decisions are not necessarily those of UPOV. They are provided for information purposes only.

NETHERLANDS

JUDGMENT ON ESSENTIALLY DERIVED VARIETIES (EDVs) (IN THE FIRST INSTANCE)

By K.A. Fikkert,
Secretary-General of the Board for Plant Breeders' Rights in
the Netherlands

Procedural background

In 2002, a court in The Hague, Netherlands, gave a provisional judgement in a case concerning the notion of 'Essentially Derived Variety' (EDV) (see UPOV Gazette No. 94 of December 2002). The court concluded the proceedings by its judgment of July 13, 2005, probably the very first court interpretation of the notion of EDV in the world. Filing an appeal was still possible at the time of preparing this publication.

Relevant facts

Party D is the holder of a plant breeders' right, granted by the Community Plant Variety Office (hereafter called: an EU-PBR), for the variety 'Dangypmini' of the species *Gypsophila*. Party A is marketing material of two other varieties of that species, known as 'Blancanieves' and 'Summer Snow'.

EDV?

The proceedings in this court case revolve around the question whether 'Blancanieves' and 'Summer Snow' can be considered varieties derived from 'Dangypmini' in the sense of Article 13, paragraphs 5 (a) and 6 of the Council Regulation on Community plant variety rights (EC/2100/94; hereafter called "the EU Regulation"). The court comes to a negative answer to that question.

DNA fingerprinting

Party D supports its claim that 'Blancanieves' is an EDV of 'Dangypmini', for which he is the holder of an EU-PBR, by the results of DNA fingerprinting. Those results show, according to Party D, such a strong genetic similarity between

the two varieties that 'Blancanieves' is to be considered an EDV of 'Dangypmini'.

Party A, producing another fingerprinting report, challenges the set-up as well as the conclusions of the DNA fingerprinting, brought forward by the other party.

The court leaves conclusions from either DNA fingerprinting aside because it finds sufficient grounds for its verdict in 'classic' characteristics.

Interpretation of Article 14 of the UPOV Convention

Since the provisions concerning EDV's in the EU Regulation result from the UPOV Convention, the court formulates some considerations with regard to the EDV provisions in the UPOV Convention, notably Article 14 paragraph 5 (a) (i) and (b).

Firstly, the court considers that at first glance the text of (b) (i) seems at odds with (b) (iii). After all, a condition of (b) (i) is that the (in the sense of: all) characteristics of the initial variety must be preserved while (b) (iii) provides that the essential characteristics must only be maintained insofar as they do not result from the act of derivation. The court concludes that (b) (i) mainly aims at laying down that the derived variety must have its genetic origin in the initial variety.

When assessing the question whether the essential characteristics of the initial variety are found sufficiently in the derived variety, according to (b) (iii) abstraction is required of the changes that result from the act of derivation. It is not required that an EDV should have all essential characteristics of the initial variety; changes in (essential) characteristics, that have resulted from the act of derivation should be disregarded.

Secondly, the court holds the opinion that it can be concluded from (the creation history of) the rules in both the UPOV Convention and the EU Regulation that a variety must not deviate considerably from the initial variety in order to consider

it an EDV. First of all, the simple fact that the initial variety has been used at some point during the development of the new variety is not enough ground to consider the latter an EDV. To that end the court points at the wording “essentially derived”, apparently to express the discrepancy between the initial variety and the EDV should not be too substantial, at the examples quoted in Article 14 paragraph 5 (c) of the UPOV Convention and at the “Explanatory Notes” to the draft UPOV Convention (dos. No. IOM/IV/2 of June 22, 1989, page 12). Finally in this respect the court finds it important that the extension of the protection of initial varieties to EDV’s can be considered an exception provision to the main rule of independence of distinguishable varieties. Being an exception it should be interpreted in a limited manner.

Implementation of interpretation

Important for the case is the fact that ‘Dangypmini’ and ‘Blancanieves’ differ in a large number of characteristics as regards shape and form (morphology). In this respect the court takes note that the Community Plant Variety Office determined that differences can be established in 17 out of the 21 tested characteristics, which apparently are relevant for Gypsophila.

Those differences are so substantial in number and significance that the conclusion can no longer be justified that this is a matter of one or a few differences as required for an EDV. In addition it was insufficiently demonstrated how the large number of morphological differences could have been obtained with only relatively simple “acts of derivation”.

As regards ‘Summer Snow’ it was insufficiently motivated that and why that variety should be considered an EDV from ‘Dangypmini’, even more so when one considers that in its decision to grant EU-PBR for ‘Summer Snow’ the Community Plant Variety Office did not even typify ‘Dangypmini’ as a “similar variety” and, consequently, has not investigated it either.

Conclusion

The conclusion from the above is that trading (harvested) material of both ‘Blancanieves’ and ‘Summer Snow’ does not mean an infringement of the EU-PBR for ‘Dangypmini’.

NEW ZEALAND

INFRINGEMENT OF PLANT VARIETY RIGHTS

Provided by: Kate Duckworth and Jane Calvert, Baldwins, Intellectual Property, Wellington, New Zealand

Plant variety rights cases are rare in New Zealand. Even rarer are cases on infringement.

Plant variety rights (“PVRs”) are governed by the Plant Variety Rights Act 1987 (“the Act”).

PVRs give the owner of the PVR the exclusive right to produce for sale, and to sell, reproductive quality of the variety concerned (section 17 of the Act). Infringement of the exclusive rights is actionable through the High Court.

The facts of the case

In *Cropmark Seeds Ltd v Winchester Intl (NZ) Ltd & Ors* (HC, 28/9/04, John Hansen J Timaru CIV 2003 – 476 – 8). Cropmark sued three parties (a company, and its two directors) for infringement of its PVR in a barley called “Optic” used in brewing beer.

Cropmark alleged the defendants “arranged” for the sale of Optic barley seed.

Optic barley was developed in the United Kingdom. Cropmark was the exclusive licensee in New Zealand. There were sub-licensees in New Zealand who paid a royalty to Cropmark.

The facts of the case revealed a reasonably complex web whereby the defendants arranged for sales of uncertified Optic seeds. It did not sell itself. Some of the seed was purported to be for “feed” and not for “sowing” to avoid the need to pay levies and royalties. The seed was sold in plain bags, without tags. Purchasers of the seed were asked not to tell anyone about the purchase and would be billed as “straight barley”.

The second defendant was found to have gone to some lengths to avoid a paper trail and to hide the true nature of the sales. The Judge, John Hansen J, also found discrepancies in the evidence. In relation to the second defendant, he found him “disingenuous, prone to dissemble, sometimes contradictory, and frequently answering a completely different question to what was put”.

The Judge’s decision

The Judge came to the view that the second defendant knew the legal position, that only Cropmark had the right to sell Optic barley, and if he did not sell directly, but merely arranged sales, he would avoid infringing Cropmark’s rights.

The defendants’ claimed there was no infringement based on the words of section 17 “produce for sale, and to sell, reproductive material”. As there were no sales there was claimed to be no infringement.

John Hansen J’s decision includes an interesting discussion of the extent of the rights granted by the Act.

The Act was said to give proprietary rights. Infringement is a violation of those rights, and in the Judge’s view could not be limited to sale. The Judge appeared to work backwards, stretching the words “produce for sale, and to sell, reproductive material” to include arranging sales. He said that otherwise sales of seed could be organised, in breach of proprietary rights, but escape all forms of action.

How can it be an infringement if the rights do not extend that far?

It was the Judge’s view that Parliament did not intend to exclude arranging sales from infringement. While this may be true, because the rights were intended to be exclusive / proprietary, the words of the Act do not extend that far. The Judge claimed that arranging sales is an infringement but an infringement is only an infringement if prohibited by the Act. Arranging sales is not one of the exclusive rights granted by the Act.

The Judge found that the first and second defendants infringed Cropmark’s proprietary rights. The third defendant, as director of the first defendant, was found not to have infringed because he lacked the necessary knowledge of the activities.

The question then turned to liability. There was no evidence that the defendants profited from their activities. If this was the case the one wonders why the defendants bothered to arrange sales? In any case, the Judge saw no point in seeking an account of profits or damages.

Cropmark asked for exemplary damages. Exemplary damages are available where the defendant’s behaviour is reprehensible. Exemplary damages are punitive and intended to punish the defendant.

The Judge had no difficulty in finding there was a blatant and deliberate disregard of Cropmark’s rights. An award of \$5,000 against each of the first and second defendants was awarded.

Did the Judge get it right?

Arguably no, because arranging sales is not one of the exclusive rights granted to the proprietor under section 17. But the defendants did appear to be up to no good.

Typically a Judge can only operate within the confines of the law before him or her. Interest and lobby groups can then pressure Parliament for a change. It may be that the next time the Act is amended the exclusive rights provision will be amended to include arranging sales so that Judges do not have stretch the letter of the law.

ANNUAL REPORT OF THE SECRETARY-GENERAL FOR 2004

(thirty-sixth year)

I. COMPOSITION OF THE UNION

Members

1. On December 31, 2004, the Union had 58 members. The following States became members of the Union in 2004:

- (a) On June 30, 2004, Singapore deposited its instrument of accession to the Convention. The Convention (1991 Act) entered into force in respect of Singapore on July 30, 2004.
- (b) On September 24, 2004, Jordan deposited its instrument of accession to the Convention. The Convention (1991 Act) entered into force in respect of Jordan on October 24, 2004.
- (c) On October 14, 2004, Uzbekistan deposited its instrument of accession to the Convention. The Convention (1991 Act) entered into force in respect of Uzbekistan on November 14, 2004.
- (d) On November 9, 2004, Azerbaijan deposited its instrument of accession to the Convention. The Convention (1991 Act) entered into force in respect of Azerbaijan on December 9, 2004.

2. On June 1, 2004, Austria deposited its instrument of accession to the 1991 Act of the Convention. The 1991 Act entered into force in respect of Austria on July 1, 2004.

3. The 58 members of the Union, on December 31, 2004, were the following: Argentina, Australia, Austria, Azerbaijan, Belgium, Belarus, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lithuania, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United States of America, Uruguay and Uzbekistan.

Situation in Relation to the Convention and its various Acts

4. On December 31, 2004, the situation of the members of the Union in relation to the Convention and its various Acts was as follows:

- (a) two States were bound by the 1961 Convention as amended by the 1972 Act, namely Belgium and Spain;
- (b) the 1978 Act was the Act binding 25 States, namely: Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, Ecuador, France, Ireland, Italy, Kenya, Mexico, New Zealand, Nicaragua, Norway, Panama,

Paraguay, Portugal, Slovakia, South Africa, Switzerland, Trinidad and Tobago, Ukraine and Uruguay.

- (c) the 1991 Act was the most recent Act binding 31 States, namely: Australia, Austria, Azerbaijan, Belarus, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Israel, Japan, Jordan, Kyrgyzstan, Latvia, Lithuania, Netherlands, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Singapore, Slovenia, Sweden, Tunisia, United Kingdom, United States of America and Uzbekistan.

Future Members

5. Under Article 34(3) of the 1991 Act, "any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention".

6. Four requests were considered in the period under review:

- (a) a request by Armenia, by Note of October 15, 2003;
- (b) a request by Albania, by letter of February 16, 2004;
- (c) a request by Mauritius, by letter of March 23, 2004;
- (d) a request by Turkey, by letter of June 28, 2004.

7. At its twenty-first extraordinary session, on April 2, 2004, the Council examined the Law of the Republic of Armenia on the Protection of Selection Achievements and the Law of the Republic of Albania on Plant Breeder's Right.

8. In respect of Armenia, the Council decided to

"(a) advise the Government of Armenia that the Law, in its main provisions, incorporates the substance of the 1991 Act, and that it may deposit an instrument of accession to the 1991 Act;

"(b) further advise the Government of Armenia that it may wish to amend and supplement the texts of its legislation, as recommended in document C(Extr.)/21/2, so as to avoid recourse to the general principle in Article 2 of the Law."

9. In respect of Albania, the Council decided to

"(a) advise the Government of Albania that the Law, in its main provisions, incorporates the substance of the 1991 Act, and that it may deposit an instrument of accession to the 1991 Act;

“(b) further advise the Government of Albania that it may wish to amend and supplement the texts of its legislation, as recommended in document C(Extr.)/21/4, so as to avoid recourse to the general principle in Article 122 of the Constitution.”

10. At its thirty-eighth ordinary session, on October 21, 2004, the Council examined the Plant Breeder’s Right Bill of the Republic of Mauritius and the Law on the Protection of Breeder’s Rights for New Plant Varieties of the Republic of Turkey.

11. In respect of Mauritius, the Council decided to

“(a) take note of the information given in document C/38/13;

“(b) take a positive decision on the conformity of the Plant Breeder’s Right Bill of the Republic of Mauritius with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, in accordance with Article 34(3) of that Act, which allows the Republic of Mauritius to deposit its instrument of accession once the Bill is enacted and in force;

“(c) authorize the Secretary-General to inform the Government of Mauritius of that decision.”

12. In respect of Turkey, the Council decided to

“(a) take note of the information given in document C/38/14;

“(b) take a positive decision on the conformity of Law No. 5042 of the Republic of Turkey with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, in accordance with Article 34(3) of that Act, which allows the Republic of Turkey to deposit its instrument of accession;

“(c) authorize the Secretary-General to inform the Government of Turkey of that decision.”

13. By December 2004, the following 18 States, the European Community (EC) and the African Intellectual Property Organization (OAPI), had initiated the procedure for accession to the UPOV Convention: Albania, Armenia, Costa Rica, Egypt, Georgia, Honduras, Iceland, India, Kazakhstan, Mauritius, Morocco, Serbia and Montenegro, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Venezuela, Viet Nam and Zimbabwe. OAPI and its member States will be in a position to accede to the 1991 Act once Annex X of the revised Bangui Agreement enters into force. By letter of December 21, 2004, the Director General of OAPI informed the Office of the Union of the decision by the Administrative Council of OAPI, taken at its forty-fourth session on

December 3 and 4, 2004, that Annex X of the Bangui Agreement will enter into force on January 1, 2006.

II. SESSIONS OF THE COUNCIL AND ITS SUBSIDIARY BODIES

Council

14. The Council held its twenty-first extraordinary session on April 2, 2004, under the chairmanship of Miss Enriqueta Molina Macías (Mexico), President of the Council.

15. The Council elected unanimously Mr. Krieno Fikkert (Netherlands) as Vice-Chair of the CAJ for the remaining period of the term of office, starting on April 2, 2004, and ending after the thirty-eighth ordinary session of the Council, on October 21, 2004, due to the resignation of Mr. Doug Waterhouse (Australia), who was elected Vice-President of the Council of UPOV on October 23, 2003.

16. The Council also elected unanimously Mr. Luis Salaiques (Spain) as Chairman of the Technical Working Party for Agricultural Crops (TWA) for the remaining term of office, starting on April 2, 2004, and ending after the thirty ninth ordinary session of the Council in October 2005, due to the resignation of Mr. Carlos Gómez Etchebarne (Uruguay) as Chairman of the TWA.

17. The Council examined the Law of the Republic of Armenia on the Protection of Selection Achievements and the Law of the Republic of Albania on Plant Breeder’s Right for conformity with the 1991 Act of the UPOV Convention.

18. The Council endorsed results obtained at the sixty-seventh session of the Consultative Committee concerning:

- access to UPOV documents listed in the “Meeting Documents” section of the UPOV website;
- the procedure for placing meeting documents on the UPOV website;
- the transfer of information contained in the two UPOV Collections “Important Texts and Documents” and “Plant Variety Protection Laws and Treaties” to the UPOV website where it will be freely available;
- a policy for providing passwords to different sections of the UPOV website.

19. The Council held its thirty-eighth ordinary session on October 21, 2004, also under the chairmanship of Miss Enriqueta Molina Macías. The session was attended by 46 members of the Union,² by 11 observer States¹ and 11 international organizations.

¹ Albania, Egypt, Iraq, Malaysia, Mauritius, Oman, Peru, Saudi Arabia, Serbia and Montenegro, Thailand and Turkey.

² World Intellectual Property Organization (WIPO), Food and Agriculture Organization of the United Nations (FAO), World Trade Organization (WTO), European Community (EC), Organization for Economic Co-operation and Development (OECD), European Seed Association (ESA), International Association for the Protection of Intellectual Property (AIPPI), Association of European Horticultural Breeders (AOHE), International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA), Committee of National Institutes of Intellectual Property Attorneys (CNIPA), International Seed Federation (ISF).

20. At that session, the Council dealt with the following main issues:

- (a) It examined the Plant Breeder's Right Bill of the Republic of Mauritius and the Law on the Protection of Breeder's Rights for New Plant Varieties of the Republic of Turkey for conformity with the 1991 Act of the UPOV Convention.
- (b) It approved the report of the Secretary-General on the activities of the Union in 2003 and noted the report on the activities in the first nine months of 2004.
- (c) It approved the accounts for the 2002-2003 financial period and noted the report of the auditor on the accounts of the 2002-2003 biennium.
- (d) It noted the establishment of a Consultative Group on Long-term Financial Issues which would present its results in October 2005.
- (e) It noted a report on the signing of a Memorandum of Understanding with the Community Plant Variety Office (CPVO) on October 21, 2004. The Memorandum of Understanding concerns the cooperation for the development and maintenance of a web-based UPOV Plant Variety Database and the CPVO Centralized Database of Variety Denominations.
- (f) It elected, in each case for a term of three years ending with the forty-first ordinary session of the Council, in 2007:
 - (i) Mr. Krieno Fikkert (Netherlands), Chairman of the Administrative and Legal Committee;
 - (ii) Mrs. Carmen Gianni (Argentina), Vice-Chairperson of the Administrative and Legal Committee;
 - (iii) Ms. Julia Borys (Poland), Chairperson of the Technical Committee; and
 - (iv) Mrs. Françoise Blouet (France), Vice-Chairperson of the Technical Committee.
- (g) It noted documents and oral reports on the situation in the legislative, administrative and technical fields related to plant variety protection, as presented by members and observers.
- (h) It approved the calendar of meetings in 2005.

Consultative Committee

21. The Consultative Committee held its sixty-seventh session on April 2, 2004, under the chairmanship of Miss Enriqueta Molina Macías (Mexico). It made a preliminary examination of the Law of the Republic of Armenia on the Protection of Selection Achievements and of the Law of the Republic of Albania on Plant Breeder's Rights. It took note of a first report on the work of a Consultative Group on Long-

term Financial Issues of the Union. It endorsed proposals concerning the access to UPOV documents. It took note of a Performance Assessment Report for the Biennium 2002-2003. It considered developments related to biodiversity and plant genetic resources and to the review of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

22. The Consultative Committee held its sixty-eighth session on October 20, 2004, also under the chairmanship of Miss Enriqueta Molina Macías. It made a preliminary examination of the Plant Breeder's Right Bill of the Republic of Mauritius and of the Law on the Protection of Breeder's Rights for New Plant Varieties of the Republic of Turkey. Based on the work of a Consultative Group, it considered long-term financial issues of the Union. It continued the preliminary examination of the conformity of the Protection of Plant Varieties and Farmers' Rights Act of India with the 1978 Act of the UPOV Convention taking into account additional information provided by the Government of India. It noted a progress report concerning the Study on the Impact of Plant Breeders' Rights and entrusted the Office of the Union to implement the program on the development and operation of a distance learning course. It considered developments related to biodiversity and plant genetic resources and to the review of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In support of the view that the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPRFA) and the UPOV Convention should be mutually supportive, it agreed to propose appropriate steps for cooperation with the Food and Agriculture Organization of the United Nations (FAO). It entrusted the Office of the Union to prepare a document concerning the observer status in relation to UPOV bodies and observer status of UPOV in other organizations.

Administrative and Legal Committee, Technical Committee, Technical Working Parties and Working Group on Biochemical and Molecular Techniques and DNA Profiling in Particular

23. The Administrative and Legal Committee (CAJ) held its forty-ninth and its fiftieth sessions on April 1, 2004, and on October 18 and 19, 2004, respectively. The Technical Committee (TC) held its fortieth session from March 29 to 31, 2004. Reference is made to documents C/38/9, C/39/9 and C/38/10, respectively. The Technical Working Party for Vegetables (TWV) held its thirty-eighth session in Seoul from June 7 to 11, 2004. A Workshop on Data Handling was held in Beijing from June 9 to 11, 2004. The Technical Working Party on Automation and Computer Programs (TWC) held its twenty-second session in Tsukuba (Japan) from June 14 to 17, 2004. The Technical Working Party for Agricultural Crops (TWA) held its thirty-third session in Poznań (Poland) from June 28 to July 2, 2004. The Technical Working Party for Ornamental Plants and Forest Trees (TWO) held its thirty-seventh session in Hanover (Germany) from July 12 to 16, 2004. The Technical Working Party for Fruit Crops (TWF) held its thirty-fifth session in Marquardt near Potsdam (Germany) from July 19 to 23, 2004. All Technical Working Parties were preceded by a Preparatory Workshop the day before. There was no meeting of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT) in 2004.

III. COURSES, SEMINARS, WORKSHOPS, IMPORTANT CONTACTS

24. On January 12, 2004, the Office of the Union (the Office) considered, in a telephone conversation with Mr. Justin J. Rakotoarisaona, Secretary General, African Seed Trade Association (AFSTA), organizational and financial aspects of a UPOV Seminar to be held in connection with the Annual Conference 2004 of AFSTA in Hammamet (Tunisia) on March 23, 2004.
25. On January 13, the Office agreed with Mr. François Burgaud, *Groupement national interprofessionnel des semences et plants* (GNIS), Paris, on the funding of the third phase of the capacity-building program for plant variety protection under the Revised Bangui Agreement which was implemented jointly by the African Organization for Intellectual Property (*Organisation africaine de la propriété intellectuelle*, OAPI), UPOV and the Government of France. At the same time, organizational and financial matters related to the UPOV Seminar in Hammamet were agreed with Mr. Burgaud.
26. On January 30, the Office consulted on the telephone with Mr. Anthioumane N'Diaye, Director General, OAPI, Yaoundé, on the representation of OAPI at the UPOV Seminar in Hammamet (see paragraph 24, above) and on a project of technical and financial assistance in the implementation of the OAPI system of plant variety protection.
27. From February 9 to 16, the Office participated in the Seventh Conference of the Parties to the Convention on Biological Diversity (COP-7) which was held in Kuala Lumpur. The Office made statements on access and benefit-sharing during a Plenary Session on February 10 and during a session of Working Group II on February 11. At the fringes of the Opening Ceremony, the Office met with Mr. Hamdallah Zedan, Executive Secretary, CBD, and with Mr. Klaus Töpfer, Executive Director, United Nations Environment Programme (UNEP).
28. On February 11, at the Putra World Trade Centre of Kuala Lumpur, the Office held a lunchtime briefing on plant variety protection in which some 70 delegates to COP-7 participated.
29. On February 12, the Office sent information to Costa Rica providing explanation about provisions of Article 15(2) of the 1991 Act of the UPOV Convention.
30. On February 12, UPOV organized, in cooperation with the Ministry of Agriculture of Malaysia and with the financial assistance of the Ministry of Agriculture, Forestry and Fisheries of Japan, a National Seminar on the Protection of New Varieties of Plants under the UPOV Convention. Some 80 experts from the Department of Agriculture, the Malaysian Agricultural Research and Development Institute, from universities and the breeding sector participated. The Ministry of Agriculture gave an overview of the (unpublished) draft Protection of New Plant Varieties Act. Possibilities of technical cooperation with a view to implementing plant variety protection in Malaysia were explored.
31. On February 13, the Office paid a visit to the headquarters of the International Tropical Fruits Network (TFNet) which is located in Serdang, Malaysia. TFNet is an independent and self-financing global network set up under the auspices of the Food and Agriculture Organization of the United Nations (FAO), with States and institutions among its members. The Office met with Mr. Khairuddin Md. Tahir, Chief Executive Officer, and professionals of TFNet. It was agreed that experts from TFNet be involved in the drafting of UPOV Test Guidelines for tropical fruit species through the work of the TWF.
32. From February 16 to 20, in Hanoi, the Office organized, in cooperation with the Ministry of Agriculture and Rural Development of Viet Nam and with the financial assistance of the Ministry of Agriculture, Forestry and Fisheries of Japan, the Fifth Asian Regional Technical Meeting for Plant Variety Protection. Nineteen experts from 14 invited countries and some 30 experts from the host country participated. The International Rice Research Institute (IRRI) and TFNet were also represented. Eight experts from UPOV members (Germany, Japan, Netherlands and Republic of Korea) participated as lecturers. The aim of the meeting was to assist in the implementation of effective examination of plant varieties on a national and regional level, to promote regional cooperation in the DUS testing and to contribute to the revision and drafting of Test Guidelines.
33. On February 17, in Hanoi, the Office discussed with Mr. Do Hun Thien, Deputy Director-General, Department of Agriculture, and his staff those provisions of the proposed Seed Law of Viet Nam which were related to plant variety protection. The aim was to provide information with a view to harmonizing the plant variety protection scheme of Viet Nam with the 1991 Act of the UPOV Convention.
34. On February 23 and 24, in Bangkok, the Office organized, in cooperation with IRRI, and with the financial assistance of the Ministry of Agriculture, Forestry and Fisheries of Japan, a Training Workshop on Plant Variety Protection. Some 40 participants from countries being members of the International Network for Genetic Evaluation of Rice (INGER), which is operated by IRRI, and experts from IRRI were present. Two representatives from UPOV members (Japan and Republic of Korea) gave lectures. As a conclusion, a strong interest was expressed in cooperating with UPOV in establishing regional lists of example varieties for the UPOV Test Guidelines for Rice and in a possible review of IRRI rice descriptors.
35. On March 11, the Office took part in the meeting of the Caribbean Working Group for the Establishment of the Priorities for the Cooperation for the Development Project, organized by WIPO in view of the implementation of the Cooperation Agreement between WIPO and the governments of the Caribbean countries. During that meeting, the Working Group was informed that an activity in that region had been included in the UPOV work plan for 2004.
36. On March 19, the Office participated in a session of the Committee on Plant Variety Protection of the German Association on Industrial Property Protection and Copyright

(GRUR), which was held at the premises of the European Patent Office in Munich, Germany.

37. On March 23, in Hammamet, the Office organized, in cooperation with AFSTA, GNIS and the Ministry of Agriculture, Environment and Water Resources of Tunisia, a Regional Seminar on Plant Variety Protection under the UPOV Convention. Some 150 participants attended, most of them delegates to the Annual Congress 2004 of AFSTA.

38. On March 24, the Office participated in the Annual Congress 2004 of AFSTA which took place in Hammamet.

39. On April 8, the Office consulted with representatives of the Worldwide Academy of WIPO on the setting up and operation of a Distance Learning Program on Plant Variety Protection.

40. On April 23, the Office received the visit of Madam Jiang Zehui, Leading Member of the State Forestry Administration of China and President of the Chinese Academy of Forestry, and her group. Progress of plant variety protection and activities with China and the Office of the Union in 2004 and 2005 were discussed.

41. On April 28, the Office received the visit of Mr. Nelson Velasco, President of the Ecuadorian Institute of Intellectual Property (*Instituto Ecuatoriano de la Propiedad Intelectual*, IEPI), Ecuador. Matters of regional cooperation in plant variety protection among Andean States were considered.

42. On April 29, Mrs. Maureen Crane-Scott, Registrar, Corporate Affairs and Intellectual Property Office of Barbados, visited the Office. Possibilities to organize a workshop on plant variety protection in Barbados later in 2004 were explored.

43. On May 5, the Office gave a lecture at a Workshop on Value Capture in the Plant Breeding Industry, which was organized by the British Society of Plant Breeders in Norwich, United Kingdom.

44. On May 5, the Office received the visit of Mrs. Régine Gazaro (OAPI). Details of a capacity building program, which involved training of OAPI experts in France on the examination of distinctness, uniformity and stability of plant varieties, were considered. The considerations with Mrs. Gazaro were pursued on May 12.

45. On May 5, the Office gave a lecture about plant breeder's right and Small and Medium-sized Enterprises (SMEs) at the WIPO-WASME special program on Intellectual Property Rights Issues for entrepreneurs, economists, bankers, lawyers and accountants, organized by WIPO and the World Association for Small and Medium-sized Enterprises (WASME), in Geneva.

46. On May 13 and 14, the Office had a meeting at the International Plant Genetic Resources Institute (IPGRI), Rome. A broad consensus with IPGRI in respect of the use of plant genetic resources was apparent and areas of cooperation were identified.

47. On May 18 in Angers, France, the Office had a meeting with CPVO, in which an expert of WIPO also participated. Technical items related to the coordination of a UPOV web-based Plant Variety Database and the CPVO centralized database on variety denominations were considered.

48. From May 23 to 26, the Office participated in the World Seed Congress 2004 of the International Seed Federation (ISF), which was held in Berlin. During a session of the ISF Breeders' Committee, the Office reported on recent developments in plant variety protection. With some 1,400 participants, the 2004 Congress was again one of the most important events of the world seed industry. The crucial importance of effective plant variety protection for sustained breeding was stressed on various occasions.

49. On May 27 and 28, in Berlin, the Office participated in an International Seminar on the Protection of Intellectual Property and Access to Plant Genetic Resources, which was organized by ISF. Some 200 participants were present. The seminar highlighted the importance of the UPOV Convention, which provides effective protection of new varieties while securing free access to plant genetic resources in the form of protected varieties for the purpose of breeding new varieties.

50. On June 4, the Office was consulted by an official of the Swiss Patent Office on specific provisions of the 1991 Act of the UPOV Convention. The consultation related to amendments in the Swiss legislation on plant variety protection, which aimed at harmonization with the 1991 Act of the UPOV Convention, and was continued on June 7.

51. On June 4, Mr. Vladimir Derbenskiy, former consultant at the Office, contacted the Office on behalf of the State Commission of the Russian Federation for Selection Achievements Test and Protection, in order to consider joint activities in members states of the Commonwealth of Independent States (CIS Countries).

52. On June 4, at the WIPO/UPOV headquarters, the Office lectured at an Interregional Intermediate Seminar on Intellectual Property, which was organized by the WIPO Worldwide Academy. Some 60 leading officials from developing countries participated.

53. On June 5, in Seoul, the Office organized a Technical Workshop on the Examination of New Varieties of Plants under the UPOV Convention. Some 80 national participants were present. Experts from France, the Netherlands and the United Kingdom participated as lecturers. The Workshop, which was held in connection with the thirty-eighth session of the UPOV Technical Working Party for Vegetables (TWV), was opened and chaired by Mr. Lee Byung-Muk, Director, Plant Variety Protection Division, National Seed Management Office (NSMO) of the Republic of Korea.

54. On June 8, the Office briefed professionals of WIPO on recent developments in plant variety protection.

55. From June 9 to 11, in Beijing, the Office organized, in cooperation with the State Forestry Administration, the Ministry of Agriculture and the State Intellectual Property Office of China, and with financial assistance of the Ministry

of Agriculture, Forestry and Fisheries of Japan, a Workshop on Data Handling. Some 35 experts from China, Kenya, Mongolia, Singapore and Viet Nam participated. Speakers from Denmark, Germany, Japan and the United Kingdom gave lectures. The workshop included practical computer training at the Chinese Academy of Agriculture.

56. On the evening of June 10, the Office attended a reception at Prangins, Switzerland, to celebrate the Global Crop Diversity Trust.

57. On June 11, at the invitation of the Government of China, the Office participated in a ceremony to celebrate the fifth anniversary of China's accession to the UPOV Convention.

58. During the ceremony, which took place at the Great People's Hall, Beijing, a number of Chinese scientists and breeders were awarded prizes in recognition of their outstanding achievements.

59. On June 12 and 13, in Beijing, the Office organized, in cooperation with the State Forestry Administration, the Ministry of Agriculture and the State Intellectual Property Office of China, and with financial assistance of the Ministry of Agriculture, Forestry and Fisheries of Japan, a Workshop on the Benefit of Regional Cooperation and the 1991 Act of the UPOV Convention. Some 80 participants from China, including officials of the plant variety protection offices (Agriculture and Forestry), other officials of the State government and of local governments, breeders, representatives of seed companies, three experts from Viet Nam, two from Singapore, three from the Republic of Korea and one from Mongolia were present. Nine foreign speakers from Japan, the Netherlands, the Republic of Korea, the Russian Federation, the Community Plant Variety Office (CPVO), the International Seed Federation (ISF) and the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOFORA) gave lectures. Madam Jiang Zehui, Executive Member of the State Forestry Administration of China, welcomed the participants and highlighted recent progress in plant variety protection. Mr. Zhang Baowen, Vice-Minister of Agriculture, referred to the impact of plant variety protection on agricultural development. Mr. Li Yuguang, Deputy Commissioner of the State Intellectual Property Office (SIPO), stressed that plant variety protection was an essential element of China's policy for intellectual property protection. The workshop marked an important step in China's reflection with a view to acceding to the 1991 Act of the UPOV Convention.

60. On the evening of June 13, in Beijing, staff of the Office, together with the participants of the Workshop on the Benefit of Regional Cooperation and the 1991 Act of the UPOV Convention, visited the newly inaugurated headquarters of the International Network for Bamboo and Rattan (INBAR), an intergovernmental organization established in 1997, where Madam Jiang Zehui hosted a dinner reception.

61. On June 18, at the WIPO/UPOV headquarters, the Office participated in a briefing session organized by WIPO for Professor Suleiman, Advisor to the President of Sudan, on matters of the World Trade Organization (WTO). Advice on the implementation of plant variety protection, with a view to

Sudan's compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was provided.

62. On June 21, the Office provided lectures as a part of the Course on Plant Variety Protection at the Centre for Genetic Resources (CGN), Wageningen, Netherlands.

63. On July 2, the Office informed the Permanent Mission of the Republic of Azerbaijan on steps necessary to accomplish the country's accession procedure to the UPOV Convention.

64. On July 5, at the WTO headquarters, Geneva, the Office lectured at a WIPO-WTO Colloquium for Teachers of Intellectual Property Law. Twenty professors from developing countries were present.

65. From July 12 to 14, in Asunción, the Office participated in the XIX Pan-American Seed Seminar, which was organized by the Latin-American Seed Federation (FELAS). Some 500 participants from the seed industry, government institutions and scientists were present. The Office made a presentation on plant variety protection in the region with particular emphasis on the 1991 Act of the UPOV Convention and moderated a session on "Situation of Intellectual Property in Plants, Plant Genetic Resources and Plant Breeding".

66. On July 13, at the fringes of the XIX Pan-American Seed Seminar, the Office assisted in a meeting on a possible common approach to collecting royalties, which was convened by a representative of the Iowa State University and in which government officials and representatives of the seed industry from Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay participated.

67. On July 13, at the fringes of the XIX Pan-American Seed Seminar, the Office had a meeting with Mrs. Myriam Segovia, Vice Minister of Commerce, Mrs. Astrid Weiler Gustafson, Director General of Intellectual Property, Ministry of Commerce of Paraguay, as well as with Mr. Roque Leguizamón Messina and Mrs. Estela Ojeda, both from the Ministry of Agriculture of Paraguay. Matters of plant variety protection in relation to biotechnological inventions, plant genetic resources and traditional knowledge were considered and explained.

68. On July 15, at the fringes of the XIX Pan-American Seed Seminar, the Office participated in a Workshop on the situation of national seed offices, in which government officials from Argentina, Bolivia, Brazil, Chile, Colombia, Paraguay and Uruguay were present. The scope of the farmer's privilege and the enforcement of breeders' rights were identified as major issues. The Office explained provisions of the 1991 Act of the UPOV Convention which are relevant in that respect.

69. On July 19 and 20, in Montevideo, the Office lectured at a seminar on Intellectual Property Rights in Plant Varieties, which was organized by the European Union and Uruguay. Some 100 representatives from the seed industry, farmers' associations, government officials, scientists and intellectual property attorneys were present. The Office made three presentations on the UPOV Convention in general, the farmer's privilege and present tendencies in plant variety protection.

70. On July 22, in Santiago, the Office participated in the “First Seminar on Intellectual Property in Plants”, which was organized by the Ministry of Agriculture in cooperation with the National Association of Seed Producers and the Fresh Fruit Association of Chile. Some 140 participants from the seed industry, farmers’ associations, government officials of various ministries, scientists and intellectual property attorneys took part. The Office lectured on the effective operation of plant variety protection, with particular reference to the provisions of the 1991 Act of the UPOV Convention.
71. On July 22, the Office received the visit of Mr. Katsuhiko Saka, First Secretary, Permanent Mission of Japan at Geneva. Matters related to plant variety protection in the Asia and Pacific Region and to UPOV in general were considered.
72. On July 23, the Office received the visit of Mr. Edgar Krieger, newly appointed Executive Secretary of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA). Possibilities for intensified cooperation were explored.
73. On August 9, the Office consulted with Mr. Hüseyin Ergani, Second Secretary, Permanent Mission of Turkey at Geneva, on the Turkish Law on Plant Variety Protection, which was scheduled to be examined by the Council of UPOV at its thirty-eighth session in October 2004.
74. On August 10, the Office met with WIPO officials in order to discuss the development of a UPOV information brochure.
75. On August 11, the Office considered the procedure of accession to the UPOV Convention with Mr. Walid Obeidat, First Secretary, Permanent Mission of Jordan at Geneva.
76. On August 20, in Lausanne, Switzerland, the Office made a presentation at the Fleuroselect 35th Annual Convention.
77. On September 1, at Gent, Belgium, the Office made a presentation at the Annual Congress of the International Association of Horticultural Producers (AIPH).
78. On September 6, at the UPOV headquarters, the Office organized a briefing for a group of Government officials of the Republic of Korea during their study tour to various institutions in Europe. The meeting was continued on September 8, with the participation of representatives of ISF.
79. On September 6, the Office received the visit of Miss Loreen Walker, Executive Director, Jamaica Intellectual Property Office. The usefulness of enacting a plant breeder’s right law in Jamaica and the seminar activity in November 2004 were discussed.
80. From September 7 to 9, in Tokyo, the Office provided a series of lectures during a training course of eleven weeks on the “Protection of Plant Breeders’ Rights”, which was organized by the Japan International Cooperation Agency (JICA), in cooperation with the Ministry of Agriculture, Forestry and Fisheries of Japan and UPOV. Eleven experts from ten developing countries participated.
81. On September 10, in Tokyo, the Office provided a briefing for some 20 representatives of the Japan Seed Trade Association (JASTA) in preparation for Asian Seed 2004 of the Asia and Pacific Seed Association (APSA).
82. On September 10, in Tokyo, the Office lectured at a Workshop on “Recent Developments in Plant Variety Protection and the Utilization of Genetic Resources”, which was organized by the Society for Techno-Innovation in Agriculture, Forestry and Fisheries (STAFF). Some 120 government officials and representatives of the seed industry participated.
83. From September 12 to 15, in Seoul, the Office participated at Asian Seed 2004, the Annual Congress of APSA. Some 500 delegates were present. The Office participated in a preparatory session on intellectual property rights, which was held on September 12, and in the session of the Standing Committee on Intellectual Property Rights. The Office reported on recent developments in plant variety protection, in particular in the Asia and Pacific Region. The Committee agreed that a Workshop on Plant Variety Protection be held in connection with Asian Seed 2005 in Shanghai, China. UPOV was invited to participate in the organization of the Workshop. During the Technical Reports Session, on September 14, the Office made a presentation entitled “PVP Issues – New Perspectives”. The Office operated an exhibition booth which attracted considerable attention. Throughout the Congress, frequent reference was made to the need for effective protection of breeders’ rights and to UPOV. In particular, Mr. Huh Sangman, Minister for Agriculture and Forestry of the Republic of Korea, in his inaugural speech, repeatedly emphasized the importance of UPOV.
84. On September 17, in Kuala Lumpur, the Office had a meeting with Mrs. Dato Khamsiah, Deputy Director General I, Department of Agriculture, Ministry of Agriculture of Malaysia and members of her staff. The Protection of New Plant Variety Act 2004 and questions related to the accession to the UPOV Convention were considered.
85. From September 20 to 22, in Serdang, Malaysia, the Office lectured at a National Training Course on the Protection of New Plant Varieties, which was organized by the Ministry of Agriculture of Malaysia in cooperation with UPOV and with financial assistance of the Ministry of Agriculture, Forestry and Fisheries of Japan. Some 50 officials, scientists and breeders participated.
86. On September 21, the Office received the visit of Mrs. Dawn Williams and Mr. John Passino, Department of Agriculture of the United States of America, and of Mr. Henry Schmick, Office of Agricultural Affairs, United States Mission to WTO, Geneva. The Office explained UPOV’s views on plant variety protection in relation to the TRIPS Agreement, the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). The visitors referred also to the Cartagena Protocol on Biosafety.
87. On September 23, at the WIPO/UPOV headquarters, the Office organized a briefing session for Mr. Sharofidin

Nazhmudinov, Director, National Center for Patents and Information (NCPI), and his First Deputy Director, Mr. Guennadi Koupai, Tajikistan. Mr. Nazhmudinov expressed his intention to encourage Tajikistan's accession to the UPOV Convention, given that the Council of UPOV has already advised positively on the conformity of the Tajik legislation on plant variety protection.

88. On September 27, the Office organized, in cooperation with the Ministry of Agriculture and Food Industry of the Republic of Moldova, a National Workshop on Plant Variety Protection in Kishinev. Some 40 participants were present.

89. On September 28, in Bucharest, the Office organized, in cooperation with the Ministry of Agriculture, Forests and Rural Development and the State Office for Inventions and Trademarks (OSIM), a National Workshop on Plant Variety Protection. Some 60 participants were present.

90. On September 29, the Office received the visit of Mr. Danny Montano, Minister for Legal Affairs from Trinidad and Tobago, and Mrs. Mazina Kadir, Controller, Intellectual Property Office, from the same country. A brief explanation of UPOV and the plant breeder's right system was made and followed by discussions on possible activities to raise awareness of the benefits for breeders in protecting their varieties in Trinidad and Tobago and abroad.

91. On September 29, at the WIPO/UPOV headquarters, the Office participated in a video conference organized by the WIPO Worldwide Academy and the University of Turin, Italy, as a part of a Master of Laws in Intellectual Property.

92. On September 30, in Sofia, the Office organized, in cooperation with the Ministry of Agriculture and Forestry of Bulgaria, a National Workshop on Plant Variety Protection. Some 120 participants were present.

93. From October 4 to 7, the office participated in the first meeting of the FAO Expert Group on the Terms of the Standard Material Transfer Agreement under the International Treaty for Plant Genetic Resources for Food and Agriculture. The office was requested to explain the breeder's exemption under different Acts of the UPOV Convention.

94. On October 11, the Office received a visit of Mr. Dirk H. Kranen, newly appointed Financial Counsellor at the Permanent Mission of the Federal Republic of Germany.

95. On October 14, in Paris, the Office participated in a hearing at the Senate of the French Republic in the context of the transposition in French law of Directive No. 98/44 of the European Community on the Protection of Biotechnological Inventions.

96. On October 21, the Secretary-General of UPOV and the President of the Community Plant Variety Office (CPVO) signed a Memorandum of Understanding on the development and maintenance of a web-based UPOV Plant Variety Database and a CPVO Centralized Database of Variety Denominations.

97. On October 22, the Office organized a briefing with Mr. Evans Sikinyi (Kenya), Chairman, and Dr. Arnd van Wijk

(Netherlands), Advisor of the Working Group on the Impact of Plant Breeders' Rights in order to further program the work on the impact study.

98. On October 25, the Office, in cooperation with the African Organization for Intellectual Property (OAPI) and the *Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)*, Eschborn (Germany), started to elaborate a cost estimate for a project of assistance in the implementation of plant variety protection under the auspices of OAPI. The cost calculation formed part of a proposal subsequently submitted by OAPI to the European Commission for funding.

99. From November 1 to 5, in Geneva, the Office represented UPOV as an observer organization in a session of WIPO's Intergovernmental Committee on Traditional Knowledge, Folklore and Genetic Resources.

100. On November 1 and 2, in Prague, the Office participated in a session of the ISF Committee on Intellectual Property.

101. On November 3, at the UPOV Headquarters, the Office consulted with Mr. Clive Stannard, Senior Liaison Officer, FAO, on developments in respect of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture.

102. On November 8 and 9, in Bridgetown (Barbados), in cooperation with the Corporate Affairs and Intellectual Property Office (CAIPO) of Barbados, a national seminar on plant variety protection under the UPOV Convention was organized. Some 30 scientists, attorneys and officials were present. A representative of Trinidad and Tobago and the President of CPVO gave lectures.

103. On November 10, the Office considered elements of the project for the implementation of plant variety protection under the auspices of OAPI with Mr. Jacques Gennatas, Commission of the European Community, Brussels, and Mr. Joël Guiard, *Groupe d'étude et de contrôle des variétés et des semences (GEVES)*, La Minière (France).

104. On November 10 and 11, the Office attended the Tenth Regular Session of the Commission on Genetic Resources for Food and Agriculture which was held in Rome.

105. On November 11 and 12, in Kingston (Jamaica), the Office organized, in cooperation with the Ministry of Science and Technology and the Intellectual Property Office (JIPO) of Jamaica a regional seminar on plant variety protection under the UPOV Convention. Some 30 scientists, attorneys and officials were present. A representative of Trinidad and Tobago and the President of CPVO gave lectures.

106. On November 16, the Office received a visit of Mr. Dominique Nyandwi, Director General of Industry, and Mr. Charles Ntagwarara, Magistrate, of Burundi. Reference was made to anticipated UPOV activities in the region in 2006 in which experts from Burundi might be involved.

107. On November 17 and 18, in Angers (France), the Office participated in a session of the Administrative Council of CPVO.

108. On November 23, the Office considered with Mr. López de Haro y Wood, Ministry of Agriculture, Fisheries and Food of Spain, the joint organization of a Training Course on Plant Variety Protection for Latin-American States, to be held in the second half of 2005.

109. On November 30 and December 1, the Office attended a CPVO meeting in Angers (France) with the CPVO examination offices to discuss technical items related to the conduct of the testing of Distinctness, Uniformity and Stability (DUS).

IV. RELATIONS WITH STATES AND ORGANIZATIONS

110. With regard to relations with States and organizations, a major part of the activities of the Office was focussed on advice and assistance on plant variety protection legislation and the procedure to accede to the Convention by potential members of the Union, or members of the Union that intended to accede to the 1991 Act of the Convention. The Office provided written or oral comments, paid visits to national authorities or received representatives of the respective States and certain organizations in order to provide the requested advice. In this respect, the Office had contacts with Armenia, Albania, Azerbaijan, Bahrain, Bangladesh, Barbados, Burundi, Cambodia, Chile, Colombia, Egypt, El Salvador, European Community, France, Iceland, India, Iraq, Ireland, Islamic Republic of Iran, Jamaica, Jordan, Kazakhstan, Libyan Arab Jamahiriya, Lithuania, Malaysia, Mauritius, Serbia and Montenegro, Singapore, Switzerland, Tajikistan, Thailand, Turkey, United Arab Emirates, Uzbekistan and Viet Nam and the African Intellectual Property Organization (OAPI).

111. The Office met with representatives of international intergovernmental organizations to coordinate activities or to explain UPOV's position in other fora. Of particular importance was the ongoing discussion on biological diversity, plant genetic resources and traditional knowledge. The Office participated in the consideration of these issues with the Secretariat of the Convention on Biological Diversity (CBD), the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA), the African Intellectual Property Organization (OAPI), the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of WIPO, and the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS). The Office maintained close contacts with the Community Plant Variety Office (CPVO), the Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and with the International Rice Research Center (IRRI), with the International Plant Genetic Resources Institute (IPGRI) and with the International Center for Agricultural Research in the Dry Areas (ICARDA), in particular, with the Organisation for Economic Co-operation

and Development (OECD) and the International Seed Testing Association (ISTA).

112. The Office provided explanations on the provisions of the Convention to members of the Union and to individuals.

113. The Office met regularly with professional associations in order to follow developments in the practical application of plant variety protection at a global and regional level. Of particular relevance were meetings with the International Seed Federation (ISF) and the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOFORA), and with the African Seed Trade Association (AFSTA), the Asia and Pacific Seed Association (APSA), the European Seed Association (ESA) and the *Federación Latinoamericana de Asociaciones de Semillas* (FELAS).

V. SELECTED RESULTS OF UPOV IN 2004

114. The results achieved by UPOV in 2004 on the basis of the work of the Council, its subsidiary bodies and the Office, are summarized in Annex II to this document. Annex III contains an overview of the missions undertaken by the staff of the Office. [For Annexes, please consult the UPOV website: http://www.upov.int/en/documents/c/39/c_39_02.pdf].

VI. PUBLICATIONS

The Office published:

- (a) two issues of "Plant Variety Protection", the Gazette and Newsletter of UPOV;
- (b) updated editions, covering every event affecting the membership of the Union, of the information leaflet on UPOV and plant variety protection in English, Arabic, Chinese, French, German, Russian and Spanish;
- (c) six updated CD-Roms in the series constituting the UPOV central database, "UPOV-ROM Plant Variety Database".

CALENDAR OF MEETINGS IN 2006Council

April 7 (afternoon) (extraordinary session)
October 19

Consultative Committee

April 7 (morning)
October 18

Administrative and Legal Committee

April 6
October 16 and 17

Technical Committee

April 3 (afternoon) to 5
[Editorial Committee: April 3 (morning and evening), April 4 (evening)]

Technical Working Party for Agricultural Crops (TWA)

September 11 to 15, [place to be determined], China
[Preparatory workshop on September 10]

Technical Working Party on Automation and Computer Programs (TWC)

June 19 to 22, Nairobi, Kenya
[Preparatory workshop on June 18]

Technical Working Party for Fruit Crops (TWF)

August 21 to 25, Salvador, Bahia State, Brazil
[Preparatory workshop on August 20]

Technical Working Party for Ornamental Plants and Forest Trees (TWO)

August 28 to September 1, Maceio, Alagoas State, Brazil
[Preparatory workshop on August 27]

Technical Working Party for Vegetables (TWV)

June 12 to 16, Guanajuato, Guanajuato State, Mexico
[Preparatory workshop on June 11]

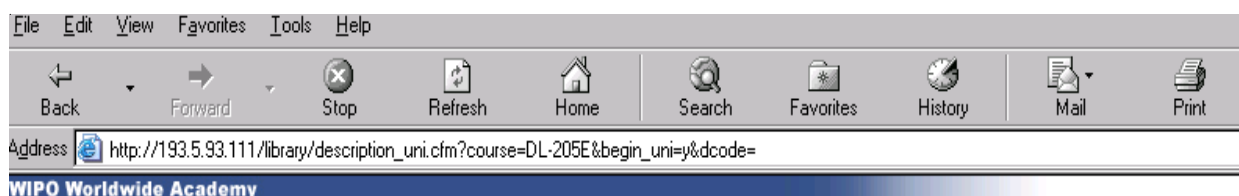
Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular

No meeting planned in 2006.

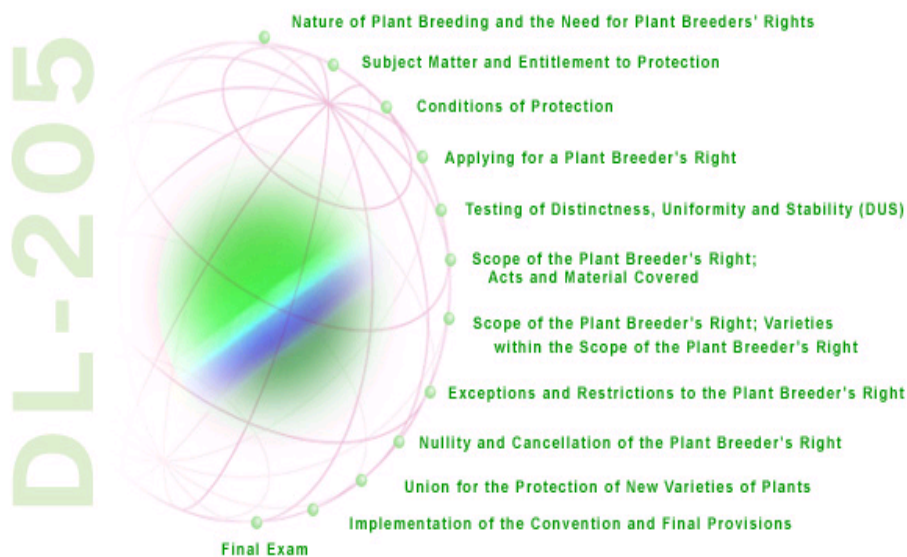
UPOV LAUNCHES NEW DISTANCE LEARNING COURSE

UPOV successfully launched, in collaboration with the WIPO Worldwide Academy, an on-line distance learning course (DL-205) "Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention" in September 2005. The course materials for the estimated 36-hour course are broken down into 11 modules containing comprehensive

explanations, diagrams and self-assessment questions and end of modules tests guiding students throughout the program. Tutoring by experts from UPOV members provides students with the opportunity for further clarification and discussion. The course concludes with a final exam.



- ▶ My Course
- ▶ Syllabus
- ▶ Resources
- ▶ Communicate
- ▶ Profile
- ▶ Grade Book
- ▶ Short Cuts
- ▶ Help
- ▶ Tutor
- ◀ Exit



In 2006, it is planned to run two sessions of the DL-205 course, in February 2006 (in English only) and November 2006 (in English, French, German, Spanish).

IF YOU ARE INTERESTED IN PARTICIPATING IN ONE OF THE 2006 SESSIONS OF THE UPOV DISTANCE LEARNING COURSE :

Please contact the Office of the Union

UPOV
34, chemin des Colombettes
1211 Geneva 20
Tel.: +41-22-338 9565/9233 Fax: +41-22-733 0336
E-mail: upov.mail@upov.int



MEMBERS OF THE INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

International Convention for the Protection of New Varieties of Plants*

UPOV Convention (1961), as revised at Geneva (1972, 1978 and 1991)

Status on September 15, 2005

State/Organization	Date on which State/Organization became member of UPOV	Number of contribution units	Latest Act ¹ of the Convention to which State/Organization is party and date on which State/Organization became party to that Act
Albania.....	October 15, 2005	0.2	1991 Act..... October 15, 2005
Argentina.....	December 25, 1994	0.5	1978 Act..... December 25, 1994
Australia.....	March 1, 1989	1.0	1991 Act..... January 20, 2000
Austria.....	July 14, 1994	1.5	1991 Act..... July 1, 2004
Azerbaijan.....	December 9, 2004	0.2	1991 Act..... December 9, 2004
Belarus.....	January 5, 2003	0.2	1991 Act..... January 5, 2003
Belgium ²	December 5, 1976	1.5	1961/1972 Act..... December 5, 1976
Bolivia.....	May 21, 1999	0.2	1978 Act..... May 21, 1999
Brazil.....	May 23, 1999	0.25	1978 Act..... May 23, 1999
Bulgaria.....	April 24, 1998	0.2	1991 Act..... April 24, 1998
Canada.....	March 4, 1991	1.0	1978 Act..... March 4, 1991
Chile.....	January 5, 1996	0.2	1978 Act..... January 5, 1996
China.....	April 23, 1999	0.5	1978 Act ³ April 23, 1999
Colombia.....	September 13, 1996	0.2	1978 Act..... September 13, 1996
Croatia.....	September 1, 2001	0.2	1991 Act..... September 1, 2001
Czech Republic.....	January 1, 1993	0.5	1991 Act..... November 24, 2002
Denmark ⁴	October 6, 1968	1.5	1991 Act..... April 24, 1998
Ecuador.....	August 8, 1997	0.2	1978 Act..... August 8, 1997
Estonia.....	September 24, 2000	0.2	1991 Act..... September 24, 2000
European Community.....	July 29, 2005	5.0	1991 Act..... July 29, 2005
Finland.....	April 16, 1993	1.0	1991 Act..... July 20, 2001
France ⁵	October 3, 1971	5.0	1978 Act..... March 17, 1983
Germany.....	August 10, 1968	5.0	1991 Act..... July 25, 1998
Hungary.....	April 16, 1983	0.5	1991 Act..... January 1, 2003
Ireland.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Israel.....	December 12, 1979	0.5	1991 Act..... April 24, 1998
Italy.....	July 1, 1977	2.0	1978 Act..... May 28, 1986
Japan.....	September 3, 1982	5.0	1991 Act..... December 24, 1998
Jordan.....	October 24, 2004	0.2	1991 Act..... October 24, 2004
Kenya.....	May 13, 1999	0.2	1978 Act..... May 13, 1999
Kyrgyzstan.....	June 26, 2000	0.2	1991 Act..... June 26, 2000
Latvia.....	August 30, 2002	0.2	1991 Act..... August 30, 2002
Lithuania.....	December 10, 2003	0.2	1991 Act..... December 10, 2003
Mexico.....	August 9, 1997	0.75	1978 Act..... August 9, 1997
Netherlands.....	August 10, 1968	3.0	1991 Act ⁶ April 24, 1998
New Zealand.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Nicaragua.....	September 6, 2001	0.2	1978 Act..... September 6, 2001
Norway.....	September 13, 1993	1.0	1978 Act..... September 13, 1993
Panama.....	May 23, 1999	0.2	1978 Act..... May 23, 1999
Paraguay.....	February 8, 1997	0.2	1978 Act..... February 8, 1997
Poland.....	November 11, 1989	0.5	1991 Act..... August 15, 2003
Portugal.....	October 14, 1995	0.5	1978 Act..... October 14, 1995
Republic of Korea.....	January 7, 2002	0.75	1991 Act..... January 7, 2002
Republic of Moldova.....	October 28, 1998	0.2	1991 Act..... October 28, 1998
Romania.....	March 16, 2001	0.2	1991 Act..... March 16, 2001
Russian Federation.....	April 24, 1998	0.5	1991 Act..... April 24, 1998
Singapore.....	July 30, 2004	0.2	1991 Act..... July 30, 2004
Slovakia.....	January 1, 1993	0.5	1978 Act..... January 1, 1993
Slovenia.....	July 29, 1999	0.2	1991 Act..... July 29, 1999
South Africa.....	November 6, 1977	1.0	1978 Act..... November 8, 1981
Spain ⁷	May 18, 1980	2.0	1961/1972 Act..... May 18, 1980

State/Organization	Date on which State/Organization became member of UPOV	Number of contribution units	Latest Act ¹ of the Convention to which State/Organization is party and date on which State/Organization became party to that Act	
Sweden.....	December 17, 1971	1.5	1991 Act.....	April 24, 1998
Switzerland	July 10, 1977	1.5	1978 Act.....	November 8, 1981
Trinidad and Tobago.....	January 30, 1998	0.2	1978 Act.....	January 30, 1998
Tunisia	August 31, 2003	0.2	1991 Act.....	August 31, 2003
Ukraine	November 3, 1995	0.2	1978 Act.....	November 3, 1995
United Kingdom	August 10, 1968	2.0	1991 Act.....	January 3, 1999
United States of America	November 8, 1981	5.0	1991 Act ⁸	February 22, 1999
Uruguay	November 13, 1994	0.2	1978 Act.....	November 13, 1994
Uzbekistan	November 14, 2004	0.2	1991 Act.....	November 14, 2004

(Total: 60)

* The International Union for the Protection of New Varieties of Plants (UPOV), established by the International Convention for the Protection of New Varieties of Plants, is an independent intergovernmental organization having legal personality. Pursuant to an agreement concluded between the World Intellectual Property Organization (WIPO) and UPOV, the Director General of WIPO is the Secretary-General of UPOV and WIPO provides administrative services to UPOV.

1 “1961/1972 Act” means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972; “1978 Act” means the Act of October 23, 1978, of the Convention; “1991 Act” means the Act of March 19, 1991, of the Convention.

2 With a notification under Article 34(2) of the 1978 Act.

3 With a declaration that the 1978 Act is not applicable to the Hong Kong Special Administrative Region.

4 With a declaration that the Convention of 1961, the Additional Act of 1972, the 1978 Act and the 1991 Act are not applicable to Greenland and the Faroe Islands.

5 With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.

6 Ratification for the Kingdom in Europe.

7 With a declaration that the Convention of 1961 and the Additional Act of 1972 apply to the entire territory of Spain.

8 With a reservation pursuant to Article 35(2) of the 1991 Act.

ADDRESSES OF PLANT VARIETY PROTECTION OFFICES IN UPOV MEMBERS

ALBANIA

Seed Institute
Ministry of Food and Agriculture
Rr. Siri Kodra
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ARGENTINA

Área Semillas
Secretaría de Agricultura, Ganadería y Pesca
Ministerio de Economía y Obras
y Servicios Públicos
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1063 Buenos Aires

Tel. (54-11) 4349 24 97
Fax (54-11) 4349 24 17
e-mail: inase@sagyp.mecon.ar
website: <http://www.sagpya.mecon.gov.ar>

AUSTRALIA

The Registrar
Plant Breeder's Rights
IP Australia
P.O. Box 200
Woden, A.C.T. 2606

Tel. (61-2) 6283 2999
Fax (61-2) 6283 7999
e-mail: pbr@ipaustrialia.gov.au
website: <http://www.ipaustrialia.gov.au>

AUSTRIA

Bundesamt für Ernährungssicherheit
Institut für Sortenwesen
Postfach 400
Spargelfeldstrasse 191
A-1226 Wien

Tel. (43-1) 732 16 40 00
Fax (43-1) 732 16 42 11
e-mail: sortenwesen@ages.at
website: <http://www.lwvie.ages.at>

AZERBAIJAN

State Commission on the Test and Protection of Selection
Novelty
Necef Narimanov st., 7A
1006 Baku

Tel./Fax (994-12) 462 5420
e-mail: yguliyev@agroagency.gov.az

BELARUS

Committee for the State Testing and Protection of Plant
Varieties of the Republic of Belarus
90, Kazintza str.
Minsk 220108

Tel. (375-17) 277 0421 / 277 7051
Fax (375-17) 278 3530
e-mail: sortr@mshp.minsk.by

BELGIUM

Service public fédéral économie, P.M.E.,
Classes moyenne & energie
Office de la Propriété Intellectuelle
North Gate III – 5ème étage
16, bd du Roi Albert II
B-1000 Bruxelles

Tel. (32-2) 206 5158
Fax (32-2) 206 5750
e-mail: camille.vanslembrouck@mineco.fgov.be
website: <http://mineco.fgov.be/opri-die.htm>

BOLIVIA

Dirección Nacional de Semillas
Secretaría Nacional de Agricultura y Ganadería
Avda. 6 de Agosto 2006, Edif. V. Centenario
Casilla 4793
La Paz

Tel. (591-2) 441 153 / 441 608
Fax (591-2) 441 153 / 441 608
e-mail: semillas@ceibo.entelnet.bo
website: <http://www.semillas.org>

BRAZIL

Serviço Nacional de Proteção de Cultivares - SNPC
(National Plant Varieties Protection Service)
Secretaria de Desenvolvimento Agropecuário e
Cooperativismo - SDC
Ministério da Agricultura, Pecuária e Abastecimento
Esplanada dos Ministérios, Bloco D, Anexo A, Sala 251
CEP 70043-900, Brasília, DF

Tel. (55-61) 3218 2547 / 2549
Fax (55-61) 3224 28 42
e-mail: snpc@agricultura.gov.br
Website: www.agricultura.gov.br

BULGARIA

State Patent Office of the Republic of Bulgaria
52 B, Dr. G.M. Dimitrov Blvd.
BG-1040 Sofia

Tel. (359-2) 873 51 75
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e-mail: bpo@bg.net
website: <http://www.bpo.bg>

Central Office "Variety Testing"
Executive Agency for Variety Testing, Field Inspection and
Seed Control (IASAS)
125 Tzarigradsko shose Blvd.
Block 1
1113 Sofia

Tel. (359-2) 700 375
Fax (359-2) 71 36 35

CANADA

Plant Breeders' Rights Office
Canadian Food Inspection Agency (CFIA)
59 Camelot Drive
Ottawa, Ontario K1A 0Y9

Tel. (1-613) 225-2342
Fax (1-613) 228-6629
e-mail: vsisson@inspection.gc.ca
website: <http://www.inspection.gc.ca/english/plaveg/pbrpov/pbrpove.shtml>

CHILE

Ministerio de Agricultura
Servicio Agrícola y Ganadero (SAG)
Departamento de Semillas
Avda Bulnes 140
Casilla 1167-21
Santiago de Chile

Tel. (56-2) 696 29 96, 698 22 44
Fax (56-2) 696 64 80
e-mail: semillas@sag.gob.cl
website: <http://www.sag.gob.cl/Portal.asp>

CHINA

Plant Variety Protection Office
Ministry of Agriculture
Building 20
Maizidian Street
Beijing 100026

Tel. (86-10) 641 930 29 / 641 916 77
Fax (86-10) 641 930 82 / 641 916 78
e-mail: cnpvp@agri.gov.cn

Department of Science and Technology
Office for the Protection of New Varieties of Forest Plants
State Forestry Administration
No. 18 Hepingli East Street
Beijing 100714

Tel. (86-10) 642 14 714
Fax (86-10) 642 13 084 / 642 14 904
e-mail: lybxpz@ihw.com.cn, lybxpz@public.east.cn.net
website: <http://www.forestry.gov.cn>

COLOMBIA

Instituto Colombiano Agropecuario (ICA)
División de Semillas – Oficina 410
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Santa Fe de Bogotá

Tel. (57-1) 232 4697, 232 8643
Fax (57-1) 232 4695, 288 4037
e-mail: obtentores.semillas@ica.gov.co
website: <http://www.ica.gov.co>

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Institute for Seed and Seedlings
Vinkovacka cesta 63c
31000 Osijek

Tel. (385-31) 275 206
Fax (385-31) 275 193
e-mail: r.ore@zsr.hr
website: <http://www.zsr.hr/main.htm>

CZECH REPUBLIC

Central Institute for Supervising and Testing in Agriculture
Department of Plant Variety Rights
Za Opravnou 4
150 06 Praha 5 – Motol

Tel. (420-2) 572 11755
Fax (420-2) 572 11752
e-mail: motol@ooz.zeus.cz
website: <http://www.ukzuz.cz/en/index.php>

DENMARK

Minsitry of Food, Agriculture and Fisheries
Danish Institute of Agricultural Sciences
Department of Variety Testing
Teglværksvej 10
Tystofte
DK-4230 Skælskør

Tel. (45) 5816 06 00
Fax (45) 5816 06 06
e-mail: afs.djf@agrsci.dk
website: <http://eng.agrsci.dk>

ECUADOR

Instituto Ecuatoriano de la Propiedad Intelectual
Dirección Nacional de Obtenciones Vegetales
Avenida República 396 y Diego de Almagro
Edificio FORUM 300, 1^{er} piso
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Tel. (593-2) 2508 000, ext. 340
Fax (593-2) 2508 026
e-mail: iepi@interactive.net.ec

ESTONIA

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Variety Control Department
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71020 Viljandi

Tel./Fax (+372) 433 4650
e-mail: pille.ardel@plant.agri.ee
website: <http://www.plant.agri.ee>

EUROPEAN COMMUNITY

Postal address:
Community Plant Variety Office
P.O. Box 2141
49021 Angers Cedex 02
France

Visitors' address:
3, boulevard Foch
49004 Angers
France

Tel. (33-2) 41 25 64 32
Fax (33-2) 41 25 64 10
website: www.cpvo.eu.int

FINLAND

Plant Variety Board
Plant Variety Rights Office
Ministry of Agriculture and Forestry
Hallituskatu 3a, Helsinki
Box 30
FIN-00023 GOVERNMENT

Tel. (358-9) 160 3316
Fax (358-9) 88663
e-mail: arto.vuori@mmm.fi
website: <http://www.mmm.fi>

FRANCE

Comité de la protection des obtentions végétales
11, rue Jean Nicot
F-75007 Paris

Tel. (33-1) 42 75 93 14
Telex 250 648
Fax (33-1) 42 75 94 25
website: <http://geves.zarcrom.fr>

GERMANY

Postanschrift:
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Hausanschrift:
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Tel. (49-511) 9566-5
Fax (49-511) 563362
e-mail: bsa@bundessortenamt.de
website: <http://www.bundessortenamt.de>

HUNGARY

Hungarian Patent Office
Magyar Szabadalmi Hivatal
Garibaldi-u.2 - B.P. 552
H-1370 Budapest

Tel. (36-1) 312 44 00, 331 3992
Fax (36-1) 311 48 41, 331 25 96
e-mail: mszh@hungary.com
website: <http://www.hpo.hu>

IRELAND

Controller of Plant Breeders' Rights
Department of Agriculture and Food
Backweston
Leixlip
Co. Kildare

Tel. (353) 1-628 0608
Fax (353) 1-628 0634
e-mail: backwest@agriculture.gov.ie
website: <http://www.gov.ie/daff>

ISRAEL

The Plant Breeders' Rights Council
The Volcani Center
P.O. Box 6
Bet-Dagan 50250

Tel. (972-3) 948 5450
Fax (972-3)-948 5839
e-mail: esthers@moag.gov.il, ilpbr-tu@int.gov.il
website: <http://www.moag.gov.il>

ITALY

Ufficio Italiano Brevetti e Marchi
Ministero delle attività produttive
19, via Molise
I-00187 Roma

Tel. (39-06) 47 05 1, 488 43 54 (Div. IV)
Fax (39-06) 47 05 30 35
e-mail: segreteria.dgspc@minindustria.it
website: <http://www.minindustria.it>

JAPAN

Seeds and Seedlings Division
Agricultural Production Bureau
Ministry of Agriculture, Forestry and Fisheries
1-2-1 Kasumigaseki - Chiyoda-ku
Tokyo 100

Tel. (81-3) 35 91 05 24
Fax (81-3) 35 02 65 72
website: <http://www.hinsyu.maff.go.jp/english/index.htm>

JORDAN

The Registrar
New Plant Variety Protection Office
Ministry of Agriculture
Q. Rania Alabdalah street
Amman

Tel. (962) 6 568 6151
Fax (962) 6 565 1786
e-mail: pvp@moa.gov.jo

KENYA

Plant Breeders' Rights Office
Kenya Plant Health Inspectorate Service (KEPHIS)
Headquarters
Waiyaki Way
P.O. Box 49592
Nairobi

Tel (254-20) 44 40 29 / 44 40 31
Fax (254-20) 44 89 40 / 44 00 87
e-mail: pvpo@kephis.org
website: <http://www.kephis.org>

KYRGYZSTAN

State Agency of Science and Intellectual Property
62 Moskovskaya Street
720021 Bishkek
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720049 Bishkek

Tel. (+996-3312) 51 08 10 / 68 08 19
Fax (+996-3312) 51 08 13 / 68 17 03
e-mail: kyrgyzpatent@infotel.kg
website: <http://www.kyrgyzpatent.kg>

LATVIA

Plant Variety Testing Department
State Plant Protection Service
Lubanas iela, 49
1073 Riga

Tel. (+371) 7365567
Fax (+371) 7365571
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website: <http://www.vaad.gov.lv>

LITHUANIA

Lithuanian State Plant Varieties Testing Centre
Smelio st. 8
LT-2055 Vilnius

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e-mail: sigitaavtc@takas.lt
website: <http://www.avtc.lt>

MEXICO

Servicio Nacional de Inspección y
Certificación de Semillas (SNICS)
Secretaría de Agricultura, Ganadería y
Desarrollo Rural
Av. Presidente Juárez No. 13
Col. El Cortijo
54000 Tlalnepantla, Estado de México

Tel. (52-5) 5384 2213
Fax (52-5) 5390 1441
website: <http://www.sagar.gob.mx>

NETHERLANDS

Postal address:
Raad voor het Kwekersrecht
(Board for Plant Breeders' Rights)
Postbus 27
NL-6710 BA Ede

Visitors' address:
Bennekomseweg, 41
NL-6717 LL Ede

Tel. (31-318) 82 25 80
Fax (31-318) 82 25 89
e-mail: raad.kwekersrecht@rkr.agro.nl
website: <http://www.kwekersrecht.nl>

NEW ZEALAND

Commissioner of Plant Variety Rights
Plant Variety Rights Office
Private Bag 4714
Christchurch

Tel. (64-3) 926 6206
Fax. (64 3) 962 6202
e-mail: nancy.moroney@pvr.govt.nz
Website: <http://www.pvr.govt.nz>

NICARAGUA

Registro de la Propiedad Industrial e Intelectual
Ministerio de Economía y Desarrollo (MEDE)
Apartado postal 8
Managua

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Fax (505) 267 5393
e-mail: rpi-nic@ibw.com.ni

NORWAY

Plantesortsnemnda
(The Plant Variety Board)
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N-1431 Ås

Tel. (47) 64 94 44 00
Fax (47) 64 94 44 10
Website: <http://odin.dep.no/ld>

PANAMA

Dirección General del Registro
de la Propiedad Industrial (DIGERPI)
Ministerio de Comercio e Industrias
Apartado 9658 – Zona 4
Panamá 4

Tel (507) 227 39 87 / 227 25 35
Fax (507) 227 21 39 / 275 604
e-mail: digerpi@sinfo.net
website: www.digerpi.gob.pa

PARAGUAY

Ministerio de Agricultura y Ganadería
Dirección de Semillas (DISE)
Gaspar R. de Francia No. 685
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San Lorenzo

Tel. (595) 21 58 22 01
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POLAND

Research Center for Cultivar Testing
(COBORU)
63-022 Slupia Wielka

Tel. (48-61) 285 23 41
Fax (48-61) 285 35 58
e-mail: coboru@bptnet.pl
website: <http://www.coboru.pl>

PORTUGAL

Centro Nacional de Registo de Variedades
Protegidas (CENARVE)
Edifício II da DGPC
Tapada da Ajuda
P-1300 Lisboa

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LEGISLATION

ALBANIA

LAW No. 8880* OF APRIL 15, 2002,
ON PLANT BREEDER'S RIGHT

Based on Articles 78, 81, point 1 and Article 83, point 1 of the Constitution, upon the proposal of the Council of Ministers,

THE PEOPLE'S ASSEMBLY
OF
THE REPUBLIC OF ALBANIA

D E C I D E D:

CHAPTER 1

GENERAL PROVISIONS

Article 1

The goal

The purpose of this Law is to protect the rights of the persons who breed, discover and develop new varieties of plants.

Article 2

Subjects for Law application

The provisions of this Law are applicable to legal and physical persons, Albanian citizens or foreigners, and legal and physical persons who are citizens of:

- a) contracting parties or states that are parties in international treaties and conventions for the protection of plant varieties, where the Republic of Albania adhere to;
- b) states that adopt the principles of reciprocity.

Article 3

Definitions

For the purpose of this Law:

1. "Breeder" means a physical or legal person, or any employee who has bred, discovered and developed a new plant variety.

2. "Breeder's right" means the rights provided by this Law to the breeder who has bred, discovered and developed a new variety, as well as the rights of a successor in title.

3. "Variety" means a plant grouping within a botanical taxon of the lowest known rank, which is given when it satisfies the requirements for granting breeder's right, and might be:

- a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- b) distinguished from any other plant grouping by the expression of at least one of the said characteristics;
- c) considered as a unit with regard to its suitability for being propagated unchanged.

4. "NSI" is the National Seed and Seedlings Institute in the Ministry of Agriculture and Food.

5. "SCVA" is the State Commission for Variety Attestation that operates within the NSI, and examines and qualifies or not new varieties, which are recorded in the register for the breeder's right.

6. "Board of appeal" is the body that has the task to examine the applicant claims for the decisions of the SCVA on the breeder's right.

7. "Patent" means the legal document that certifies the breeder's right and the denomination of the variety.

8. "Contracting party" means a state (other than the Republic of Albania) or any intergovernmental organization, which is a party to the International Convention for the Protection of New Varieties of Plants.

9. "possessor or owner" means the person who has been granted the breeder's right, in compliance with the provisions of this Law.

10. "Applicant" is the person who has filed an application to the responsible agency for granting the breeder's right.

11. "Successor in title" means the inheritor of the breeder's right.

* Adopted on April 15, 2002. Translation provided by the Government of Albania.

12. “Obligatory license” means the license issued on the basis of this Law.

13. “UPOV” is the International Union for the Protection of the New Varieties of Plants.

14. “Mutant” means a new plant propagated from the initial known variety as the result of essential transformations occurred naturally or by genetic engineering.

15. “Soma clonal” are clones propagated from the development of somatic or vegetative cells.

16. “Application Register” is the register kept by the NSI for all the people that apply for the grant of the plant breeder’s right. The applications of this register are published periodically.

17. “Register for the breeder’s right” is the register where all the physical and legal persons that have been awarded the breeder’s right are recorded. This register is kept by the NSI, too. The records of this register are published periodically.

18. “Contracting authorization” means any contract through which one party (the authority) awards the other party (authorized) its approval to adopt in the Republic of Albania one of the acts referred to in Article 20 for a variety of plants, subject of an application for granting breeder’s right.

19. “Material” means:

- a) propagating material of any variety (seed, sapling, piece, bulb, rhizome and slip);
- b) harvested material including entire plants or parts of plants.

CHAPTER II

CONDITIONS FOR GRANTING THE BREEDER’S RIGHT

Article 4

Granting conditions

1. The breeder’s right shall be granted where the variety is new, distinct, uniform, stable and subject to denomination designated in accordance with Articles 25 and 26 of this Law.

2. The grant of the breeder’s right shall not be subject to any other or different conditions than the conditions stipulated in this Law.

Article 5

A new variety

1. A variety shall be deemed to be new if at the date of filing the application for the breeder’s right, the propagating or the harvested material of the variety has not been sold, offered for sale or otherwise disposed of to others, by or with

the consent of the breeder or by the successor in title, for purposes of exploitation of the variety:

- a) for more than one year in the territory of the Republic of Albania;
- b) for more than four years in a territory other than Albania, and in case of vines and fruit trees more than six years.

2. Novelty shall not be lost due to any sale or disposal to others:

- a) when it is part of an agreement for the disposal of variety rights;
- b) when it is part of an agreement according to which one person propagates the material for the multiplication of the said variety on behalf of the breeder or the successor in title, making sure that the ownership of the propagated material will be returned to the breeder or his successor in title and the propagated material is not used for creating a another variety;
- c) when it includes the harvested material as a sub product or additional products of the variety or activities referred to in paragraph 2.b) of this Article, ensuring that the above mentioned material is for consumption purposes.

Article 6

The distinct variety

1. A variety shall be deemed to be distinct if it is clearly distinguished from any other variety, whose existence is a matter of common knowledge at the time of the filing of the application.

2. Other indicators that are used to mark the distinction of a variety are:

- a) the variety shall be in use;
- b) the variety shall be entered in the register of the new varieties, which is kept by the NSI or in the registers of other member countries of UPOV.

Article 7

The uniform variety

A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant features and characteristics.

Article 8

The stable variety

A variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or/and in case of a particular cycle of propagation.

CHAPTER III

APPLICATION FOR THE GRANT OF THE
BREEDER'S RIGHT

Article 9

Basic principles

1. The right for filing an application for granting the breeder's right is awarded to the breeder or his/her successor in title. The application of the successor in title is supported by documentations certifying his/her status.
2. When one or more persons have bred, discovered and developed together a new variety, the breeder's right title will be granted in joint ownership, if they have no written agreement stipulating the opposite.
3. When the variety is bred, discovered or developed according to a commission contract or contract of employment outside the Republic of Albania, the right to file the application for the breeder's right is determined in the commission contract or contract of employment, in which context the new variety was bred, discovered and developed, in compliance with the contract between the parties.
4. When the new variety is bred, discovered or developed according to a commission contract or contract of employment, within the territory of the Republic of Albania, the right to file the application for the breeder's right will belong to the person who has commissioned the activity or the employer, in case that there are no other contracting stipulations.

Article 10

The application form

1. Any person that wishes to get the breeder's right and protect a variety he has to file his application at the NSI against payment.
2. The application form, the supporting documents and the application fee will be determined by the rules and regulations of the Ministry of Agriculture and Food.
3. The physical and legal foreign persons can file the applications for the breeder's right in compliance with this Law and might protect their rights through their domestic or foreign representatives, Albanian residents, when have provided a Power of Attorney.

Article 11

Right of Priority

1. The breeder enjoys the right of priority for a variety in case where there is an initial application for the same variety, filed by him/her or by his/her successor in title, with the Contracting Party.

2. When an application filed in the NSI is preceded by other such applications, the priority will fall only on the initial application. The right of priority will be duly required in the application filed to the NSI. It can be required only within a period of 12 months from the date of the filing of the first application.

3. The breeder will submit to the NSI a copy of the first application within 3 months from the date of the filing, in compliance with Article 12, point 3. The NSI has the right to examine the first application within 3 months from the date of receiving the request.

4. The effects of priority will be such that when the conditions for the protection of the variety are applied, the date of filing of the first application is taken into account. The breeder has the right to ask the postpone of the application examination up to two years from the date of the expiration of priority, and 3 years from the date of the filing of the first application. When the first application is rejected or withdrawn the NSI has the right to start the examination of the variety before the date determined by the applicant. In such a case, within an appropriate period, the breeder is allowed to furnish data, documentations or materials required for the examination of the variety.

CHAPTER IV

EXAMINATION OF THE APPLICATION

Article 12

Formal requirements for examination

1. The NSI will examine the application if it meets the formal requirements.
2. When the application is not complete, then the NSI will ask the breeder to complete and amend it within 30 days from the date of receiving the request. Any application which is not amended within this period, it is assumed as if it was not submitted at all.
3. Each application that is complete and proper, in compliance with the requirements of Article 10 to this Law, it will be entered in the register of applications.

Article 13

Preliminary examination of the application

1. The NSI shall examine the application based on the records in order to verify if the variety is new and if the breeder shall be granted the right of the application, in compliance with Article 9 to this Law.
2. When the application does not meet the requirements of Articles 4 and 9 to this Law, it is rejected.

Article 14

Technical examination of the variety

1. The variety shall be subject to the technical examination in order to determine if the variety is distinct, uniform and stable and based on these, the formal description of the variety is made supported by the agro botanic evaluation.
2. The technical examination is carried out by the SCVA aiming these subjects:
 - a) the results of the field tests and other necessary tests carried out by the NSI;
 - b) the results of the cultivating tests and other necessary tests carried out by the NSI or by another institution in Albania or from abroad;
 - c) payment of fees determined by the rules and regulations of the Ministry of Agriculture and Food for the implementation of this Law.
3. The procedures of examination are determined by the rules and regulations of the Ministry of Agriculture and Food.

Article 15

The grant of the breeder's right or its rejection

1. While as a result of preliminary and technical examinations it is estimated that the variety satisfies the requirements of Article 4 to this Law and the breeder fulfills the other requirements defined by the provisions of this Law, the SCVA shall grant the breeder's right and shall issue the patent of the variety, which are announced by an order of the Minister of Agriculture and Food within 30 days from the date of granting this right.
2. The grant of the breeder's right and the description of the variety or the rejection of the application are respectively entered into the register of applications and the register for the breeder's right.
3. The model for the patent, for the register of the breeder's right, as well as their content and the required fees shall be determined by the rules and regulations of the Ministry of Agriculture and Food.

Article 16

The right to claim

1. Every decision taken by the SCVA is made known to the applying party within 5 days.
2. The applying party shall be allowed to submit its own comments, orally or in writing, within 30 days from the date of receiving the notification.
3. The decision of the SCVA is claimed to the board of appeal. The establishment, operation and composition of the

board of appeal are determined by an order of the Minister of Agriculture and Food.

4. The decision of the board of appeal can be brought to the law-court.

Article 17

Review of claims

1. The rejection of the breeder's right is announced to the applicant within 5 days from the date of making the decision. Within a period of three months, the applicant shall express his comments related to the rejection of the breeder's right, stating whether he is aiming to withdraw the application or continue with it. The period may be prolonged upon applicant's request.
2. When the applicant does not reply within the determined period, the application is considered withdrawn. When the applicant wants to continue with the application, his answer is made known to the SCVA within 30 days.
3. The breeder who is claiming for the rejection of the breeder's right by the SCVA, during the technical examination is asked to furnish additional data and documents or plant material, in support of his claim, if they are necessary for the technical examination.

Article 18

Preservation of files

1. The NSI maintains a register for applications and another register for the breeder's right, i.e. the applicants that have been granted this right. The registers are open to the public.
2. Each person has the right to get familiar with:
 - a) documents related to applications;
 - b) documents related to the breeder's right;
 - c) records on the testing trials and other tests carried out according to Article 14.
3. In case of varieties whose production require repeated use of other varieties (parent components), the breeder proposes the documents and tests related to the components to be confidential from inspection.
4. The NSI archive the original documents or its copies in compliance with legislation in force.

Article 19

Publications

1. The requirements for application, in compliance with Article 10 to this Law, shall be published in the bulletin of the NSI.

2. The NSI will publish periodically in its bulletin the information related to the protection of varieties of plants, namely:

- a) application for the grant of the breeder's right;
- b) applications for the denomination of the variety;
- c) registration of the new denomination for the protected varieties;
- d) withdrawal of applications for granting the breeder's right;
- e) rejection of the request for the application of the breeder's right;
- f) the granting of the breeder's right;
- g) changes to the information about the applicants, successors in title and their representatives, provided with Power of Attorney;
- h) expiration of the duration of the breeder's right;
- i) licenses;
- j) formal information.

CHAPTER V

THE RIGHTS OF THE BREEDER

Article 20

Scope of the breeder's right

1. The right of the breeder in the respect of the propagating material of the protected variety shall extend to the following acts:

- a) production or reproduction (multiplication);
- b) conditioning for the purpose of propagation;
- c) offering for sale;
- d) selling or other marketing;
- e) exporting;
- f) importing;
- g) stocking or storing for any of the purposes mentioned above.

2. Subject to Articles 21 and 22 to this Law are the acts referred to from item a) to item g), point 1 of this Article in respect of harvested material, which includes parts of plants obtained through the unauthorized use of propagating material of the protected variety, shall require the authorization of the breeder.

3. The breeder can authorize the use of the protected variety for the purposes stipulated in points 1 and 2 in this Article, which are subject to conditions and limitations.

Article 21

Exceptions to the breeder's right

The breeder's right shall not extend to:

- a) acts done for non-commercial purposes;
- b) acts done for experimental purposes;
- c) acts of farmers, who for their needs, use seeds produced in their own holdings.

Article 22

Exhaustion of the breeder's right

The breeder's right shall not extend to acts concerning the material of the protected variety or obtained from it, which have been sold by the breeder or with his content, in the territory of the Republic of Albania in cases:

- a) when there is no further propagation of the variety in question;
- b) when there is no export of the propagating material of the variety.

Article 23

Duration of the breeder's right

The breeder's right for crops shall be granted for 20 years, for fruit-trees, shrubs and decorating plants shall be 25 years. The rights of the breeder and of the owner of the variety start at the date of application.

Article 24

Obligatory license

1. Each person, may, through an application, require from the NSI the issue of an obligatory license for the breeder's right, which can be delivered only when this right shall effect the protection of public interest.

2. The obligatory license is granted when the applicant is capable to make use of the breeder's right in a conscious and fruitful manner.

3. The procedures and conditions for issuing the obligatory license are determined by the rules and regulations of the Ministry of Agriculture and Food.

CHAPTER VI

VARIETY DENOMINATION

Article 25

Denomination

1. The denomination of a protected variety shall be designated by its main generic characteristics.
2. The denomination may consist of a word, a word combination, a combination of words with figures or a combination of letters with figures, that shall enable the variety to be identified.
3. When in a contract between parties, a denomination is proposed or registered to be used for a variety, then this denomination shall be the only used in the territory of the Republic of Albania.
4. It is not allowed the use of the same or closely related denomination that will cause confusion between this variety and another variety of the same kind or of a closely related type in the territory of the Republic of Albania, as long as this variety shall be used. The above restriction is applied for denominations designated in the contract between the parties.
5. Any person who offers for sale, sells or markets the propagating material of a protected variety, shall be obliged to use the denomination of that variety.
6. The obligation to use the denomination does not expire with the right of the breeder, as long as it is in production or in the marketing.
7. When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indications with a registered variety denomination, provided that the denomination shall be easily recognized.

Article 26

Registration procedures

1. The denomination proposed for a variety is submitted along with the application for protection. The breeder follows the procedures for the registration of the variety denomination after paying the determined fee and submits a temporary denomination for it in the application. In this case, the breeder proposes the new denomination for the variety within 30 days from the date of receiving the proposal forwarded to the NSI. If the breeder does not file a proposal within the determined period, the application is rejected.
2. If the criteria stipulated under Article 25 of this Law are fulfilled, then the denomination of the variety shall be published in the bulletin of the NSI.
3. Each interested person might make comments within 3 months after the publication for the registration of the denomination, for one of the reasons for the rejection of the breeder's right, in compliance with Article 25 of this Law.

4. The objections and remarks are sent to the breeder in writing, within 30 days.

5. Based on the objections and remarks, the applicant may file a new proposal. When the proposed denomination does not comply with the provisions under Article 25 to this Law, the NSI asks the applicant to submit a new proposal within 30 days from the date of receiving the written notification. The fail to submit a new proposal within this period will be associated with the rejection of the application.

6. The new proposal is subject to re-examination. When the new proposal does not comply with the provisions under this article, the NSI informs the applicant for another denomination that will be in compliance with the above-mentioned stipulations. The failure to make a new proposal is associated with the rejection of the application.

7. If no objections or remarks are taken into account, a statement, clarifying the reasons for this decision, will associate each decision of the SCVA. The decision is made known to the parties. The rejection of a proposed denomination is also associated with a decision.

8. The denomination is registered on the same date with the grant of the breeder's right.

CHAPTER VII

THE MAINTENANCE OF THE BREEDER'S RIGHT

Article 27

Annual payment

The holder of the title of the variety, until 31 January of each year, shall make an annual payment to the NSI for the entire duration of the breeder's right. The amount of the payment is determined by a decision of the Council of Ministers.

Article 28

Maintenance of the variety

1. The holder of the title must maintain the protected variety or its parent components for the entire duration of the breeder's right.
2. Upon the request of the NSI, the holder of the title or any authority selected by him, within the prescribed period, shall supply information associated with documents or materials that are thought to be necessary for verifying the maintenance of the variety.
3. The conditions for the maintenance of the variety are determined by the rules and regulations of the Ministry of Agriculture and Food.

Article 29

Verification of the variety maintenance

During the protection period, the NSI shall verify whether the variety and its parent components are properly maintained.

CHAPTER VIII

NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

Article 30

Nullity

1. The SCVA shall declare the breeder's right granted by it null and void when examinations have proved the variety is not new, uniform, distinct, stable, and when the breeder's right has been granted to a person who is not entitled to it.
2. When the breeder's right has been declared null and void because it does not comply with the provisions of this Law, it is presumed to be ungranted.
3. Each person can submit to the SCVA the request for the nullification of the breeder's right. The SCVA has the authority to act on its own initiative.

Article 31

Cancellation of the breeder's right

1. The SCVA may cancel the breeder's right granted by it when the breeder has failed to maintain the variety and the variety cease to be uniform and stable.
2. The breeder's right is cancelled when:
 - a) the breeder does not meet the requirements made by the NSI for verifying the maintenance of the variety.
 - b) the SCVA proposes the cancellation of the denomination of the variety when the breeder does not propose another suitable denomination within the determined period.
3. The breeder is informed in writing about the reasons of the SCVA for the cancellation of the breeder's right, leaving him a period of 30 days to act immediately in compliance with the decision.
4. The cancellation of the breeder's right comes into effect on the date of its entry in the register for the plant breeder's right.

CHAPTER IX

JOINT OWNERSHIP

Article 32

Every contract between the parties for joint application for the breeder's right is made in writing and is signed by the parties. The contract provides penalties in case of its violation and turning the application invalid.

Article 33

1. In case when some applicants are requesting the breeder's right, each one shall be allowed, without being in agreement with the others, to determine or dispose by inheritance his own part of the application. The joint applicant may also withdraw the application or conclude a contract with third parties only according to the joint application.
2. When there are joint owners for a breeder's right, each of them has the right, without agreement with the others, to determine or dispose by inheritance his own portion of breeder's right or to start legal procedures to examine the violation of breeder's right against any person that will use the protected variety in the Republic of Albania. In the Republic of Albania, the use of the protected variety by one of joint owners does not require the agreement of other owners, however, the joint-owners have the right to withdraw from Plant Breeder's Right or conclude contracts with third parties according to the joint right of plant breeder.
3. The stipulations of this article are applicable only then where there is no agreement for challenges between applicants or between joint owners.

CHAPTER X

CONTRACT AWARD AND RIGHTS

Article 34

1. Contract award is made in writing and signed by both parties.
2. The signed contract award is entered into the Register for breeder's right after payment of the certain license fee. The licensee has the right to start a legal procedure for contract award only if it has been recorded in the Register for Breeder's Right.

Article 35

1. While a separate Article for challenging contract award is missing, the awarder may allow a third party to carry out for the protected variety any actions specified in Article 20 in this Law.

EUROPEAN COMMUNITY
COUNCIL REGULATION (EC) NO 2100/94*
OF 27 JULY 1994
ON COMMUNITY PLANT VARIETY RIGHTS**

COUNCIL REGULATION (EC) No 2100/94 of 27 July 1994
 on Community plant variety rights

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
 Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social
 Committee (3),

Whereas plant varieties pose specific problems as regards the
 industrial property régime which may be applicable;

Whereas industrial property regimes for plant varieties have
 not been harmonized at Community level and therefore
 continue to be regulated by the legislation of the Member
 States, the content of which is not uniform;

Whereas in such circumstances it is appropriate to create a
 Community regime which, although co-existing with national
 regimes, allows for the grant of industrial property rights valid
 throughout the Community;

Whereas it is appropriate that the implementation and
 application of this Community regime should not be carried
 out by the authorities of the Member States but by a
 Community Office with legal personality, the 'Community
 Plant Variety Office';

Whereas the system must also have regard to developments in
 plant breeding techniques including biotechnology; whereas
 in order to stimulate the breeding and development of new
 varieties, there should be improved protection compared with
 the present situation for all plant breeders without, however,
 unjustifiably impairing access to protection generally or in
 the case of certain breeding techniques;

Whereas varieties of all botanical genera and species should
 be protectable;

Whereas protectable varieties must comply with internationally
 recognized requirements, i.e. distinctness, uniformity, stability
 and novelty, and also be designated by a prescribed variety
 denomination;

Whereas it is important to provide for a definition of a plant
 variety, in order to ensure the proper functioning of the system;
 Whereas this definition is not intended to alter definitions which
 may have been established in the field of intellectual property
 rights, especially the patent field, nor to interfere with or
 exclude from application laws governing the protectability of
 products, including plants and plant material, or processes
 under such other industrial property rights;

Whereas it is however highly desirable to have a common
 definition in both fields; whereas therefore appropriate efforts
 at international level should be supported to reach such a
 common definition;

Whereas for the grant of Community plant variety rights an
 assessment of important characteristics relating to the variety
 is necessary; whereas, however, these characteristics need not
 necessarily relate to their economic importance;

Whereas the system must also clarify to whom the right to
 Community plant variety protection pertains; whereas in some
 cases it would be to several persons in common, not just to
 one; whereas the formal entitlement to make applications must
 be regulated;

Whereas the system must also define the term 'holder' used in
 this Regulation; whereas that term 'holder' without further
 specification is used in this Regulation including in its Article
 29 (5), it is intended to be within the meaning of Article 13 (1)
 thereof;

Whereas, since the effect of a Community plant variety right
 should be uniform throughout the Community, commercial
 transactions subject to the holder's agreement must be precisely
 delimited; whereas the scope of protection should be extended,
 compared with most national systems, to certain material of
 the variety to take account of trade via countries outside the
 Community without protection; whereas, however, the
 introduction of the principle of exhaustion of rights must ensure
 that the protection is not excessive;

Whereas in order to stimulate plant breeding, the system
 basically confirms the internationally accepted rule of free
 access to protected varieties for the development therefrom,
 and exploitation, of new varieties;

Whereas in certain cases where the new variety, although
 distinct, is essentially derived from the initial variety, a certain

* Official Journal of the European Communities L 227 , 01/09/1994 P. 0001 - 0030

Implemented by **395R1238** (OJ L 121 01.06.95 p.31)

Implemented by **395R1239** (OJ L 121 01.06.95 p.37)

Exercise of enabling power (art. 19(2)) **396R2470** (OJ L 335 24.12.96 p.10)

** See amendments to this Regulation in pages 65 to 71 of this publication.

form of dependency from the holder of the latter one should be created;

Whereas, the exercise of Community plant variety rights must be subjected to restrictions laid down in provisions adopted in the public interest;

Whereas this includes safeguarding agricultural production; whereas that purpose requires an authorization for farmers to use the product of the harvest for propagation under certain conditions;

Whereas it must be ensured that the conditions are laid down at Community level;

Whereas compulsory licensing should also be provided for under certain circumstances in the public interest, which may include the need to supply the market with material offering specified features, or to maintain the incentive for continued breeding of improved varieties;

Whereas the use of prescribed variety denominations should be made obligatory;

Whereas the Community plant variety right should in principle have a life of at least 25 years and in the case of vine and tree species, at least 30 years; whereas other grounds for termination must be specified;

Whereas a Community plant variety right is an object of the holder's property and its role in relation to the non-harmonized legal provisions of the Member States, particularly of civil law, must therefore be clarified; whereas this applies also to the settlement of infringements and the enforcement of entitlement to Community plant variety rights;

Whereas, it is necessary to ensure that the full application of the principles of the Community plant variety rights system is not impaired by the effects of other systems; whereas for this purpose certain rules, in conformity with Member States' existing international commitments, are required concerning the relationship to other industrial property rights;

Whereas it is indispensable to examine whether and to what extent the conditions for the protection accorded in other industrial property systems, such as patents, should be adapted or otherwise modified for consistency with the Community plant variety rights system; whereas this, where necessary, should be laid down in balanced rules by additional Community law;

Whereas the duties and powers of the Community Plant Variety Office, including its Boards of Appeal, relating to the grant, termination or verification of Community plant variety rights and publications are as far as possible to be modelled on rules developed for other systems, as are also the Office's structure and Rules of Procedure, the collaboration with the Commission and Member States particularly through an Administrative

Council, the involvement of Examination Offices in technical examination and moreover the necessary budgetary measures; Whereas the Office should be advised and supervised by the aforementioned Administrative Council, composed of representatives of Member States and the Commission;

Whereas the Treaty does not provide, for the adoption of this Regulation, powers other than those of Article 235;

Whereas this Regulation takes into account existing international conventions such as the International Convention for the Protection of New Varieties of Plants (UPOV Convention), the Convention of the Grant of European Patents (European Patent Convention) or the Agreement on trade-related aspects of intellectual property rights, including trade in counterfeit goods; whereas it consequently implements the ban on patenting plant varieties only to the extent that the European Patent Convention so requires, i.e. to plant varieties as such;

Whereas this Regulation should be re-examined for amendment as necessary in the light of future developments in the aforementioned Conventions,

HAS ADOPTED THIS REGULATION:

PART ONE

GENERAL PROVISIONS

Article 1

Community plant variety rights

A system of Community plant variety rights is hereby established as the sole and exclusive form of Community industrial property rights for plant varieties.

Article 2

Uniform effect of Community plant variety rights

Community plant variety rights shall have uniform effect within the territory of the Community and may not be granted, transferred or terminated in respect of the abovementioned territory otherwise than on a uniform basis.

Article 3

National property rights for plant varieties

This Regulation shall be without prejudice to the right of the Member States to grant national property rights for plant varieties, subject to the provisions of Article 92 (1).

Article 4

Community Office

For the purpose of the implementation of this Regulation a Community Plant Variety Office, hereinafter referred to as 'the Office', is hereby established.

PART TWO

SUBSTANTIVE LAW

CHAPTER I

CONDITIONS GOVERNING THE GRANT OF
COMMUNITY PLANT VARIETY RIGHTS

Article 5

Object of Community plant variety rights

1. Varieties of all botanical genera and species, including, inter alia, hybrids between genera or species, may form the object of Community plant variety rights.

2. For the purpose of this Regulation, 'variety' shall be taken to mean 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 plant variety right are fully met, can be:

- defined by the expression of the characteristics that results 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.

3. A plant grouping consists of entire plants or parts of plants as far as such parts are capable of producing entire plants, both referred to hereinafter as 'variety constituents'.

4. The expression of the characteristics referred to in paragraph 2, first indent, may be either invariable or variable between variety constituents of the same kind provided that also the level of variation results from the genotype or combination of genotypes.

Article 6

Protectable varieties

Community plant variety rights shall be granted for varieties that are:

- (a) distinct;
- (b) uniform;
- (c) stable; and
- (d) new.

Moreover, the variety must be designated by a denomination in accordance with the provisions of Article 63.

Article 7

Distinctness

1. A variety shall be deemed to be distinct if it is clearly distinguishable by reference to the expression of the characteristics that results from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge on the date of application determined pursuant to Article 51.

2. The existence of another variety shall in particular be deemed to be a matter of common knowledge if on the date of application determined pursuant to Article 51:

- (a) it was the object of a plant variety right or entered in an official register of plant varieties, in the Community or any State, or in any intergovernmental organization with relevant competence;
- (b) an application for the granting of a plant variety right in its respect or for its entering in such an official register was filed, provided the application has led to the granting or entering in the meantime.

The implementing rules pursuant to Article 114 may specify further cases as examples which shall be deemed to be a matter of common knowledge.

Article 8

Uniformity

A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in the expression of those characteristics which are included in the examination for distinctness, as well as any others used for the variety description.

Article 9

Stability

A variety shall be deemed to be stable if the expression of the characteristics which are included in the examination for distinctness as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Article 10

Novelty

1. A variety shall be deemed to be new if, at the date of application determined pursuant to Article 51, variety constituents or harvested material of the variety have not been sold or otherwise disposed of to others, by or with the consent of the breeder within the meaning of Article 11, for purposes of exploitation of the variety:

- (a) earlier than one year before the above-mentioned date, within the territory of the Community;
- (b) earlier than four years or, in the case of trees or of vines, earlier than six years before the said date, outside the territory of the Community.

2. The disposal of variety constituents to an official body for statutory purposes, or to others on the basis of a contractual or other legal relationship solely for production, reproduction, multiplication, conditioning or storage, shall not be deemed to be a disposal to others within the meaning of paragraph 1, provided that the breeder preserves the exclusive right of disposal of these and other variety constituents, and no further disposal is made. However, such disposal of variety constituents shall be deemed to be a disposal in terms of paragraph 1 if these constituents are repeatedly used in the production of a hybrid variety and if there is disposal of variety constituents or harvested material of the hybrid variety.

Likewise, the disposal of variety constituents by one company or firm within the meaning of the second paragraph of Article 58 of the Treaty to another of such companies or firms shall not be deemed to be a disposal to others, if one of them belongs entirely to the other or if both belong entirely to a third such company or firm, provided no further disposal is made. This provision shall not apply in respect of cooperative societies.

3. The disposal of variety constituents or harvested material of the variety, which have been produced from plants grown for the purposes specified in Article 15 (b) and (c) and which are not used for further reproduction or multiplication, shall not be deemed to be exploitation of the variety, unless reference is made to the variety for purposes of that disposal.

Likewise, no account shall be taken of any disposal to others, if it either was due to, or in consequence of the fact that the breeder had displayed the variety at an official or officially recognized exhibition within the meaning of the Convention on International Exhibitions, or at an exhibition in a Member State which was officially recognized as equivalent by that Member State.

CHAPTER II

PERSONS ENTITLED

Article 11

Entitlement to Community plant variety rights

1. The person who bred, or discovered and developed the variety, or his successor in title, both - the person and his successor - referred to hereinafter as 'the breeder', shall be entitled to the Community plant variety right.
2. If two or more persons bred, or discovered and developed the variety jointly, entitlement shall be vested jointly in them or their respective successors in title. This provision shall also apply to two or more persons in cases where one or more of them discovered the variety and the other or the others developed it.

3. Entitlement shall also be invested jointly in the breeder and any other person or persons, if the breeder and the other person or persons have agreed joint entitlement by written declaration.

4. If the breeder is an employee, the entitlement to the Community plant variety right shall be determined in accordance with the national law applicable to the employment relationship in the context of which the variety was bred, or discovered and developed.

5. Where entitlement to a Community plant variety right is vested jointly in two or more persons pursuant to paragraphs 2 to 4, one or more of them may empower the others by written declaration to such effect to claim entitlement thereto.

Article 12

Entitlement to file an application for a Community plant variety right

1. An application for a Community plant variety right may be filed by any natural or legal person, or any body ranking as a legal person under the law applicable to that body, provided they are:

(a) nationals of one of the Member States or nationals of a member of the Union for the Protection of New Varieties of Plants within the meaning of Article 1 (xi) of the Act of 1991 of the International Convention for the Protection of New Varieties of Plants, or are domiciled or have their seat or an establishment in such a State;

(b) nationals of any other State who do not meet the requirements laid down in (a) in respect of domicile, seat or establishment, in so far as the Commission, after obtaining the opinion of the Administrative Council referred to in Article 36, has so decided. Such a decision may be made dependent on the other State affording protection for varieties of the same botanical taxon to nationals of all the Member States, which corresponds to the protection afforded pursuant to this Regulation; the Commission shall establish whether this condition is met.

2. An application may be filed jointly by two or more such persons.

CHAPTER III

EFFECTS OF COMMUNITY PLANT VARIETY RIGHTS

Article 13

Rights of the holder of a Community plant variety right and prohibited acts

1. A Community plant variety right shall have the effect that the holder or holders of the Community plant variety right, hereinafter referred to as 'the holder', shall be entitled to effect the acts set out in paragraph 2.

2. Without prejudice to the provisions of Articles 15 and 16, the following acts in respect of variety constituents, or harvested material of the protected variety, both referred to hereinafter as 'material', shall require the authorization of the holder:

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) exporting from the Community;
- (f) importing to the Community;
- (g) stocking for any of the purposes mentioned in (a) to (f).

The holder may make his authorization subject to conditions and limitations.

3. The provisions of paragraph 2 shall apply in respect of harvested material only if this was obtained through the unauthorized use of variety constituents of the protected variety, and unless the holder has had reasonable opportunity to exercise his right in relation to the said variety constituents.

4. In the implementing rules pursuant to Article 114, it may be provided that in specific cases the provisions of paragraph 2 of this Article shall also apply in respect of products obtained directly from material of the protected variety. They may apply only if such products were obtained through the unauthorized use of material of the protected variety, and unless the holder has had reasonable opportunity to exercise his right in relation to the said material. To the extent that the provisions of paragraph 2 apply to products directly obtained, they shall also be considered to be 'material'.

5. The provisions of paragraphs 1 to 4 shall also apply in relation to:

- (a) varieties which are essentially derived from the variety in respect of which the Community plant variety right has been granted, where this variety is not itself an essentially derived variety;
- (b) varieties which are not distinct in accordance with the provisions of Article 7 from the protected variety; and
- (c) varieties whose production requires the repeated use of the protected variety.

6. For the purposes of paragraph 5 (a), a variety shall be deemed to be essentially derived from another variety, referred to hereinafter as 'the initial variety' when:

- (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety;
- (b) it is distinct in accordance with the provisions of Article 7 from the initial variety; and
- (c) except for the differences which result from the act of derivation, it conforms essentially to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety.

7. The implementing rules pursuant to Article 114 may specify possible acts of derivation which come at least under the provisions of paragraph 6.

8. Without prejudice to Article 14 and 29, the exercise of the rights conferred by Community plant variety rights may not violate any provisions adopted on the grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of the environment, the protection of industrial or commercial property, or the safeguarding of competition, of trade or of agricultural production.

Article 14

Derogation from Community plant variety right

1. Notwithstanding Article 13 (2), and for the purposes of safeguarding agricultural production, farmers are authorized to use for propagating purposes in the field, on their own holding the product of the harvest which they have obtained by planting, on their own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant variety right.

2. The provisions of paragraph 1 shall only apply to agricultural plant species of:

(a) Fodder plants:

Cicer arietinum L. - Chickpea milkvetch
 Lupinus luteus L. - Yellow lupin
 Medicago sativa L. - Lucerne
 Pisum sativum L. (partim) - Field pea
 Trifolium alexandrinum L. - Berseem/Egyptian clover
 Trifolium resupinatum L. - Persian clover
 Vicia faba - Field bean
 Vicia sativa L. - Common vetch
 and, in the case of Portugal, Lolium multiflorum lam - Italian rye-grass

(b) Cereals:

Avena sativa - Oats
 Hordeum vulgare L. - Barley
 Oryza sativa L. - Rice
 Phalaris canariensis L. - Canary grass
 Secale cereale L. - Rye
 X Triticosecale Wittm. - Triticale
 Triticum aestivum L. emend. Fiori et Paol. - Wheat
 Triticum durum Desf. - Durum wheat
 Triticum spelta L. - Spelt wheat

(c) Potatoes:

Solanum tuberosum - Potatoes

(d) Oil and fibre plants:

Brassica napus L. (partim) - Swede rape
 Brassica rapa L. (partim) - Turnip rape
 Linum usitatissimum - linseed with the exclusion of flax.

3. Conditions to give effect to the derogation provided for in paragraph 1 and to safeguard the legitimate interests of the breeder and of the farmer, shall be established, before the entry into force of this Regulation, in implementing rules pursuant to Article 114, on the basis of the following criteria:

- there shall be no quantitative restriction of the level of the farmer's holding to the extent necessary for the requirements of the holding,
- the product of the harvest may be processed for planting, either by the farmer himself or through services supplied to him, without prejudice to certain restrictions which Member States may establish regarding the organization of the processing of the said product of the harvest, in particular in order to ensure identity of the product entered for processing with that resulting from processing,
- small farmers shall not be required to pay any remuneration to the holder; small farmers shall be considered to be:
- in the case of those of the plant species referred to in paragraph 2 of this Article to which Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (4) applies, farmers who do not grow plants on an area bigger than the area which would be needed to produce 92 tonnes of cereals; for the calculation of the area, Article 8 (2) of the aforesaid Regulation shall apply,
- in the case of other plant species referred to in paragraph 2 of this Article, farmers who meet comparable appropriate criteria,
- other farmers shall be required to pay an equitable remuneration to the holder, which shall be sensibly lower than the amount charged for the licensed production of propagating material of the same variety in the same area; the actual level of this equitable remuneration may be subject to variation over time, taking into account the extent to which use will be made of the derogation provided for in paragraph 1 in respect of the variety concerned,
- monitoring compliance with the provisions of this Article or the provisions adopted pursuant to this Article shall be a matter of exclusive responsibility of holders; in organizing that monitoring, they may not provide for assistance from official bodies,
- relevant information shall be provided to the holders on their request, by farmers and by suppliers of processing services; relevant information may equally be provided by official bodies involved in the monitoring of agricultural production, if such information has been obtained through ordinary performance of their tasks, without additional burden or costs. These provisions are without prejudice, in respect of personal data, to Community and national legislation on the protection of individuals with regard to the processing and free movement of personal data.

Article 15

Limitation of the effects of Community plant variety rights

The Community plant variety rights shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes;
- (c) acts done for the purpose of breeding, or discovering and developing other varieties;
- (d) acts referred to in Article 13 (2) to (4), in respect of such other varieties, except where the provisions of Article 13 (5) apply, or where the other variety or the material of this variety comes under the protection of a property right which does not contain a comparable provision; and
- (e) acts whose prohibition would violate the provisions laid down in Articles 13 (8), 14 or 29.

Article 16

Exhaustion of Community plant variety rights

The Community plant variety right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 13 (5), which has been disposed of to others by the holder or with his consent, in any part of the Community, or any material derived from the said material, unless such acts:

- (a) involve further propagation of the variety in question, except where such propagation was intended when the material was disposed of; or
- (b) involve an export of variety constituents into a third country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported materials is for final consumption purposes.

Article 17

Use of variety denominations

1. Any person who, within the territory of the Community, offers or disposes of to others for commercial purposes variety constituents of a protected variety, or a variety covered by the provisions of Article 13 (5), must use the variety denomination designated pursuant to Article 63; where it is used in writing, the variety denomination shall be readily distinguishable and clearly legible. If a trade mark, trade name or similar indication is associated with the designated denomination, this denomination must be easily recognizable as such.
2. Any person effecting such acts in respect of any other material of the variety, must inform of that denomination in accordance with other provisions in law or if a request is made by an authority, by the purchaser or by any other person having a legitimate interest.

3. Paragraphs 1 and 2 shall apply even after the termination of the Community plant variety right.

Article 18

Limitation of the use of variety denominations

1. The holder may not use any right granted in respect of a designation that is identical with the variety denomination to hamper the free use of that denomination in connection with the variety, even after the termination of the Community plant variety right.

2. A third party may use a right granted in respect of a designation that is identical with the variety denomination to hamper the free use of that denomination only if that right was granted before the variety denomination was designated pursuant to Article 63.

3. Where a variety is protected by a Community plant variety right or, in a Member State or in a Member of the International Union for the Protection of New Varieties of Plants by a national property right, neither its designated denomination or any designation which might be confused with it can be used, within the territory of the Community, in connection with another variety of the same botanical species or a species regarded as related pursuant to the publication made in accordance with Article 63 (5), or for material of such variety.

CHAPTER IV

DURATION AND TERMINATION OF COMMUNITY PLANT VARIETY RIGHTS

Article 19

Duration of Community plant variety rights

1. The term of the Community plant variety right shall run until the end of the 25th calendar year or, in the case of varieties of vine and tree species, until the end of the 30th calendar year, following the year of grant.

2. The Council, acting by qualified majority on proposal from the Commission, may, in respect of specific genera or species, provide for an extension of these terms up to a further five years.

3. A Community plant variety right shall lapse before the expiry of the terms laid down in paragraph 1 or pursuant to paragraph 2, if the holder surrenders it by sending a written declaration to such effect to the Office, and with effect from the day following the day on which the declaration is received by the Office.

Article 20

Nullity of Community plant variety rights

1. The Office shall declare the Community plant variety right null and void if it is established:

- (a) that the conditions laid down in Articles 7 or 10 were not complied with at the time of the Community plant variety right; or
- (b) that where the grant of the Community plant variety right has been essentially based upon information and documents furnished by the applicant, the conditions laid down in Articles 8 and 9 were not complied with at the time of the grant of the right; or
- (c) that the right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

2. Where the Community plant variety right is declared null and void, it shall be deemed not to have had, as from the outset, the effects specified in this Regulation.

Article 21

Cancellation of Community plant variety rights

1. The Office shall cancel the Community plant variety right with effect in futurum if it is established that the conditions laid down in Article 8 or 9 are no longer complied with. If it is established that these conditions were already no longer complied with from a point in time prior to cancellation, cancellation may be made effective as from that juncture.

2. The Office may cancel a Community plant variety right with effect in futurum if the holder, after being requested to do so, and within a time limit specified by the Office:

- (a) has not fulfilled an obligation pursuant to Article 64 (3); or
- (b) in the case referred to in Article 66, does not propose another suitable variety denomination; or
- (c) fails to pay such fees as may be payable to keep the Community plant variety right in force; or
- (d) either as the initial holder or as a successor in title as a result of a transfer pursuant to Article 23, no longer satisfies the conditions laid down in Articles 12 and 82.

CHAPTER V

COMMUNITY PLANT VARIETY RIGHTS AS OBJECTS OF PROPERTY

Article 22

Assimilation with national laws

1. Save where otherwise provided in Articles 23 to 29, a Community plant variety right as an object of property shall be regarded in all respects, and for the entire territory of the Community, as a corresponding property right in the Member State in which:

- (a) according to the entry in the Register of Community Plant Variety Rights, the holder was domiciled or had his seat or an establishment on the relevant date; or

(b) if the conditions laid down in subparagraph (a) are not fulfilled, the first-mentioned procedural representative of the holder, as indicated in the said Register, was domiciled or had his seat or an establishment on the date of registration.

2. Where the conditions laid down in paragraph 1 are not fulfilled, the Member State referred to in paragraph 1 shall be the Member State in which the seat of the Office is located.

3. Where domiciles, seats or establishments in two or more Member States are entered in respect of the holder or the procedural representatives in the Register referred to in paragraph 1, the first-mentioned domicile or seat shall apply for the purposes of paragraph 1.

4. Where two or more persons are entered in the Register referred to in paragraph 1 as joint holders, the relevant holder for the purposes of applying paragraph 1 (a) shall be the first joint holder taken in order of entry in the Register who fulfils the conditions. Where none of the joint holders fulfils the conditions laid down in paragraph 1 (a), paragraph 2 shall be applicable.

Article 23

Transfer

1. A Community plant variety right may be the object of a transfer to one or more successors in title.

2. Transfer of a Community plant variety right by assignment can be made only to successors who comply with the conditions laid down in Article 12 and 82. It shall be made in writing and shall require the signature of the parties to the contract, except when it is a result of a judgement or of any other acts terminating court proceedings. Otherwise it shall be void.

3. Save as otherwise provided in Article 100, a transfer shall have no bearing on the rights acquired by third parties before the date of transfer.

4. A transfer shall not take effect for the Office and may not be cited vis-à-vis third parties unless documentary evidence thereof as provided for in the implementing rules is provided and until it has been entered in the Register of Community Plant Variety Rights. A transfer that has not yet been entered in the Register may, however, be cited vis-à-vis third parties who have acquired rights after the date of transfer but who knew of the transfer at the date on which they acquired those rights.

Article 24

Levy of execution

A Community plant variety right may be levied in execution and be the subject of provisional, including protective, measures within the meaning of Article 24 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Lugano on 16 September 1988, hereinafter referred to as the 'Lugano Convention'.

Article 25

Bankruptcy or like proceedings

Until such time as common rules for the Member States in this field enter into force, the only Member State in which a Community plant variety right may be involved in bankruptcy or like proceedings shall be that in which such proceedings are first brought within the meaning of national law or of conventions applicable in this field.

Article 26

The application for a Community plant variety right as an object of property

Articles 22 to 25 shall apply to applications for Community plant variety rights. Concerning such applications, the references made in those Articles to the Register of Community Plant Variety Rights shall be regarded as references to the Register of Application for Community Plant Variety Rights.

Article 27

Contractual exploitation rights

1. Community plant variety rights may form in full or in part the subject of contractually granted exploitation rights. Exploitation rights may be exclusive or non-exclusive.

2. The holder may invoke the rights conferred by the Community plant variety right against a person enjoying the right of exploitation who contravenes any of the conditions or limitations attached to his exploitation right pursuant to paragraph 1.

Article 28

Joint holdership

Articles 22 to 27 shall apply mutatis mutandis in the event of joint holdership of a Community plant variety right in proportion to the respective share held, where such shares have been determined.

Article 29

Compulsory exploitation right

1. Compulsory exploitation rights shall be granted to one or more persons by the Office, on application by that person or those persons, but only on grounds of public interest and after consulting the Administrative Council referred to in Article 36.

2. On application by a Member State, by the Commission or by an organization set up at Community level and registered by the Commission, a compulsory exploitation right may be granted, either to a category of persons satisfying specific requirements, or to anyone in one or more Member States or throughout the Community. It may be granted only on grounds of public interest and with the approval of the Administrative Council.

3. The Office shall, when granting the compulsory exploitation right, stipulate the type of acts covered and specify the reasonable conditions pertaining thereto as well as the specific requirements referred to in paragraph 2. The reasonable conditions shall take into account the interests of any holder of plant variety rights who would be affected by the grant of the compulsory exploitation right. The reasonable conditions may include a possible time limitation, the payment of an appropriate royalty as equitable remuneration to the holder, and may impose certain obligations on the holder, the fulfilment of which are necessary to make use of the compulsory exploitation right.

4. On the expiry of each one-year period after the grant of the compulsory exploitation right and within the aforementioned possible time limitation, any of the parties to proceedings may request that the decision on the grant of the compulsory exploitation right be cancelled or amended. The sole grounds for such a request shall be that the circumstances determining the decision taken have in the meantime undergone change.

5. On application, the compulsory exploitation right shall be granted to the holder in respect of an essentially derived variety if the criteria set out in paragraph 1 are met. The reasonable conditions referred to in paragraph 3 shall include the payment of an appropriate royalty as equitable remuneration to the holder of the initial variety.

6. The implementing rules pursuant to Article 114 may specify certain cases as examples of public interest referred to in paragraph 1 and moreover lay down details for the implementation of the provisions of the above paragraphs.

7. Compulsory exploitation rights may not be granted by Member States in respect of a Community plant variety right.

PART THREE

THE COMMUNITY PLANT VARIETY OFFICE

CHAPTER I

GENERAL PROVISIONS

Article 30

Legal status, sub-offices

1. The Office shall be a body of the Community. It shall have legal personality.
2. In each of the Member States, the Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
3. The Office shall be represented by its President.
4. With the consent of the Administrative Council referred to in Article 36, the Office may entrust national agencies with the exercise of specific administrative functions of the Office

or establish its own sub-offices for that purpose in the Member States, subject to their consent.

Article 31

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Office, without prejudice to the application of Article 47 to the members of the Board of Appeal.

2. Without prejudice to Article 43, the powers conferred on the appointing authority by the Staff Regulations, and by the Conditions of Employment of Other Servants, shall be exercised by the Office in respect of its own staff.

Article 32

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Office.

Article 33

Liability

1. The contractual liability of the Office shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Office.
3. In the case of non-contractual liability, the Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.
4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.
5. The personal liability of its servants towards the Office shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 34

Languages

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community (5), shall apply regarding the Office.
2. Applications to the Office, the documents required to process such applications and all other papers submitted shall be filed in one of the official languages of the European Communities.

3. Parties to proceedings before the Office as specified in the implementing rules pursuant to Article 114, shall be entitled, to conduct written and oral proceedings in any official language of the European Communities with translation and, in the case of hearings, simultaneous interpretation, at least into any other of the official languages of the European Communities chosen by any other party to proceedings. The exercise of these rights does not imply specific charges for the parties to proceedings.

4. The translation services required for the functioning of the Office are in principle provided by the Translation Centre of the Bodies of the Union.

Article 35

Decisions of the Office

1. Decisions of the Office shall, provided they do not have to be made by the Board of Appeal pursuant to Article 72, be taken by or under the authority of the President of the Office.

2. Subject to paragraph 1, decisions pursuant to Articles 20, 21, 29, 59, 61, 62, 63, 66 or 100 (2) shall be taken by a Committee of three members of the Office's staff. The qualifications of the members of such Committee, the powers of individual members in the preparatory phase of the decisions, the voting conditions and the role of the President in respect of such Committee shall be determined in the implementing rules pursuant to Article 114. Otherwise, the members of such Committee, in making their decisions, shall not be bound by any instructions.

3. Decisions of the President, other than those specified in paragraph 2, if not taken by the President, may be taken by a member of the Office's staff to whom the power to do so has been delegated pursuant to Article 42 (2) (h).

CHAPTER II

THE ADMINISTRATIVE COUNCIL

Article 36

Creation and powers

1. An Administrative Council is hereby set up, attached to the Office. In addition to the powers assigned to the Administrative Council by other provisions of this Regulation, or by the provisions referred to in Articles 113 and 114, it shall have the powers in relation to the Office defined below:

(a) It shall advise on matters for which the Office is responsible, or issue general guidelines in this respect.

(b) It shall examine the management report of the President, and shall moreover monitor the Office's activities, on the basis of that examination and any other information obtained.

(c) It shall, on a proposal from the Office, either determine the number of Committees referred to in Article 35, the work allocation and the duration of their respective function, or issue general guidelines in this respect.

(d) It may establish rules on working methods of the Office.

(e) It may issue test guidelines pursuant to Article 56 (2).

2. Moreover the Administrative Council:

- may deliver opinions to, and require information from the Office or the Commission, where it considers that this is necessary,

- may forward to the Commission, with or without amendments, the drafts placed before it pursuant to Article 42 (2) (g), or its own draft amendments to this Regulation, to the provisions referred to in Articles 113 and 114 or to any other rules relating to Community plant variety rights,

- shall be consulted pursuant to Articles 113 (4) and 114 (2),

- shall carry out its functions relating the Office's budget pursuant to Articles 109, 111 and 112.

Article 37

Composition

1. The Administrative Council shall be composed of one representative of each Member State and one representative of the Commission and their alternates.

2. The members of the Administrative Council may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

Article 38

Chairmanship

1. The Administrative Council shall elect a Chairman and a Deputy Chairman from among its members. The Deputy Chairman shall ex officio replace the Chairman in the event of him being prevented from attending to his duties.

2. The terms of office of the Chairman or Deputy Chairman shall expire when their respective membership of the Administrative Council ceases. Without prejudice to this provision, the duration of the terms of office of the Chairman or Deputy Chairman shall be three years, unless another Chairman or Deputy Chairman have been elected before the end of this period. The terms of office shall be renewable.

Article 39

Meetings

1. Meetings of the Administrative Council shall be convened by its Chairman.

2. The President of the Office shall take part in the deliberations, unless the Administrative Council decides otherwise. He shall not have the right to vote.

3. The Administrative Council shall hold an ordinary meeting once a year; in addition, it shall meet on the initiative of its Chairman or at the request of the Commission or of one-third of the Member States.

4. It shall adopt rules of procedure, and may set up, in accordance with these rules, Committees placed under its authority.

5. The Administrative Council may invite observers to attend its meetings.

6. The secretariat for the Administrative Council shall be provided by the Office.

Article 40

Place of meetings

The Administrative Council shall meet at the seat of the Commission, or at the location of the Office or of an Examination Office. The details shall be determined in the rules of procedure.

Article 41

Voting

1. The Administrative Council shall take its decisions, other than those referred to in paragraph 2, by a simple majority of the representatives of the Member States.

2. The majority of three quarters of the representatives of the Member States shall be required for the decisions which the Administrative Council is empowered to take under Articles 12 (1) (b), 29, 36 (1) (a), (b), (d) and (e), 43, 47, 109 (3) and 112.

3. Each Member State shall have one vote.

4. The decisions of the Administrative Council shall have no binding force within the meaning of Article 189 of the Treaty.

CHAPTER III

MANAGEMENT OF THE OFFICE

Article 42

Functions and powers of the President

1. The Office shall be managed by the President.

2. To this end, the President shall have, in particular, the following functions and powers:

(a) The President shall take all necessary steps, including the adoption of internal administrative instructions and the publications of notices, to ensure the functioning of the Office in accordance with the provisions of this Regulation, with those referred to in Articles 113 and

114, or with the rules established, or guidelines issued, by the Administrative Council pursuant to Article 36 (1).

(b) He shall submit a management report to the Commission and Administrative Council each year.

(c) He shall exercise in respect of the staff the powers laid down in Article 31 (2).

(d) He shall submit proposals as referred to in Article 36 (1) (c) and 47 (2).

(e) He shall draw up estimates of the revenue and expenditure of the Office pursuant to Article 109 (1), and shall implement the budget pursuant to Article 110.

(f) He shall supply information as required by the Administrative Council pursuant to Article 36 (2), first indent.

(g) He may place before the Administrative Council draft amendments to this Regulation, to the provisions referred to in Articles 113 and 114 or to any other rules relating to Community plant variety rights.

(h) He may delegate his powers to other members of the Office's staff, and subject to the provisions referred to in Articles 113 and 114.

3. The President shall be assisted by one or more Vice-Presidents. If the President is absent or indisposed, the Vice-President or one of the Vice-Presidents shall take his place in accordance with the procedure laid down in the rules established, or the guidelines issued, by the Administrative Council pursuant to Article 36 (1).

Article 43

Appointment of senior officials

1. The President of the Office shall be appointed by the Council from a list of candidates which shall be proposed by the Commission after obtaining the opinion of the Administrative Council. Power to dismiss the President shall lie with the Council, acting on a proposal from the Commission after obtaining the opinion of the Administrative Council.

2. The term of office of the President shall not exceed five years. This term of office shall be renewable.

3. The Vice-President or Vice-Presidents of the Office shall be appointed or dismissed as in paragraphs 1 and 2, after consultation of the President.

4. The Council shall exercise disciplinary authority over the officials referred to in paragraphs 1 and 3.

Article 44

Control of legality

1. The Commission shall control the legality of those acts of the President in respect of which Community law does not

provide for any control on legality by another body, and of the acts of the Administrative Council relating to the Office's budget.

2. The Commission shall require that any unlawful act referred to in paragraph 1 be altered or annulled.

3. Member States, any member of the Administrative Council or any other persons directly and personally involved may refer to the Commission any act referred to in paragraph 1, whether express or implied, to examine the legality of that act. Referral shall be made to the Commission within two months of the day on which the party concerned became aware of the act in question. The Commission shall take and communicate a decision within two months.

CHAPTER IV

THE BOARDS OF APPEAL

Article 45

Establishment and powers

1. There shall be established within the Office one or more Boards of Appeal.

2. The Board or Boards of Appeal shall be responsible for deciding on appeals from the decisions referred to in Article 67.

3. The Board or Boards of Appeal shall be convened as necessary. The number of Boards of Appeal and the work allocation shall be determined in the implementing rules pursuant to Article 114.

Article 46

Composition of the Boards of Appeal

1. A Board of Appeal shall consist of a Chairman and two other members.

2. The Chairman shall select for each case the other members and their respective alternates from the list of qualified members established pursuant to Article 47 (2).

3. Where the Board of Appeal considers that the nature of the appeal so requires, it may call up to two further members from the aforesaid list for that case.

4. The qualifications required for the members of each Board of Appeal, the powers of individual members in the preparatory phase of the decisions and the voting conditions shall be determined in the implementing rules pursuant to Article 114.

Article 47

Independence of the members of the Boards of Appeal

1. The Chairmen of the Boards of Appeal and their respective alternates shall be appointed by the Council from a list of candidates for each chairman and each alternate which shall be proposed by the Commission after obtaining the opinion of the Administrative Council. The term of office shall be five years. It shall be renewable.

2. The other members of the Boards of Appeal shall be those selected pursuant to Article 46 (2), from a list of qualified members established on a proposal from the Office, for a term of five years, by the Administrative Council. The list shall be established for a term of five years. This shall be renewable for whole or part of the list.

3. The members of the Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions.

4. The members of the Boards of Appeal may not be members of the Committees referred to in Article 35 nor perform any other duties in the Office. The function of the members of the Boards of Appeal may be a part-time function.

5. The members of the Boards of Appeal may not be removed from office nor from the list respectively, during the respective term, unless there are serious grounds for such removal and the Court of Justice of the European Communities, on application by the Commission after obtaining the opinion of the Administrative Council takes a decision to this effect.

Article 48

Exclusion and objection

1. Members of the Boards of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to proceedings, or if they participated in the decision under appeal.

2. If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.

3. Members of the Boards of Appeal may be objected to by any party to the appeal proceedings for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.

4. The Boards of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member who withdraws or has been objected to shall be replaced in the Board of Appeal by his alternate.

PART FOUR

PROCEEDINGS BEFORE THE OFFICE

CHAPTER I

APPLICATIONS

Article 49

Filing of applications

1. An application for a Community plant variety right shall be filed at the choice of the applicant:

- (a) at the Office directly; or
- (b) at one of the sub-offices or national agencies, established or entrusted, pursuant to Article 30 (4), subject to the applicant forwarding an information on this filing to the Office directly within two weeks after filing.

Details on the manner in which the information referred to in (b) above must be forwarded, may be laid down in the implementing rules pursuant to Article 114. The omission of forwarding information on an application to the Office pursuant to (b) above, does not affect the validity of the application if the application has reached the Office within one month after filing at the sub-office or national agency.

2. Where the application is filed at one of the national agencies referred to in paragraph 1 (b), the national agency shall take all steps to forward the application to the Office within two weeks after filing. National agencies may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application.

Article 50

Conditions governing applications

1. The application for a Community plant variety right must contain at least the following:

- (a) a request for the grant of a Community plant variety right;
- (b) identification of the botanical taxon;
- (c) information identifying the applicant or, where appropriate, the joint applicants;
- (d) the name of the breeder and an assurance that, to the best of the applicants knowledge, no further persons have been involved in the breeding, or discovery and development, of the variety; if the applicant is not the breeder, or not the only breeder, he shall provide the

relevant documentary evidence as to how the entitlement to the Community plant variety right came into his possession;

- (e) a provisional designation for the variety;
- (f) a technical description of the variety;
- (g) the geographic origin of the variety;
- (h) the credentials of any procedural representative;
- (i) details of any previous commercialization of the variety;
- (j) details of any other application made in respect of the variety.

2. Details of the conditions referred to in paragraph 1, including the provision of further information, may be laid down in the implementing rules pursuant to Article 114.

3. An application shall propose a variety denomination which may accompany the application.

Article 51

Date of application

The date of application for a Community plant variety right shall be the date on which a valid application was received by the Office pursuant to Article 49 (1) (a) or by a sub-office or national agency pursuant to Article 49 (1) (b), provided it complies with Article 50 (1) and subject to payment of the fees due pursuant to Article 83 within a time limit specified by the Office.

Article 52

The right of priority

1. The right of priority of an application shall be determined by the date of receipt of the application. Where applications have the same date of application, the priorities thereof shall be determined according to the order in which they were received, if this can be established. Otherwise they shall have the same priority.

2. If the applicant or his predecessor in title has already applied for a property right for the variety in a Member State or in a Member of the International Union for the Protection of New Varieties of Plants, and the date of application is within 12 months of the filing of the earlier application, the applicant shall enjoy a right of priority for the earlier application as regards the application for the Community plant variety right, provided the earlier application still exists on the date of application.

3. The right of priority shall have the effect that the date on which the earlier application was filed shall count as the date of application for the Community plant variety right for the purposes of Articles 7, 10 and 11.

4. Paragraphs 2 and 3 shall also apply in respect of earlier applications that were filed in another Member State, provided

the conditions set out in Article 12 (1) (b), second sentence, is met regarding this State on the date of application for the Community plant variety right.

5. Any claim for a right of priority earlier than that provided for in paragraph 2 shall lapse if the applicant does not submit to the Office within three months of the date of application copies of the earlier application that have been certified by the authorities responsible for such application. If the earlier application has not been made in one of the official languages of the European Communities, the Office may require, in addition, a translation of the earlier application in one of these languages.

CHAPTER II

EXAMINATION

Article 53

Formal examination of application

1. The Office shall examine whether:
 - (a) the application has effectively been filed pursuant to Article 49;
 - (b) the application complies with the conditions laid down in Article 50 and the conditions laid down in the implementing rules pursuant to that Article;
 - (c) where appropriate, a claim for priority complies with the provision laid down in Article 52 (2), (4) and (5); and
 - (d) the fees due pursuant to Article 83 have been paid within a time limit specified by the Office.
2. If the application, although complying with the conditions referred to in Article 51, does not comply with other conditions laid down in Article 50, the Office shall give the applicant an opportunity to correct any deficiencies that may have been identified.
3. If the application does not comply with the conditions referred to in Article 51, the Office shall inform the applicant thereof, or, where this is not possible, publish the information pursuant to Article 89.

Article 54

Substantive examination

1. The Office shall examine whether the variety may be the object of a Community plant variety right pursuant to Article 5, whether the variety is new pursuant to Article 10, whether the applicant is entitled to file an application pursuant to Article 12 and whether the conditions laid down in Article 82 are complied with. The Office shall also examine whether the proposed variety denomination is suitable pursuant to Article 63. For such purposes, it may avail itself of the services of other bodies.

2. The first applicant shall be deemed to be entitled to the Community plant variety right pursuant to Article 11. This shall not apply if, before a decision on the application is taken, the Office is aware, or it is shown by a final judgment delivered with regard to a claim for entitlement pursuant to Article 98 (4), that entitlement is not or is not solely vested in the first applicant. Where the identity of the sole or other person entitled has been determined, the person or persons may enter the proceedings as applicant or applicants.

Article 55

Technical examination

1. Where the Office has not discovered any impediment to the grant of a Community plant variety right on the basis of the examination pursuant to Articles 53 and 54, it shall arrange for the technical examination relating to compliance with the conditions laid down in Articles 7, 8 and 9 to be carried out by the competent office or offices in at least one of the Member States entrusted with responsibility for the technical examination of varieties of the species concerned by the Administrative Council, hereafter referred to as the 'Examination Office or Offices'.
2. Where no Examination Office is available, the Office may, with the consent of the Administrative Council, entrust other appropriate agencies with responsibility therefore or establish its own sub-offices for the same purposes. For the purpose of the provisions of this Chapter, such agencies or sub-offices shall be considered as Examination Offices. They may avail themselves of facilities made available by the applicant.
3. The Office shall forward to the Examination Offices copies of the application as required under the implementing rules pursuant to Article 114.
4. The Office shall determine, through general rules or through requests in individual cases, when, where and in what quantities and qualities the material for the technical examination and reference samples are to be submitted.
5. Where the applicant makes a claim for priority pursuant to Article 52 (2) or (4), he shall submit the necessary material and any further documents required within two years of the date of application pursuant to Article 51. If the earlier application is withdrawn or refused before the expiry of two years, the Office may require the applicant to submit the material or any further documents within a specified time limit.

Article 56

The conduct of technical examinations

1. Unless a different manner of technical examination relating to compliance with the conditions laid down in Articles 7 to 9 has been arranged, the Examination Offices shall, for the purposes of the technical examination, grow the variety or undertake any other investigations required.

2. The conduct of any technical examinations shall be in accordance with test guidelines issued by the Administrative Council and any instructions given by the Office.

3. For the purposes of the technical examination, the Examination Offices may, with the approval of the Office, avail themselves of the services of other technically qualified bodies and take into account the available findings of such bodies.

4. Each Examination Office shall begin the technical examination, unless the Office has otherwise provided, no later than on the date on which a technical examination would have begun on the basis of an application for a national property right filed on the date on which the application sent by the Office was received by the Examination Office.

5. In the case of Article 55 (5), each Examination Office shall begin the technical examination, unless the Office has otherwise provided, no later than on the date on which an examination would have begun on the basis of an application for a national property right, provided the necessary material and any further documents required were submitted at that date.

6. The Administrative Council may determine that the technical examination for varieties of vine and tree species may begin at a later date.

Article 57

Examination reports

1. The Examination Office shall, at the request of the Office or if it deems the results of the technical examination to be adequate to evaluate the variety, send the Office an examination report, and, where it considers that the conditions laid down in Articles 7 to 9 are complied with, a description of the variety.

2. The Office shall communicate the results of the technical examinations and the variety description to the applicant and shall give him an opportunity to comment thereon.

3. Where the Office does not consider the examination report to constitute a sufficient basis for decision, it may provide of its own motion, after consultation of the applicant, or on request of the applicant for complementary examination. For the purposes of assessment of the results, any complementary examination carried out until a decision taken pursuant to Articles 61 and 62 becomes final shall be considered to be part of the examination referred to in Article 56 (1).

4. The results of the technical examination shall be subject to the exclusive rights of disposal of the Office and may only otherwise be used by the Examination Offices in so far as this is approved by the Office.

Article 58

Costs of technical examinations

The Office shall pay the Examination Offices a fee in accordance with the implementing rules pursuant to Article 114.

Article 59

Objections to grant of right

1. Any person may lodge with the Office a written objection to the grant of a Community plant variety right.

2. Objectors shall be party to the proceedings for grant of the Community plant variety right in addition to the applicant. Without prejudice to Article 88, objectors shall have access to the documents, including the results of the technical examination and the variety description as referred to in Article 57 (2).

3. Objections may be based only on the contention that:

(a) the conditions laid down in Articles 7 to 11 are not complied with;

(b) there is an impediment under Article 63 (3) or (4) to a proposed variety denomination.

4. Objections may be lodged:

(a) at any time after the application and prior to a decision pursuant to Articles 61 or 62, in the case of paragraph 3 (a) hereof;

(b) within three months of the publication of the proposed variety denomination pursuant to Article 89, in the case of objections under paragraph 3 (b) hereof.

5. The decisions on objections may be taken together with the decisions pursuant to Articles 61, 62 or 63.

Article 60

Priority of a new application in the case of objections

Where an objection on the grounds that the conditions laid down in Article 11 are not met leads to the withdrawal or refusal of the application for a Community plant variety right and if the objector files an application for a Community plant variety right within one month following the withdrawal or within one month of the date on which the refusal becomes final in respect of the same variety, he may require that the date of the withdrawn or refused application be deemed to be the date of his application.

CHAPTER III

DECISIONS

Article 61

Refusal

1. The Office shall refuse applications for a Community plant variety right if and as soon as it establishes that the applicant:

- (a) has not remedied any deficiencies within the meaning of Article 53 which he was given an opportunity to correct within the time limit notified to him;
- (b) has not complied with a rule or request pursuant to Article 55 (4) or (5) within the time limit laid down, unless the Office has consented to non-submission; or
- (c) has not proposed a variety denomination which is suitable pursuant to Article 63.

2. The Office shall also refuse applications for a Community plant variety right if:

- (a) it establishes that the conditions it is required to verify pursuant to Article 54 have not been fulfilled; or
- (b) it reaches the opinion on the basis of the examination reports pursuant to Article 57, that the conditions laid down in Articles 7, 8 and 9 have not been fulfilled.

Article 62

Grant

If the Office is of the opinion that the findings of the examination are sufficient to decide on the application and there are no impediments pursuant to Articles 59 and 61, it shall grant the Community plant variety right. The decision shall include an official description of the variety.

Article 63

Variety denomination

1. Where a Community plant variety right is granted, the Office shall approve, for the variety in question, the variety denomination proposed by the applicant pursuant to Article 50 (3), if it considers, on the basis of the examination made pursuant to the second sentence of Article 54 (1), that this denomination is suitable.

2. A variety denomination is suitable, if there is no impediment pursuant to paragraphs 3 or 4 of this Article.

3. There is an impediment for the designation of a variety denomination where:

- (a) its use in the territory of the Community is precluded by the prior right of a third party;
- (b) it may commonly cause its users difficulties as regards recognition or reproduction;
- (c) it is identical or may be confused with a variety denomination under which another variety of the same or of a closely related species is entered in an official register of plant varieties or under which material of another variety has been marketed in a Member State or in a Member of the International Unit for the Protection of New Varieties of Plants, unless the other variety no

longer remains in existence and its denomination has acquired no special significance;

- (d) it is identical or may be confused with other designations which are commonly used for the marketing of goods or which have to be kept free under other legislation;
- (e) it is liable to give offence in one of the Member States or is contrary to public policy;
- (f) it is liable to mislead or to cause confusion concerning the characteristics, the value or the identity of the variety, or the identity of the breeder or any other party to proceedings.

4. There is another impediment where, in the case of a variety which has already been entered:

- (a) in one of the Member States; or
- (b) in a Member of the International Union for the Protection of New Varieties of Plants; or
- (c) in another State for which it has been established in a Community act that varieties are evaluated there under rules which are equivalent to those laid down in the Directives on common catalogues;

in an official register of plant varieties or material thereof and has been marketed there for commercial purposes, and the proposed variety denomination differs from that which has been registered or used there, unless the latter one is the object of an impediment pursuant to paragraph 3.

5. The Office shall publish the species which it considers 'closely related' within the meaning of paragraph 3 (c).

CHAPTER IV

THE MAINTENANCE OF COMMUNITY PLANT VARIETY RIGHTS

Article 64

Technical verification

1. The Office shall verify the continuing existence unaltered of the protected varieties.

2. For this purpose, a technical verification shall be carried out pursuant to Articles 55 and 56.

3. The holder shall be required to provide all the information necessary to assess the continuing existence unaltered of the variety to the Office and to the Examination Offices to which technical verification of the variety has been entrusted. He shall be required, in accordance with the instructions given by the Office, to submit material of the variety and to permit to verify whether appropriate measures have been taken to ensure the continuing existence unaltered of the variety.

Article 65

Report on the technical verification

1. At the request of the Office, or if it establishes that the variety is not uniform or stable, the Examination Office entrusted with the technical verification shall send the Office a report on its findings.
2. If any deficiencies pursuant to paragraph 1 have been found during the technical verification, the Office shall inform the holder of the results of the technical verification and shall give him an opportunity to comment thereon.

Article 66

Amendment of the variety denomination

1. The Office shall amend a variety denomination designated pursuant to Article 63 if it establishes that the denomination does not satisfy, or no longer satisfies, the conditions laid down in Article 63 and in the event of a prior conflicting right of a third party, if the holder agrees to the amendment or the holder or any other person required to use the variety denomination has been prohibited, by a final judgment, for this reason from using the variety denomination.
2. The Office shall give the holder an opportunity to propose an amended variety denomination and shall proceed in accordance with Article 63.
3. Objections may be lodged against the proposed amended variety denomination in accordance with Article 59 (3) (b).

CHAPTER V

APPEALS

Article 67

Decisions subject to appeal

1. An appeal shall lie from decisions of the Office which have been taken pursuant to Articles 20, 21, 59, 61, 62, 63 and 66, as well as on decisions related to fees pursuant to Article 83, to costs pursuant to Article 85, to the entering or deletion of information in the Register pursuant to Article 87 and to the public inspection pursuant to Article 88.
2. An appeal lodged pursuant to paragraph 1 shall have suspensory effect. The Office may, however, if it considers that circumstances so require, order that the contested decision not be suspended.
3. An appeal may lie from decisions of the Office pursuant to Articles 29 and 100 (2), unless a direct appeal is lodged pursuant to Article 74. The appeal shall not have suspensory effect.
4. An appeal against a decision which does not terminate proceedings as regards one of the parties may only be made in conjunction with an appeal against the final decision, unless the decision provides for separate appeal.

Article 68

Persons entitled to appeal and to be parties to appeal proceedings

Any natural or legal person may appeal, subject to Article 82, against a decision, addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former. The parties to proceedings may, and the Office shall, be party to the appeal proceedings.

Article 69

Time limit and form

Notice of appeal shall be filed in writing at the Office within two months of the service of the decision where addressed to the appealing person, or, in the absence thereof, within two months of the publication of the decision, and a written statement setting out the grounds of appeal shall be filed within four months after the aforesaid service or publication.

Article 70

Interlocutory revision

1. If the body of the Office which has prepared the decision considers the appeal to be admissible and well founded, the Office shall rectify the decision. This shall not apply where the appellant is opposed by another party to the appeal proceedings.
2. If the decision is not rectified within one month after receipt of the statement of grounds, for the appeal, the Office shall forthwith:

- decide whether it will take an action pursuant to Article 67 (2), second sentence, and
- remit the appeal to the Board of Appeal.

Article 71

Examination of appeals

1. If the appeal is admissible, the Board of Appeal shall examine whether the appeal is well-founded.
2. When examining the appeal, the Board of Appeal shall as often as necessary invite the parties to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

Article 72

Decision on appeal

The Board of Appeal shall decide on the appeal on the basis of the examination carried out pursuant to Article 71. The Board of Appeal may exercise any power which lies within the competence of the Office, or it may remit the case to the

competent body of the Office for further action. The latter one shall, in so far as the facts are the same, be bound by the ratio decidendi of the Board of Appeal.

Article 73

Further appeal

1. A further appeal to the Court of Justice of the European Communities shall lie from decisions of the Board of Appeal.
2. The further appeal may be lodged on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation, or of any rule of law relating to their application or misuse of power.
3. The further appeal may be made by any party to the appeal proceedings who is adversely affected by its decision, or by the Commission or the Office.
4. The further appeal shall be lodged with the Court of Justice within two months of service of the decision of the Board of Appeal.
5. If the Court of Justice remits the case for further action to the Board of Appeal, the Board shall, in so far as the facts are the same, be bound by the ratio decidendi of the Court of Justice.

Article 74

Direct appeal

1. A direct appeal to the Court of Justice of the European Communities may lie from decisions of the Office pursuant to Articles 29 and 100 (2).
2. The provisions laid down in Article 73 shall apply *mutatis mutandis*.

CHAPTER VI

MISCELLANEOUS CONDITIONS GOVERNING PROCEEDINGS

Article 75

Statement of grounds on which decisions are based, right of audience

Decisions of the Office shall be accompanied by statements of the grounds on which they are based. They shall be based only on grounds or evidence on which the parties to proceedings have had an opportunity to present their comments orally or in writing.

Article 76

Examination of the facts by the Office of its own motion

In proceedings before it the Office shall make investigations on the facts of its own motion, to the extent that they come

under the examination pursuant to Articles 54 and 55. It shall disregard facts or items of evidence which have not been submitted within the time limit set by the Office.

Article 77

Oral proceedings

1. Oral proceedings shall be held either on the initiative of the Office itself or at the request of any of the parties to proceedings.
2. Without prejudice to paragraph 3, oral proceedings before the Office shall not be public.
3. Oral proceedings before the Board of Appeal including delivery of the decision, shall be public in so far as the Board of Appeal before which the proceedings are taking place does not decide otherwise in circumstances where serious and unwarranted disadvantages could arise from admitting the public, particularly for any of the parties to the appeal proceedings.

Article 78

Taking of evidence

1. In any proceedings before the Office, the means of giving or obtaining evidence may include the following:
 - (a) hearing the parties to proceedings;
 - (b) requests for information;
 - (c) the production of documents or other evidence;
 - (d) hearing the witnesses;
 - (e) opinions by experts;
 - (f) inspection;
 - (g) sworn affidavits.
2. Where the Office decides through a collective body, that body may commission one of its members to examine the evidence adduced.
3. If the Office considers it necessary that a party to proceedings, witness or expert give evidence orally, it shall either:
 - (a) issue a summons requiring the relevant person to appear before it; or
 - (b) request the competent judicial or other authority in the country of domicile of the relevant person to take the evidence as provided for in Article 91 (2).
4. A party to proceedings, witness or expert who is summoned before the Office may request it to allow his evidence to be heard by the competent judicial or other authority in his country of domicile. On receipt of such a request or in the case that no reaction was given to the summons, the

Office may, in accordance with Article 91 (2), request the competent judicial or other authority to hear the evidence of that person.

5. If a party to proceedings, witness or expert gives evidence before the Office, the Office may, if it considers it advisable that the evidence be given under oath or otherwise in binding form, request the competent judicial or other authority in the country of domicile of the relevant person to hear his evidence under the requisite conditions.

6. When the Office requests a competent judicial or other authority to take evidence, it may request it to take the evidence in binding form and to permit a member of the Office to attend the hearing and question the party to proceedings, witness or expert either through that judicial or other authority or directly.

Article 79

Service

The Office shall of its own motion effect service of all decisions and summonses, and of notifications and communications, from which a time limit is reckoned, or which are required to be served either in pursuance of other provisions of this Regulation or by provisions adopted pursuant to this Regulation or by order of the President of the Office. Service may be effected through the competent variety offices of the Member States.

Article 80

Restitutio in integrum

1. Where, in spite of having taken all due care in the particular circumstances, the applicant for a Community plant variety right or the holder or any other party to proceedings before the Office has been unable to observe a time limit vis-à-vis the Office, his rights shall, upon application, be restored if his failure to respect the time limit has resulted directly, by virtue of this Regulation, in the loss of any right or means of redress.

2. Applications shall be filed in writing within two months after the cause of non-compliance when the time limit has ceased to operate. The act omitted shall be completed within this period. Applications shall be admissible only within the period of one year following the expiry of the time limit which has not been observed.

3. An application shall be accompanied by a statement of the grounds on which it is based and the facts on which it relies.

4. The provisions of this Article shall not apply to the time limits referred to in paragraph 2 nor to the time limits specified in Article 52 (2), (4) and (5).

5. Any person who, in a Member State, has in good faith used or made effective and genuine arrangements to use a variety which is the subject of a published application for grant of a Community plant variety right, or of a Community plant variety right that has been granted, in the course of a period

between the loss of rights pursuant to paragraph 1 in respect of the application or of a Community plant variety right that has been granted and the restoration of those rights, may without payment continue such use in the course of his business or for the needs thereof.

Article 81

General principles

1. In the absence of procedural provisions in this Regulation or in provisions adopted pursuant to this Regulation, the Office shall apply the principles of procedural law which are generally recognized in the Member States.

2. Article 48 shall apply mutatis mutandis to the staff of the Office in so far as it is involved in decisions of the kind referred to in Article 67, and to the staff of the Examination Offices, in so far as it participates in measures for the preparation of such decisions.

Article 82

Procedural representative

Persons who are not domiciled or do not have a seat or an establishment within the territory of the Community may participate as party to proceedings before the Office only if they have designated a procedural representative who is domiciled or has his seat or an establishment within the territory of the Community.

CHAPTER VII

FEES, SETTLEMENT OF COSTS

Article 83

Fees

1. The Office shall charge fees for its official acts provided for under this Regulation as well as for each year of the duration of a Community plant variety right, pursuant to the fees regulations adopted in accordance with Article 113.

2. If fees due in respect of the official acts set out in Article 113 (2) or of other official acts referred to in the fees regulations, which are only to be carried out on application, are not paid, the application shall be deemed not to have been filled or the appeal not to have been lodged if the acts necessary for the payment of the fees have not been effected within one month of the date on which the Office served a new request for payment of fees and indicated in so doing these consequences of failure to pay.

3. If certain information provided by the applicant for grant of a Community plant variety right can only be verified by a technical examination which goes beyond the framework established for the technical examination of varieties of the taxon concerned, the fees for the technical examination may be increased, after having heard the person liable to pay the fees, up to the amount of the expenditure actually incurred.

4. In the case of a successful appeal, the appeal fees or, in case of a partial success, the corresponding part of the appeal fees, shall be refunded. However, the refund can be fully or partly refused if the success of the appeal is based on facts which were not available at the time of the original decision.

Article 84

Termination of financial obligations

1. The Office's right to require payment of fees shall lapse after four years from the end of the calendar year in which the fees became due for payment.
2. Rights against the Office for the refunding of fees or of sums overcharged by the Office shall lapse after four years from the end of the calendar year in which the rights arose.
3. A request for payment of a fee shall have the effect of interrupting the time limit specified in paragraph 1, and a written and reasoned claim for refund shall have the effect of interrupting the time limit specified in paragraph 2. After interruption the time limit shall begin to run again immediately and shall terminate at the latest six years after the end of the calendar year in which it originally commenced, unless judicial proceedings to enforce the right have been instituted in the meantime; in that case the time limit shall end not earlier than one year after the judgment has acquired the authority of a final decision.

Article 85

Apportionment of costs

1. The losing party to proceedings for revocation or cancellation of a Community plant variety right, or to appeal proceedings shall bear the costs incurred by the other party to proceedings as well as all costs incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within the limits of the scales set for each category of costs under the conditions laid down in the implementing rules pursuant to Article 114.
2. However, where each party to proceedings succeeds on some and fails on other heads, or if reasons of equity so dictate, the Office or Board of Appeal shall decide a different apportionment of costs.
3. The party to proceedings who terminates the proceedings by withdrawing the application for a Community plant variety right, the application for revocation or cancellation of rights, or the appeal, or by surrendering the Community plant variety rights, shall bear the costs incurred by the other party to proceedings as stipulated in paragraphs 1 and 2.
4. Where the parties to proceedings conclude before the Office, or Board of Appeal a settlement of costs differing from that provided for in the preceding paragraphs, note shall be taken of that agreement.
5. On request, the Office or Board of Appeal shall determine the amount of the costs to be paid pursuant to the preceding paragraphs.

Article 86

Enforcement of decisions which determine the amount of costs

1. Final decisions of the Office which determine the amount of costs shall be enforceable.
2. Enforcement shall be governed by the rules of civil procedure applicable in the Member State in which it takes place. Subject only to verification that the relevant document is authentic, the enforcement clause or endorsement shall be appended by the national authority appointed for that purpose by the Government of each Member State; the Governments shall inform the Office and the Court of Justice of the European Communities of the identity of each such national authority.
3. When, upon application by the party seeking enforcement, these formalities have been completed, it shall be entitled to proceed to endorsement under national law by bringing the matter directly before the competent body.
4. Enforcement shall not be suspended except by decision of the Court of Justice of the European Communities. Control as to the regularity of enforcement measures shall, however, reside with the national courts.

CHAPTER VIII

REGISTERS

Article 87

Establishment of the Registers

1. The Office shall keep a Register of Applications for Community Plant Variety Rights which shall contain the following particulars:
 - (a) applications for a Community plant variety right together with a statement of the taxon and the provisional designation of the variety, the date of application and the name and address of the applicant, of the breeder and of any procedural representative concerned;
 - (b) any cases of termination of proceedings concerning applications for a Community plant variety right together with the information set out in subparagraph (a);
 - (c) proposals for variety denominations;
 - (d) changes in the identity of the applicant or his procedural representative;
 - (e) on request, any levy of execution as referred to in Articles 24 and 26.
2. The Office shall keep a Register of Community Plant Variety Rights wherein, after grant of a Community plant variety right, the following particulars shall be entered:
 - (a) the species and variety denomination of the variety;

- (b) the official description of the variety or a reference to documents in the Office's possession in which the official description of the variety is contained as integrating part of the Register;
- (c) in the case of varieties for which material with specific components has to be used repeatedly for the production of material, a reference to such components;
- (d) the name and address of the holder, of the breeder and of any procedural representative concerned;
- (e) the date on which the Community plant variety right begins and ends, together with the reasons for the termination of right;
- (f) on request, any contractual exclusive exploitation right or compulsory exploitation right, including the name and address of the person enjoying the right of exploitation;
- (g) on request, any levy of execution as referred to in Article 24;
- (h) where the holder of an initial variety and the breeder of a variety essentially derived from the initial variety both so request, the identification of the varieties as initial and essentially derived including the variety denominations and the names of the parties concerned. A request from one of the parties concerned only shall suffice if he has obtained either a non-contentious acknowledgement by the other party pursuant to Article 99 or a final decision or a final judgment pursuant to the provisions of this Regulation which contain an identification of the varieties concerned as initial and essentially derived.

3. Any other particular or any condition for the entering in both Registers may be specified in the implementing rules pursuant to Article 114.

4. The Office may of its own motion and upon consultation with the holder adapt the official variety description in respect of the number and type of characteristics or of the specified expressions of those characteristics, when necessary, in the light of the current principles governing the description of varieties of the taxon concerned, in order to render the description of the variety comparable with the descriptions of other varieties of the taxon concerned.

Article 88

Public inspection

1. The Registers mentioned in Article 87 shall be open to public inspection.

2. In case of a legitimate interest, the following shall be open to public inspection, in accordance with the conditions set up in the implementing rules pursuant to Article 114:

- (a) documents relating to applications for grant of a Community plant variety right;
- (b) documents relating to Community plant variety rights already granted;

- (c) the growing of varieties for the purposes of their technical examination;
- (d) the growing of varieties for the purpose of verifying their continuing existence.

3. In the case of varieties for which material with specific components has to be used repeatedly for the production of material, at the request of the applicant for a Community plant variety right, all data relating to components, including their cultivation, shall be withheld from inspection. Such a request for withholding from inspection may not be filed once the decision on the application for grant of a Community plant variety right has been taken.

4. Materials submitted or obtained in connection with examinations under Articles 55 (4), 56 and 64 may not be given to other parties by the competent authorities under this Regulation unless the person entitled gives his consent or such transfer is required in connection with the cooperation covered by this Regulation for the purposes of the examination or by virtue of legal provisions.

Article 89

Periodical publications

The Office shall at least every two months, issue a publication containing the information entered into the Registers pursuant to Article 87 (1) and (2) (a), (d), (e), (f), (g) and (h), and not yet published. The Office shall also publish an annual report, containing information which the Office regards as expedient, but at least a list of valid Community plant variety rights, their holders, the dates of grant and expiry and the approved variety denominations. Details of these publications shall be specified by the Administrative Council.

Article 90

Exchange of information and of publications

1. The Office and the competent variety offices of the Member States shall, on request and without prejudice to the conditions set up for the sending of results of technical examinations, dispatch to each other for their own use, free of charge, one or more copies of their respective publications and any other useful information relating to property rights applied for or granted.

2. The data referred to in Article 88 (3) shall be excluded from information, unless:

- (a) the information is necessary for the conduct of the examinations pursuant to Articles 55 and 64; or
- (b) the applicant for a Community plant variety right or the holder gives his consent.

Article 91

Administrative and legal cooperation

1. Unless otherwise provided in this Regulation or in national law, the Office, Examination Offices referred to in

Article 55 (1) and the courts or authorities of the Member States shall on request give assistance to each other by communicating information or opening files related to the variety, and samples or growing thereof for inspection. Where the Office and the Examination Offices lay files, samples or growing thereof open to inspection by courts or public prosecutors' offices, the inspection shall not be subject to the restrictions laid down in Article 88, and the inspection given by the Examination Offices shall not be subject to a decision of the Office pursuant to that Article.

2. Upon receipt of letters rogatory from the Office, the courts or other competent authorities of the Member States shall undertake on behalf of that Office and within the limits of their jurisdiction, any necessary enquiries or other related measures.

PART FIVE

IMPACT ON OTHER LAWS

Article 92

Cumulative protection prohibited

1. Any variety which is the subject matter of a Community plant variety right shall not be the subject of a national plant variety right or any patent for that variety. Any rights granted contrary to the first sentence shall be ineffective.

2. Where the holder has been granted another right as referred to in paragraph 1 for the same variety prior to grant of the Community plant variety right, he shall be unable to invoke the rights conferred by such protection for the variety for as long as the Community plant variety right remains effective.

Article 93

Application of national law

Claims under Community plant variety rights shall be subject to limitations imposed by the law of the Member States only as expressly referred to in this Regulation.

PART SIX

CIVIL LAW CLAIMS, INFRINGEMENTS, JURISDICTION

Article 94

Infringement

1. Whosoever:

(a) effects one of the acts set out in Article 13 (2) without being entitled to do so, in respect of a variety for which a Community plant variety right has been granted; or

- (b) omits the correct usage of a variety denomination as referred to in Article 17 (1) or omits the relevant information as referred to in Article 17 (2); or
- (c) contrary to Article 18 (3) uses the variety denomination of a variety for which a Community plant variety right has been granted or a designation that may be confused with it;

may be sued by the holder to enjoin such infringement or to pay reasonable compensation or both.

2. Whosoever acts intentionally or negligently shall moreover be liable to compensate the holder for any further damage resulting from the act in question. In cases of slight negligence, such claims may be reduced according to the degree of such slight negligence, but not however to the extent that they are less than the advantage derived therefrom by the person who committed the infringement.

Article 95

Acts prior to grant of Community plant variety rights

The holder may require reasonable compensation from any person who has, in the time between publication of the application for a Community plant variety right and grant thereof, effected an act that he would be prohibited from performing subsequent thereto.

Article 96

Prescription

Claims pursuant to Articles 94 and 95 shall be time barred after three years from the time at which the Community plant variety right has finally been granted and the holder has knowledge of the act and of the identity of the party liable or, in the absence of such knowledge, after 30 years from the termination of the act concerned.

Article 97

Supplementary application of national law regarding infringement

1. Where the party liable pursuant to Article 94 has, by virtue of the infringement, made any gain at the expense of the holder or of a person entitled to exploitation rights, the courts competent pursuant to Articles 101 or 102 shall apply their national law, including their private international law, as regards restitution.

2. Paragraph 1 shall also apply as regards other claims that may arise in respect of the performance or omission of acts pursuant to Article 95 in the time between publication of the application for grant of a Community plant variety right and the disposal of the request.

3. In all other respects the effects of Community plant variety rights shall be determined solely in accordance with this Regulation.

Article 98

Claiming entitlement to a Community plant variety right

1. If a Community plant variety right has been granted to a person who is not entitled to it under Article 11, the person entitled to it may, without prejudice to any other remedy which may be open to him under the laws of the Member States, claim to have the Community plant variety right transferred to him.
2. Where a person is entitled to only part of a Community plant variety right, that person may, in accordance with paragraph 1, claim to be made a joint holder.
3. Claims pursuant to paragraphs 1 and 2 may be invoked only within a period of up to five years of publication of the grant of the Community plant variety right. This provision shall not apply if the holder knew, at the time it was granted or acquired by him, that he was not entitled to such rights or that entitlement thereto was not vested solely in him.
4. The person entitled shall be eligible *mutatis mutandis* to pursue claims pursuant to paragraphs 1 and 2 in respect of an application for grant of a Community plant variety right filed by a person who was not entitled to it or whom the entitlement was not vested solely.

Article 99

Obtaining identification of a variety

The holder of an initial variety and the breeder of a variety essentially derived from the initial variety shall be entitled to obtain an acknowledgement of the identification of the varieties concerned as initial and essentially derived.

Article 100

Consequences of a change in holdership of a Community plant variety right

1. In the event of a complete change in the holdership of a Community plant variety right in consequence of a final judgment delivered pursuant to Articles 101 or 102 for the purposes of claiming entitlement under Article 98 (1), any exploitation or other rights shall lapse with the entry of the person entitled in the Register of Community Plant Variety Rights.
2. Where the holder or a person enjoying the right of exploitation has effected one of the acts set out in Article 13 (2) or has made effective and genuine arrangements to do so prior to the commencement of the proceedings pursuant to Articles 101 or 102, he may continue or perform such acts provided he requests a non-exclusive exploitation right from the new holder entered in the Register of Community Plant Variety Rights. Such requests must be made within the time limit laid down in the implementing rules. The exploitation right may be granted by the Office in the absence of an agreement between the parties. Article 29 (3) to (7) shall apply *mutatis mutandis*.

3. Paragraph 2 shall not apply where the holder or persons enjoying the right of exploitation acted in bad faith when they effected the acts or began to make the arrangements.

Article 101

Jurisdiction and procedure in legal actions relating to civil law claims

1. The Lugano Convention as well as the complementary provisions of this Article and of Articles 102 to 106 of this Regulation shall apply to proceedings relating to actions in respect of the claims referred to in Articles 94 to 100.
2. Proceedings of the type referred to in paragraph 1 shall be brought in the courts:
 - (a) of the Member State or another Contracting Party to the Lugano Convention in which the defendant is domiciled or has his seat or, in the absence of such, has an establishment; or
 - (b) if this condition is not met in any of the Member States or Contracting Parties, of the Member State in which the plaintiff is domiciled or has his seat or, in the absence of such, has an establishment; or
 - (c) if this condition is also not met in any of the Member States, of the Member States in which the seat of the Office is located.

The competent courts shall have jurisdiction in respect of infringements alleged to have been committed in any of the Member States.

3. Proceedings relating to actions in respect of claims for infringement may also be brought in the courts for the place where the harmful event occurred. In such cases, the court shall have jurisdiction only in respect of infringements alleged to have been committed in the territory of the Member State to which it belongs.
4. The legal processes and the competent courts shall be those that operate under the laws of the State determined pursuant to paragraphs 2 or 3.

Article 102

Supplementary provisions

1. Actions for claiming entitlement pursuant to Article 98 of this Regulation shall not be considered to fall under the provisions of Article 5 (3) and (4) of the Lugano Convention.
2. Notwithstanding Article 101 of this Regulation, Articles 5 (1), 17 and 18 of the Lugano Convention shall apply.
3. For the purposes of applying Articles 101 and 102 of this Regulation, the domicile or seat of a party shall be determined pursuant to Articles 52 and 53 of the Lugano Convention.

Article 103

Rules of procedure applicable

Where jurisdiction lies with national courts pursuant to Articles 101 and 102, the rules of procedure of the relevant State governing the same type of action relating to corresponding national property rights shall apply without prejudice to Articles 104 and 105.

Article 104

Entitlement to bring an action for infringement

1. Actions for infringement may be brought by the holder. Persons enjoying exploitation rights may bring such actions unless that has been expressly excluded by agreement with the holder in the case of an exclusive exploitation right or by the Office pursuant to Articles 29 or 100 (2).

2. Any person enjoying exploitation rights shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the Member States shall take all appropriate measures to ensure that the same provisions are made applicable to penalize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national rights.

PART SEVEN

BUDGET, FINANCIAL CONTROL,
COMMUNITY IMPLEMENTING RULES

Article 108

Budget

1. Estimates of all the Office's revenue and expenditure shall be prepared for each financial year and shall be shown in the Office's budget, and each financial year shall correspond with the calendar year.

2. The revenue and expenditure shown in the budget shall be in balance.

3. Revenue shall comprise, without prejudice to other types of income, total fees payable pursuant to Article 83 under the fees regulations referred to in Article 113, and, to the extent necessary, a subsidy from the general budget of the European Communities.

4. Expenditure shall comprise, without prejudice to other types of expenditure, the fixed costs of the Office and the costs arising from the Office's normal functioning, including sums payable to the Examination Offices.

Article 109

Preparation of the budget

1. The President shall draw up each year an estimate of the Office's revenue and expenditure for the following year and shall transmit it to the Administrative Council not later

than 31 March each year, together with a list of posts and, where the estimate provides for a subsidy referred to in Article 108 (3), prefaced by an explanatory statement.

2. Should the estimate provide for a subsidy referred to in Article 108 (3), the Administrative Council shall immediately forward the estimate to the Commission, together with the list of posts and the explanatory statement, and may attach its opinion. The Commission shall forward them to the budget authority of the Communities and may attach an opinion along with an alternative estimate.

3. The Administrative Council shall adopt the budget, which shall include the Office's list of posts. Should the estimate contain a subsidy referred to in Article 108 (3), the budget shall, if necessary, be adjusted to the appropriations in the general budget of the European Communities.

Article 110

Implementation of the budget

The President shall implement the Office's budget.

Article 111

Control

1. Control of commitment and payment of all expenditure and control of the existence and recovery of all revenue of the Office shall be carried out by the financial controller appointed by the Administrative Council.

2. Not later than 31 March each year the President shall transmit to the Commission, the Administrative Council and the Court of Auditors of the European Communities accounts of the Office's total revenue and expenditure for the preceding financial year. The Court of Auditors shall examine them in accordance with relevant provisions applicable to the general budget of the European Communities.

3. The Administrative Council shall give a discharge to the President of the Office in respect of the implementation of the budget.

Article 112

Financial provisions

The Administrative Council shall, after consulting the Court of Auditors, adopt internal financial provisions specifying, in particular, the procedure for establishing and implementing the Office's budget. The financial provisions must, as far as possible, correspond to the provisions of the Financial Regulation applicable to the general budget of the European Communities and depart from them only when the specific requirements of the individual operation of the Office so dictate.

Article 113

Fees regulations

1. The fees regulations shall determine in particular the matters for which fees pursuant to Article 83 (1) are due, the

amounts of the fees and the way in which they are to be paid.

2. Fees shall be charged for at least in respect of the following matters for:

- (a) the processing of applications for grant of a Community plant variety right; this fee shall cover:
 - the formal examination, (Article 53),
 - the substantive examination (Article 54),
 - the examination of the variety denomination (Article 63),
 - the decision (Articles 61, 62)
 - the related publishing (Article 89);
- (b) the arranging and carrying out of the technical examination;
- (c) the processing of an appeal including the decision;
- (d) each year of the duration of a Community plant variety right.

3.(a) Without prejudice to (b) and (c), the amounts of the fees shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for the budget of the Office to be balanced.

(b) However, the subsidy referred to in Article 108 (3) may cover, for a transitional period ending on 31 December of the fourth year from the date laid down in Article 118 (2), the expenditure relating to the initial running phase of the Office. In accordance with the procedure laid down in Article 115, this period may be extended, if necessary, for no more than one year.

(c) Moreover, during the abovementioned transitional period only, the subsidy referred to in Article 108 (3) may also cover certain expenditure of the Office relating to certain activities other than the processing of applications, the arranging and carrying out of the technical examinations and the processing of appeals. These activities shall be specified, at the latest one year after the adoption of this Regulation, in implementing rules pursuant to Article 114.

4. The fees regulations shall be adopted in accordance with the procedure laid down in Article 115, after consultation of the Administrative Council on the draft of the measures to be taken.

Article 114

Other implementing rules

1. Detailed implementing rules shall be adopted for the purpose of applying this Regulation. They shall in particular include provisions:

- defining the relationship between the Office and the Examination Offices, agencies or its own sub-offices referred to in Articles 30 (4) and 55 (1) and (2),
- on matters referred to in Articles 36 (1) and 42 (2),`
- on the procedure of the Boards of Appeal.

2. Without prejudice to Articles 112 and 113, all the implementing rules referred to in this Regulation shall be adopted in accordance with the procedure laid down in Article 115, after consultation of the Administrative Council on the draft of the measures to be taken.

Article 115

Procedure

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. Where the procedure laid down in this Article is to be followed, the representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3.(a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

(b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

PART EIGHT

TRANSITIONAL AND FINAL PROVISIONS

Article 116

Derogations

1. Notwithstanding Article 10 (1) (a) and without prejudice to the provisions of Article 10 (2) and (3), a variety shall be deemed to be new also in cases where variety constituents or

harvested material thereof have not been sold or otherwise disposed of to others, by or with the consent of the breeder, within the territory of the Community for purposes of exploitation of the variety, earlier than four years, in the case of trees or of vines earlier than six years, before the entry into force of this Regulation, if the date of application is within one year of that date.

2. The provision of paragraph 1 shall apply to such varieties also in cases where a national plant variety right was granted in one or more Member States before the entry into force of this Regulation.

3. Notwithstanding Articles 55 and 56, the technical examination of these varieties shall be carried out to the extent possible by the Office on the basis of the available findings resulting from any proceedings for the grant of a national plant variety right, in agreement with the authority before which these proceedings were held.

4. In the case of a Community plant variety right granted pursuant to paragraphs 1 or 2:

- Article 13 (5) (a) shall not apply in relation to essentially derived varieties, the existence of which was a matter of common knowledge in the Community before the date of entry into force of this Regulation.
- Article 14 (3), fourth indent shall not apply to farmers who continue to use an established variety in accordance with the authorization of Article 14 (1) if, before the entry into force of this Regulation, they have already used the variety for the purposes described in Article 14 (1) without payment of a remuneration; this provision shall apply until 30 June of the seventh year following that of the entry into force of this Regulation. Before that date the Commission shall submit a report on the situation of the established varieties dealing with each variety individually. That period may be extended, in the implementing provisions adopted pursuant to Article 114, in so far as the Commission's report justifies it.
- without prejudice to the rights conferred by national protection, the provisions of Article 16 shall apply *mutatis mutandis* to acts concerning material disposed of to others by the breeder or with his consent prior to the date of entry into force of this Regulation, and effected by person who, prior to that date, have already effected such acts or have made effective and genuine arrangements to do so.

If such earlier acts have involved further propagation which was intended within the meaning of Article 16 (a), the authorization of the holder shall be required for any further propagation after the expiry of the second year, in the case of varieties of vine and tree species after the expiry of the fourth year, following the date of entry into force of this Regulation.

- Notwithstanding Article 19, the duration of the Community plant variety right shall be reduced by the longest period:
- during which variety constituents or harvested material thereof have been sold or otherwise disposed of to others, by or with the consent of the breeder, within the territory of the Community for purposes of exploitation of the variety, as established in the findings resulting from the procedure for the grant of the Community plant variety right, in the case of paragraph 1,
- during which any national plant variety right or rights have been effective, in the case of paragraph 2,

but not more than by five years.

Article 117

Transitional provisions

The Office shall be set up in good time to assume fully the tasks incumbent upon it pursuant to this Regulation as from 27 April 1995.

Article 118

Entry into force

1. This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.
2. Articles 1, 2, 3, 5 to 29 and 49 to 106 shall apply from 27 April 1995.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 July 1994.

For the Council
The President
Th. WAIGEL

- (1) OJ No C 244, 28. 9. 1990, p. 1 and OJ No C 113, 23. 4. 1993, p. 7.
- (2) OJ No C 305, 23. 11. 1992, p. 55 and OJ No C 67, 16. 3. 1992, p. 148.
- (3) OJ No C 60, 8. 3. 1991, p. 45.
- (4) OJ No L 181, 1. 7. 1992, p. 12. Regulation as last amended by Regulation (EEC) No 1552/93 (OJ No L 154, 25. 6. 1993, p. 19).
- (5) OJ No 17, 6. 10. 1958, p. 385/58. Regulation as last amended by the 1985 Act of Accession.

COUNCIL REGULATION (EC) NO 2506/95*
OF 25 OCTOBER 1995
AMENDING REGULATION (EC) NO. 2100/94 ON
COMMUNITY PLANT VARIETY RIGHTS

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Regulation (EC) No 2100/94 (4) creates a Community regime, co-existing with national regimes, which allows for the grant of industrial property rights valid throughout the Community;

Whereas the implementation and application of the said Community regime are carried out by a Community Office with legal personality, known as the 'Community Plant Variety Office';

Whereas, considering the need to ensure coherence of the system of appeal procedures to the Community jurisdiction in the different fields of industrial and commercial property, it is appropriate to align the rules on actions which may be brought against decisions of the Community Plant Variety Office or its Boards of Appeal established by Regulation (EC) No 2100/94 with those provided for in Council Regulation (EC) No 40/94 of 20 December 1993 on the Community Trade Mark (5);

Whereas, under Council Decision 88/591/EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (6), that Court shall exercise at the first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities - with particular regard to appeals lodged under the fourth subparagraph of Article 173 of the EC Treaty - and by the acts adopted in implementation thereof, save as otherwise provided in an act setting up a body governed by Community law; whereas the jurisdiction which Regulation (EC) No 2100/94 confers on the Court of Justice to annul or to alter decisions of the Boards of Appeal and, in specific cases, decisions of the Office shall accordingly be exercised at the first instance by the Court mentioned above in accordance with the abovementioned Decision,

HAS ADOPTED THIS REGULATION:

Article 1

Council Regulation (EC) No 2100/94 is hereby amended as follows:

1. Article 67 (3) is hereby amended as follows:

- in the German version, 'direkte Beschwerde' shall be replaced by 'unmittelbare Klage', and 'eingelegt' shall be replaced by 'erhoben',
- in the English version, 'direct appeal' shall be replaced by 'direct action', and 'lodged' shall be replaced by 'brought'.

2. Article 73 shall be replaced by the following:

'Article 73

Actions against decisions of the Boards of Appeal

1. Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.
2. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application, or misuse of power.
3. The Court of Justice shall have jurisdiction to annul or to alter the contested decision.
4. The action shall be open to any party to appeal proceedings which has been unsuccessful, in whole or in part, in its submissions
5. The action shall be brought before the Court of Justice within two months of the date of service of the decision of the Board of Appeal.
6. The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice.'

3. Article 74 is hereby amended as follows:

- in the German version, the title shall be replaced by 'Unmittelbare Klage' and paragraph 1 shall be replaced by the following:

'1. Die Entscheidungen des Amtes nach Artikel 29 und Artikel 100 Absatz 2 sind mit der unmittelbaren Klage beim Gerichtshof anfechtbar'

*Official Journal of the European Communities. L 258 , 28/10/1995 P. 0003 - 0004

- in the English version, the title shall be replaced by 'Direct action', and in paragraph (1), 'A direct appeal to the Court of Justice of the European Communities may lie from' shall be replaced by 'A direct action may be brought before the Court of Justice against'.

Article 2

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.

It shall apply from 27 April 1995.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 25 October 1995.

For the Council
The President
L. ATIENZA

COUNCIL REGULATION (EC) NO 2470/96*
OF 17 DECEMBER 1996
PROVIDING FOR AN EXTENSION OF THE TERMS
OF A COMMUNITY PLANT VARIETY RIGHT IN RESPECT OF POTATOES

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights⁽¹⁾, and in particular Article 19 (2) thereof,

Having regard to the proposal from the Commission,

Whereas it is recognized that technical difficulties in potato breeding require expenditure of research activities for a long period in comparison with the overwhelming majority of all the other agricultural crops; whereas, in addition, experience on the market has shown that a new potato variety reveals its commercial value only in the long term in comparison with those agricultural species requiring also long-term research activities; whereas, for these reasons, an equitable refunding of the research activities is only possible at a fairly late stage of the protection in comparison with the other agricultural crops;

Whereas, in order to establish a legal environment conducive to achieving such equitable refunding, an extension of the initial duration of a Community plant variety right by a further five years in the case of potatoes is the most appropriate measure;

Whereas such extension should apply to all valid Community plant variety rights which were granted prior to the entry into force of this Regulation or which will be granted in future unless such a right is duly surrendered by the holder or terminated by a decision of the Community Plant Variety Office;

Whereas the period of extension should be reduced if a national property right or rights in respect of the same variety has or have been effective in a Member State prior to the grant of a Community plant variety right and, accordingly, would have allowed a breeder already to take advantage of his variety; whereas a comparable principle was already laid down under the transitional provisions of Article 116 of Regulation (EC) No 2100/94,

HAS ADOPTED THIS REGULATION:

Article 1

1. The duration of the Community plant variety right, as provided for in Article 19 (1) of Regulation (EC) No 2100/94 shall in respect of varieties of potatoes, be extended by a further five years, without prejudice to the provisions of Article 116 (4) indent of the said Regulation.

2. In the case of varieties for which a national plant variety right was granted prior to the grant of the Community plant variety right, but to which Article 116 (4) 4th indent of the said Regulation does not apply, the extension referred to in paragraph 1 shall be reduced by the longest period in full years during which any national property right or rights granted have been effective in a Member State in respect of the same variety prior to the grant of the Community plant variety right.

Article 2

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 December 1996.

For the Council
The President
I. YATES

Official Journal of the European Communities L 335 , 24/12/1996 P. 0010 - 0010

(1) OJ No L 227, 1. 9. 1994, p. 1. Regulation as amended by Regulation (EC) No 2506/95 (OJ No L 258, 28. 10. 1995, p. 3).

COUNCIL REGULATION (EC) NO 1650/2003*
OF 18 JUNE 2003
AMENDING REGULATION (EC) NO. 2100/94 ON
COMMUNITY PLANT VARIETY RIGHTS

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Court of Auditors⁽³⁾,

Whereas:

(1) With the entry into force of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽⁴⁾, the concept of centralised ex ante financial control was replaced by more modern control and audit systems.

(2) The Community Plant Variety Office should have control and audit systems comparable with those of the Community institutions.

(3) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽⁵⁾.

(4) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules conforming to those in the said Regulation.

(5) Appropriate provisions should therefore be included in Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights⁽⁶⁾ to make Regulation (EC) No 1049/2001 applicable to the Community Plant Variety Office, as should a provision on a right of appeal against a refusal of access to documents.

(6) Regulation (EC) No 2100/94 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2100/94 is hereby amended as follows:

1. The following Article shall be inserted:

“Article 33a

Access to documents

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽⁷⁾ shall apply to documents held by the Office.
2. The Administrative Council shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of Council Regulation (EC) No 1650/2003 of 18 June 2003 amending Regulation (EC) No 2100/94 on Community plant variety rights⁽⁸⁾.
3. Decisions taken by the Office pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.”

2. Article 111 shall be amended as follows:

- (a) The title shall be replaced by the following: “Audit and control”
- (b) Paragraph 111(1) shall be replaced by the following:

Official Journal of the European Union L 245 , 29/09/2003 P. 0028 - 0029

(1) OJ C 331 E, 31.12.2002, p. 69.

(2) Opinion delivered on 27.3.2003.

(3) OJ C 285, 21.11.2002, p. 4.

(4) OJ L 248, 16.9.2002, p. 1, with Corrigendum in OJ L 25, 30.1.2003, p. 43.

(5) OJ L 145, 31.5.2001, p. 43.

(6) OJ L 227, 1.9.1994, p. 1. Regulation as last amended by Regulation (EC) No 2506/95 (OJ L 258, 28.10.1995, p. 3).

(7) OJ L 145, 31.5.2001, p. 43.

(8) OJ L 245, 29.9.2003, p. 28.

“1. An internal audit function shall be set up within the Office, to be performed in compliance with the relevant international standards. The internal auditor, appointed by the President, shall be responsible to him for verifying the proper operation of budget implementation systems and procedures of the Office.

The internal auditor shall advise the President on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.”

Article 2

This Regulation shall enter into force on the first day of the month following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 18 June 2003.

For the Council
The President
G. DRYS

COUNCIL REGULATION (EC) NO 873/2004*
of 29 April 2004
AMENDING REGULATION (EC) NO. 2100/94 ON
COMMUNITY PLANT VARIETY RIGHTS

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

(1) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights⁽²⁾ creates a Community regime for plant varieties, co-existing with national regimes, which allows for the grant of industrial property rights, valid throughout the Community (Community plant variety rights).

(2) The implementation and application of this regime are carried out by a Community office with legal personality, known as the Community Plant Variety Office (the Office).

(3) The term “compulsory licence” should have the same meaning and content as the current term “compulsory exploitation right”.

(4) Only the Office is entitled to grant a compulsory licence for a plant variety which is protected by a Community plant variety right.

(5) The Community’s legal framework for the protection of biotechnological inventions, established in Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions⁽³⁾ lays down in Article 12 rules for the grant of non-exclusive compulsory licences where protected plant varieties, including Community plant varieties, incorporate patented inventions, and vice versa.

(6) Article 29 of Regulation (EC) No 2100/94, while providing in general for the grant of compulsory licences for Community plant varieties on grounds of public interest, does not expressly refer to the licences to be provided in accordance with Article 12 of Directive 98/44/EC.

(7) Considering the need to ensure transparency and coherence of the system of compulsory cross-licensing it is appropriate to amend the rules established by Regulation (EC) No 2100/94, making express reference and setting out the specific conditions relating to compulsory licences provided for in Directive 98/44/EC.

(8) Considering the national scope of the protection for biotechnological inventions according to Directive 98/44/EC it is necessary to ensure that the national patent holder be granted a cross-licence for a plant variety right only in the Member State(s) where he/she can claim a patent for a biotechnological invention.

(9) The Treaty provides for no powers, other than those in Article 308 thereof, for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 29 of Regulation (EC) No 2100/94 shall be replaced by the following:

“Article 29

Compulsory licensing

1. Compulsory licences shall be granted to one or more persons by the Office, on application by that person or those persons, but only on grounds of public interest and after consulting the Administrative Council referred to in Article 36.

2. On application by a Member State, by the Commission or by an organisation set up at Community level and registered by the Commission, a compulsory licence may be granted, either to a category of persons satisfying specific requirements, or to anyone in one or more Member States or throughout the Community. It may be granted only on grounds of public interest and with the approval of the Administrative Council.

3. The Office shall, when granting the compulsory licence pursuant to paragraphs 1, 2, 5 or 5a, stipulate the type of acts covered and specify the reasonable conditions pertaining thereto as well as the specific requirements referred to in paragraph 2. The reasonable conditions shall take into account the interests of any holder of plant variety rights who would be affected by the grant of the compulsory licence. The reasonable conditions may include a possible time limitation, the payment of an appropriate royalty as equitable remuneration to the holder and may impose certain obligations on the holder, the fulfilment of which are necessary to make use of the compulsory licence.

4. On the expiry of each one-year period after the grant of the compulsory licence pursuant to paragraphs 1, 2, 5 or 5a, and within the possible time limitation set out in paragraph 3, any of the parties to proceedings may request that the decision on the grant of the compulsory licence be cancelled or amended. The sole grounds for such a request shall be that the circumstances determining the decision taken have in the meantime undergone change.

5. On application, a compulsory licence shall be granted to the holder in respect of an essentially derived variety if the criteria set out in paragraph 1 are met. The reasonable conditions referred to in paragraph 3 shall include the payment of an appropriate royalty as equitable remuneration to the holder of the initial variety.

5a. On application, a compulsory licence for the non-exclusive use of a protected plant variety pursuant to Article 12(2) of Directive 98/44/EC shall be granted to the holder of a patent for a biotechnological invention, subject to payment of an appropriate royalty as equitable remuneration, provided that the patent holder demonstrates that:

- (i) he/she has applied unsuccessfully to the holder of the plant variety right to obtain a contractual licence; and
- (ii) the invention constitutes significant technical progress of considerable economic interest compared with the protected plant variety.

Where, in order to enable him/her to acquire or exploit his/her plant variety right, a holder has been granted a compulsory licence in accordance with Article 12(1) of Directive 98/44/EC for the non-exclusive use of a patented invention, a non-exclusive cross-licence on reasonable terms to exploit the variety shall be granted, on application, to the holder of the patent for that invention,

The territorial scope of the licence or cross-licence referred to in this paragraph shall be limited to the part or parts of the Community covered by the patent.

6. The implementing rules pursuant to Article 114 may specify certain other examples of licences in the public interest referred to in paragraphs 1, 2 and 5a, and moreover lay down details for the implementation of paragraphs 1 to 5a.

7. Compulsory licences may not be granted by Member States in respect of a Community plant variety right.”

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 29 April 2004.

For the Council
The President
M. MCDOWELL

COMMISSION REGULATION (EC) NO 1238/95*
OF 31 MAY 1995
ESTABLISHING IMPLEMENTING RULES FOR THE APPLICATION OF
COUNCIL REGULATION (EC) NO. 2100/94 AS REGARDS
THE FEES PAYABLE TO THE COMMUNITY PLANT VARIETY OFFICE

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (the Basic Regulation) (1), and in particular Article 113 thereof,

Whereas Regulation (EC) No 2100/94 is to be implemented by the Community Plant Variety Office (the Office); whereas the revenue of the Office should in principle be sufficient to balance the budget of the Office; whereas such revenues should be afforded by the fees to be paid for the official acts set out in the Basic Regulation and in Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (2) (the Proceedings Regulation) as well as by annual fees payable for the duration of a Community plant variety right;

Whereas a subsidy from the general budget of the European Communities may cover the expenditure on the initial running phase of the Office for the transitional period defined in Article 113 (3) (b) of the Regulation; whereas an extension of that period by one year is possible by virtue of the same provision;

Whereas such extension of the transitional period should be considered if sufficient experience has not been gained for setting reasonable levels of fees ensuring the principle of self-financing whilst safeguarding the attractiveness of the Community system of plant variety protection; whereas such experience could only be gained by observing the number of applications for a Community plant variety right, the costs paid to the Examination Offices and the actual duration of Community plant variety rights granted;

Whereas the level of the fees should be based on the principles of sound financial management within the Office, and in particular economy and cost-effectiveness;

Whereas, in the interests of a simplified handling by the staff of the Office, the fees should be not only laid down, but also

charged and paid in the same currency unit as is used for the budget of the Office;

Whereas the application fee should be a uniform fee covering only the processing of an application for a Community plant variety right made in respect of any given plant species;

Whereas the time limit for the payment of the application fee under Article 51 of the Basic Regulation should be considered as the period between the acts necessary for making the payment and the actual receipt of such payment by the Office, in particular in the need for a rapid recovery of costs already incurred by the Office on the one hand and for the facilitating of an effective filing of applications in the light of possibly long distances between applicant and Office, on the other;

Whereas the total of the examination fees which are charged for a technical examination should, in principle, balance the total fees to be paid by the Office to all Examination Offices; whereas costs for the maintenance of the reference collection should not necessarily be covered entirely by the examination fees charged; whereas the level of examination fee should vary between three groups of plant species in the light of experience available from existing national arrangements for plant variety protection;

Whereas the annual fees for the duration of a Community plant variety right should constitute an extra source of revenue for the Office, but should, *inter alia*, cover costs relating to the technical verification of varieties after the grant of a Community plant variety right and, in consequence, should follow the grouping established for the examination fees;

Whereas the appeal fee should be uniform in order to cover the main cost components relating to appeal proceedings, with the exception of costs relating to a technical examination pursuant to Articles 55 and 56 of the Basic Regulation or to any taking of evidence; whereas two different dates for payment of the application fee should serve as an incentive to appellants to reconsider their appeal in the light of the decisions taken by the Office pursuant to Article 70 (2) of the Basic Regulation;

Whereas other fees in respect of specific requests shall in principle cover costs incurred in their processing by the Office, including the taking of decisions on such requests;

*Commission Regulation (EC) No 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office (OJ L 121, 1.6.1995, p. 31)

Amended by:

Commission Regulation (EC) No 329/2000 of 11 February 2000 L 37 19 12.2.2000

Commission Regulation (EC) No 569/2003 of 28 March 2003 L 82 13 29.3.2003

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

Whereas to ensure flexibility in the management of costs, the President of the Office should be empowered to lay down the fees payable for examination reports which already exist at the date of application and are not available to the Office, and for specific services rendered;

Whereas surcharges may be levied in order to reduce unnecessary costs to the Office arising from a lack of cooperation on the part of particular applicants for, or holders of, Community plant variety rights;

Whereas in the light of Article 117 of the Basic Regulation, this Regulation should enter into force as soon as possible;

Whereas the Administrative Council of the Office has been consulted;

Whereas the provisions provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. Fees due to the Office, as provided for in the Basic Regulation and the Proceedings Regulation, shall be charged in accordance with this Regulation.
2. The fees due to the Office shall be laid down, charged and paid in ecus.
3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to any surcharge, due to the Office.
4. Details of the fees which may be charged by authorities of Member States by virtue of provisions of the Basic Regulation or this Regulation shall be governed by the relevant national rules of the Member States concerned.
5. Where the President of the Office is empowered to take a decision as to the amount of fees and the way in which they are to be paid, such decisions shall be published in the Official Gazette of the Office.

Article 2

General provisions

1. For each individual matter, a party to proceedings as specified in the Proceedings Regulation shall be liable to pay fees or surcharges. In the case of several parties to proceedings acting in common or on whose behalf a common course of action is pursued, each shall be liable to such payment as joint debtor.
2. Unless otherwise provided in this Regulation, the provisions relating to proceedings before the Office, including

provisions as to languages, as laid down in the Basic Regulation and the Proceedings Regulation, shall apply.

Article 3

Manner of payment

1. Fees and surcharges due to the Office shall be paid by transfer to a bank account held by the Office.
2. The President of the Office may allow the following alternative forms of payment in accordance with rules on working methods which shall be established pursuant to Article 36 (1) (d) of the Basic Regulation:
 - (a) delivery or remittance of certified cheques which are made payable in ecus to the Office;
 - (b) transfer in ecus to a giro account held by the Office; or
 - (c) payment into a charge account held in ecus with the Office.

Article 4

Date to be regarded as the date on which payment is received

1. The date on which a payment of fees and surcharges shall be considered to have been received by the Office shall be the date on which the amount of the transfer referred to in Article 3 (1) is entered in a bank account held by the Office.
2. Where the President of the Office allows other forms of payment in accordance with Article 3 (2), he shall simultaneously include in the conditions the date to be regarded as the date on which the payment is received.
3. Where the payment is considered not to have been received by the Office within the requisite time limit, such time limit shall be considered to have been observed vis-à-vis the Office where sufficient documentary evidence is produced within that time limit to show that the person making the payment duly gave an order to a banking establishment or a post office to transfer the amount of the payment in euro to a bank account held by the Office within the time limit.
4. It shall be considered to be 'necessary' within the meaning of paragraph 3 if the person making the payment duly gave an order to a banking establishment or a post office to transfer the amount of the payment in ecus to a bank account held by the Office.
5. Documentary evidence shall be regarded as sufficient within the meaning of point 3 where an acknowledgement of provision of the transfer order, issued by a banking establishment or a post office, is produced. However, where the transfer ordered was a transfer using the SWIFT electronic bank payment method, the acknowledgement of provision of the transfer order shall take the form of a copy of the SWIFT report, stamped and signed by a duly authorised official of the bank or post office.

Article 5

Name of the person making the payment and the purpose of payment

1. A person making a payment of fees or surcharges shall indicate in writing his name and the purpose of such payment.
2. If the Office cannot establish the purpose of a payment, it shall require the person having made the payment to inform it thereof in writing within two months. If the purpose is not indicated within that period, the payment shall be deemed not to have been made and shall be refunded to the person having made it.

Article 6

Underpayment

A time-limit for payment of fees or surcharges shall, in principle, be deemed to have been observed only if the full amount of the fee or surcharge has been paid in due time. If the fees or surcharges are not paid in full, the amount which has been paid shall be refunded after any time-limit for payment has expired. The Office may, however, where this is considered justified, overlook any small deficiencies, without prejudicing the rights of the person making the payment.

Article 7

Application fee

1. The applicant for a Community plant variety right (the applicant) shall pay an application fee of ECU 900 for the processing of the application under Article 113 (2) (a) of the Basic Regulation.
2. The applicant shall take the necessary steps for payment of the application fee, in accordance with Article 3, prior to or on the date on which the application is filed at the Office direct or at one of the sub-offices established or national agencies designated, pursuant to Article 30 (4) of the Basic Regulation; Article 4 (4) shall apply *mutatis mutandis*.
3. If the payment of the application fee is considered not to have been received at the same time as the application is received by the Office, the Office shall specify, in accordance with Article 51 of the Basic Regulation, a period of two weeks during which the formal date of application, assigned in accordance with the aforesaid Article 51, shall not be affected; a new request for payment as provided for in Article 83 (2) of the Basic Regulation shall not be issued to the applicant prior to the expiry of that period.
4. If the payment of the application fee is considered not to have been received within the time limit specified pursuant to paragraph 3, the date of receipt of payment shall be treated as the date of application for the purposes of Article 51 of the Basic Regulation.
5. Paragraph 4 shall not apply where the application is accompanied by sufficient documentary evidence showing that the person making the payment duly gave an order to a banking

establishment or a post office to transfer the amount of the payment in euro to a bank account held by the Office; Article 4 (5) shall apply *mutatis mutandis*.

6. As long as payment of the application fee is considered not to have been received by the Office, it shall not publish the application concerned and shall defer the technical examination.
7. Where the application fee is received but the application is not valid under Article 50 of the Basic Regulation, the Office shall retain EUR 300 of the application fee and refund the remainder when notifying the applicant of the deficiencies found in the application.

Article 8

Fees relating to technical examination

1. Fees for arranging and carrying out the technical examination of a variety being the subject of an application for a Community plant variety right 'examination fee' shall be paid in accordance with Annex I for each growing period started. In the case of varieties for which material with specific components has to be used repeatedly for the production of material, the examination fee laid down in Annex I shall be due in respect of such variety and in respect of each of the components for which an official description is not available and which must also be examined; however, it shall not in any circumstances exceed ECU 3 000.
2. The examination fee for the first growing period shall be due and payable no later than the closing date for receipt of the material for the technical examination.
3. The examination fee for each subsequent growing period shall be due and payable no later than one month prior to the beginning of such period unless the Office decides otherwise.
4. The President of the Office shall publish the dates for payment of the examination fees in the Official Gazette of the Office.
5. In the case of an examination report on the results of a technical examination which has already been carried out, in accordance with Article 27 of the Proceedings Regulation, prior to the date of application under Article 51 of the Basic Regulation, an administrative fee shall be due within such time limit as the Office shall specify.

Article 9

Annual fee

1. The Office shall charge a holder of a Community plant variety right (hereinafter referred to as 'the holder') a fee for each year of the duration of a Community plant variety right (annual fee) of EUR 300 for the years 2003 to 2005 and of EUR 435 for the year 2006 and the following years.
2. Payment of the annual fee shall be due:

- (a) in relation to the first year of the term of the Community plant variety right, within 60 days of date of the grant of the right; and
- (b) in relation to subsequent years of the term of the Community plant variety right, on the first day of the calendar month preceding the month in which the anniversary of the date grant falls.

3. The Office shall issue to the holder a request containing the subject of payment, the amount due, the date for payment, and information on the possibility of a surcharge pursuant to Article 13 (2) (a).

4. The Office shall not refund any payments which have been effected in order to keep the Community plant variety right in force.

Article 10

Fees for processing specific requests

1. Fees for the processing of a request, payable by the person making such request, shall be as follows:

- (a) for an application for a compulsory exploitation right, including any entries in the Registers, an application for an exploitation right to be granted by the Office pursuant to Article 100 (2) of the Basic Regulation, or a request to amend such exploitation rights, once granted, (compulsory licence fee), save for the Commission or a Member State in the circumstances referred to in Article 29 (2) thereof: ECU 1 500;
- (b) for a request for the following entries into the Register of Community plant variety rights (register fee):
- transfer of a Community plant variety right, contractual exploitation right,
 - identification of varieties as initial or essentially derived,
 - institution of actions in respect of claims referred to in Articles 98 (1), (2) and 99 of the Basic Regulation,
 - a Community plant variety right given as a security or as the subject of rights *in rem*, or
 - any levy of execution as referred to in Article 24 of the Basic Regulation:
- (c) for a request for any entry in the Register of Applications for Community plant variety rights or the Register of Community plant variety rights, other than those referred to in (a) and (b) above: ECU 100;
- (d) for a request for determining amount of costs pursuant to Article 85(5) of the Regulation: ECU 100.

2. The fees referred to in paragraph 1 shall be due and payable on the date of receipt of the request to which they relate. Where the payment is not received in good time, Article 83 (2) of the Basic Regulation shall apply.

3. Where a request for an entry referred to in point (b) or (c) of paragraph 1 concerns more than one application or registered right, applied for or held by the same person, only one fee shall be charged.

Article 11

Appeal fee

1. The appellant shall pay an appeal fee of ECU 1 500 for the processing of an appeal, as provided for in Article 113(2)(c) of the Basic Regulation.

2. A third of the appeal fee shall be due on the date of receipt of the appeal at the Office; Article 83 (2) of the Basic Regulation shall apply to that third. The remaining two-thirds of the appeal fee shall be due, upon request of the Office, within one month after remittal of the case by the relevant body of the Office of the Board of Appeal.

3. A refund of the appeal fee already paid shall be ordered, in the event of an interlocutory revision, under the authority of the President of the Office and in other cases by the Board of Appeal, provided that the conditions laid down in Article 83 (4) of the Basic Regulation are met.

4. Paragraph 1 shall not apply to the Commission or a Member State, being the appellant against a decision taken under Article 29 (2) of the Basic Regulation.

Article 12

Fees laid down by the President of the Office

1. The President of the Office shall fix the fees for the following matters:

- (a) the administrative fee referred to in Article 8 (5);
- (b) fees for issuing copies, certified or not, as in particular referred to in Article 84 (3) of the Proceedings Regulation;
- (c) fees in respect of the Official Gazette of the Office (Article 89 of the Basic Regulation, Article 87 of the Proceedings Regulation) and any other publication issued by the Office; and
- (d) the administrative fee referred to in Article 82(2) of the Proceedings Regulation.

2. The President of the Office may decide to make the services mentioned under paragraph 1(b), (c) and (d) dependent on an advance payment.

Article 13

Surcharges

1. The Office may levy a surcharge to the application fee if it establishes that:

- (a) a proposed denomination cannot be approved, in accordance with Article 63 of the Basic Regulation, by reason of its being identical to a denomination of another variety or by reason of its differing from a denomination of the same variety; or
- (b) an applicant for a Community plant variety right makes a new proposal for a variety denomination unless he was required by the Office to do so or unless he pursued an application for a Community plant variety right in accordance with Article 21 (3) of the Proceedings Regulation.

The Office shall not publish a proposal for variety denomination prior to the payment of a surcharge levied in accordance with the provisions of the first subparagraph.

2. The Office may levy a surcharge to the annual fee if it establishes that:

- (a) the holder has failed to pay the annual fee in accordance with Article 9 (2) and (3); or
- (b) the variety denomination must be amended in the event of a prior conflicting right of a third party, as laid down in Article 66 (1) of the Basic Regulation.

3. The surcharges referred to in paragraphs 1 and 2 shall be levied in accordance with the rules on working methods to be established pursuant to Article 36 (1) (d) of the Basic Regulation, shall amount to 20 % of the fee concerned, subject to a minimum of ECU 100, and shall be due and payable within one month of the date on which the Office issues a request.

Article 14

Derogations

1. Notwithstanding Article 7, the formal date of application assigned under Article 51 of the Basic Regulation shall remain valid in respect of all applications filed in accordance with Article 116 (1) or (2) thereof if sufficient evidence is produced on 30 September 1995 at the latest that the applicant for the Community plant variety right carried out the acts necessary for payment of the application fee.

2. Notwithstanding Article 8 (5), an administrative fee of ECU 100 shall be paid where a technical examination of the variety is carried out on the basis of the available findings from any proceedings for the grant of a national plant variety right in accordance with Article 116(3) of the Basic Regulation. Such administrative fee shall be due on 30 November 1995 at the latest.

3. Notwithstanding Article 8 (5), authorities before which proceedings for the grant of a national plant variety right have been held may charge the applicant for a Community plant variety right a fee for marking available the relevant documents under the conditions laid down in Article 93 (3) of the Proceedings Regulation. Such fee shall not exceed the fee charged in the Member State concerned for the transmission of an examination report from a testing authority in another country; its payment shall be without prejudice to the payments to be made pursuant to paragraphs 1 and 2.

4. Notwithstanding Article 8, a report fee of ECU 300 shall be due in the case of an examination report referred to in Article 94 of the Proceedings Regulation within such time limit as the Office shall specify.

Article 15

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

**Annex I of Commission Regulation 1238/95
(Consolidated version)**

Fees relating to technical examinations as referred to in Article 8

The fee to be paid for the technical examination of a variety pursuant to Article 8 shall be determined, by reference to the year in which the growing period begins and to the species group to which the variety belongs, in accordance with the table:

(in EUR)

Cost group		Fee in years 2003 to 2005	Fee in years 2006 et seq.
Agricultural group			
1	Regular crops	1 020	1 020
2	Vegetatively propagated crops	1 190	1 190
3	Oil crops	1 020	1 020
4	Grasses	1 020	1 020
5	Beet crops	1 020	1 020
6	Fibre crops	1 020	1 020
7	Crops with special test arrangements	1 020	1 020
8	Other agricultural crops	1 020	1 020
Ornamental group			
9	Species with living reference collection, greenhouse test, long cultivation	1 190	1 190
9A	Species with living reference collection, greenhouse test, long cultivation and special phytosanitary conditions	1 200	2 040
10	Species with living reference collection, greenhouse test, short cultivation	1 105	1 105
11	Species with living reference collection, outdoor test, long cultivation	1 105	1 105
12	Species with living reference collection, outdoor test, short cultivation	1 105	1 105
13	Species without living reference collection, greenhouse test, long cultivation	1 200	1 360
13A	Species without living reference collection, greenhouse test, long cultivation with a further propagation step	1 200	2 040
14	Species without living reference collection, greenhouse test, short cultivation	1 105	1 105
15	Species without living reference collection, outdoor test, long cultivation	1 105	1 105

**Cont. Annex I of Commission Regulation 1238/95
(Consolidated version)**

Cost group		Fee in years 2003 to 2005	Fee in years 2006 et seq.
16	Species without living reference collection, outdoor test, short cultivation	1 105	1 105
17	New species, greenhouse test	1 190	1 190
18	New species, outdoor test	1 190	1 190
19	Seed-propagated species (not falling into any other category)	1 200	1 360
Vegetable group			
20	Seed-propagated species, outdoor test	1 050	1 445
21	Seed-propagated species, greenhouse test	1 200	1 955
22	Vegetatively propagated species, outdoor test	1 050	1 700
23	Vegetatively propagated species, greenhouse test	1 200	1 360
Fruit groups			
24	Trees	1 050	1 615
24A	Tree species with a large permanent living reference collection	1 050	2 380
25	Shrubs	1 050	1 190
26	Vine habit	1 050	1 190
27	Runners	1 050	1 870

COMMISSION REGULATION (EC) NO 1239/95*
OF 31 MAY 1995
ESTABLISHING IMPLEMENTING RULES FOR THE APPLICATION OF
COUNCIL REGULATION (EC) NO. 2100/94 AS REGARDS
THE PROCEEDINGS BEFORE THE COMMUNITY PLANT VARIETY OFFICE

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (1), and in particular Article 114 thereof,

Whereas Regulation (EC) No 2100/94 (hereinafter referred to as 'the Basic Regulation') creates a new Community system of plant variety rights, whereby a plant variety right is valid throughout the Community;

Whereas such a system should be carried out in an effective manner as soon as possible by the Community Plant Variety Office, which is assisted by Examination Offices in conducting the technical examination of the plant varieties concerned and which may avail itself of the services of designated national agencies or one of its own suboffices established for that purpose; whereas, in that regard, it is indispensable to define the relationship between the Office and its own suboffices, the Examination Offices and national agencies;

Whereas decisions of the Office may be appealed against before its Board of Appeal which should be established and provisions on its procedure should be adopted; whereas further Boards of Appeal may be established, if necessary, by the Administrative Council;

Whereas certain provisions of Articles 23, 29, 34, 35, 36, 42, 45, 46, 49, 50, 58, 81, 85, 87, 88 and 100 of the Basic Regulation already explicitly provide that detailed rules shall or may be drawn up for their implementation; whereas other detailed rules should be drawn up for the same purpose if clarification is required;

Whereas the entry into effect of a transfer of a Community plant variety right or a transfer of an entitlement thereto should be defined in the rules relating to the entries to the Registers;

Whereas the Administrative Council of the Community Plant Variety Office has been consulted;

Whereas the rules provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

TITLE I

PARTIES TO PROCEEDINGS, OFFICE AND EXAMINATION OFFICES

CHAPTER I

PARTIES TO PROCEEDINGS

Article 1

Parties to proceedings

1. The following persons may be party to proceedings before the Community Plant Variety Office, hereinafter referred to as 'the Office':

- (a) the applicant for a Community plant variety right;
- (b) the objector referred to in Article 59 (2) of the Basic Regulation;
- (c) the holder or holders of the Community plant variety right, hereinafter referred to as 'the holder';
- (d) any person whose application or request is a prerequisite for a decision to be taken by the Office.

2. The Office may allow participation in the proceedings by any person other than those referred to in paragraph 1 who is directly and individually concerned, upon written request.

3. Any natural or legal person as well as any body qualifying as a legal person under the law applicable to that body shall be considered a person within the meaning of paragraphs 1 and 2.

(OJ L 121, 1.6.1995, p. 37)

Amended by:

Commission Regulation (EC) No 448/96 of 12 March 1996 L 62 3 13.3.1996

Commission Regulation (EC) No 2181/2002 of 6 December 2002 L 331 14 7.12.2002

Commission Regulation (EC) No 1002/2005 of 30 June 2005 L 170 7 1.7.2005

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

Article 2

Designation of parties to proceedings

1. A party to proceedings shall be designated by his name and address.
2. Names of natural persons shall be indicated by the person's family name and given names. Names of legal persons as well as companies or firms shall be indicated by their official designations.
3. Addresses shall contain all the relevant administrative information, including the name of the State in which the party to proceedings is resident or where his seat or establishment is located. Only one address should preferably be indicated for each party to proceedings; where several addresses are indicated, only the address mentioned first shall be taken into account, except where the party to proceedings designates one of the other addresses as an address for service.
4. Where a party to proceedings is a legal person, it shall also be designated by the name and address of the natural person legally representing the party to proceedings by virtue of the relevant national legislation. The provisions of paragraph 2 shall apply *mutatis mutandis* to such natural person. The Office may permit derogations from the provisions of the first sentence of the first subparagraph.
5. Where the Commission or a Member State is party to proceedings, it shall communicate a representative for each proceeding in which it takes part.

Article 3

Languages of parties to proceedings

1. A language, being an official language of the Communities, chosen by a party to proceedings for use in the document first submitted to the Office and signed for the purpose of submission shall be used by the party to proceedings until a final decision is delivered by the Office.
2. If a party to proceedings files a document signed for that purpose by him in any other official language of the Communities than that to be used pursuant to paragraph 1, the document shall be deemed to have been received when the Office holds a translation thereof, provided by other services. The Office may permit derogations from this requirement.
3. If, in oral proceedings, a party uses a language other than the official language of the Communities used by the competent members of the staff of the Office, by other parties to proceedings, or by both, being the language to be used by him, he shall make provision for simultaneous interpretation into that official language. If no such provision is made, oral proceedings may continue in the languages used by the

competent members of the staff of the Office and by other parties to the proceedings.

Article 4

Languages in oral proceedings
and in the taking of evidence

1. Any party to proceedings and any witness or expert who gives evidence in oral proceedings may use any of the official languages of the European Community.
2. Should the taking of evidence referred to in paragraph 1 be allowed at the request of a party to proceedings, then, should a party to proceedings, a witness or expert be unable to express himself adequately in any of the official languages of the European Communities, he may be heard only if the party who made the request makes provision for interpretation into the languages used jointly by all parties to proceedings or, in the absence thereof, by the members of the staff of the Office. The Office may permit derogations from the first subparagraph.
3. Statements made by the members of the staff of the Office, by parties to proceedings, witnesses or experts in one of the official languages of the European Communities during oral proceedings or taking of evidence shall be entered in the minutes in the language used. Statements made in any other language shall be entered in the language used by the members of the staff of the Office.

Article 5

Translation of documents of parties to proceedings

1. If a party to proceedings files a document in a language other than an official language of the European Communities, the Office may require a translation of the documents received to be made by the party to the proceedings into the language to be used by that party or by the competent members of the staff of the Office.
2. Where a translation of a document is to be filed or is filed by a party to proceedings, the Office may require the filing, within such time as it may specify, of a certificate that the translation corresponds to the original text.
3. Failure to file the translation referred to in paragraph 1 and the certificate referred to in paragraph 2 shall lead to the document's being deemed not to have been received.

CHAPTER II

THE OFFICE

*Section 1**Committees of the Office*

Article 6

Qualification of members of the Committees

1. The Committees referred to in Article 35 (2) of the Basic Regulation shall, at the discretion of the President of the Office, be composed of technically or legally qualified members, or both.
2. A technical number shall hold a degree, or shall be qualified by recognized experience, in the field of plant science.
3. A legally qualified member shall be a graduate in law or qualified by recognized experience in the field of intellectual property or plant variety registration.

Article 7

Decisions of the Committee

1. A Committee shall, besides taking the decisions referred to in Article 35 (2) of the Regulation, deal with:
 - the non-suspension of a decision pursuant to Article 67 (2) of the Basic Regulation,
 - interlocutory revision pursuant to Article 70 of that Regulation,
 - the *restitutio in integrum* pursuant to Article 80 of that Regulation, and
 - the award of costs pursuant to Article 85 (2) of that Regulation and Article 75 of this Regulation.
2. A decision of the Committee shall be taken by a majority of its members.

Article 8

Power of individual members of the Committees

1. The Committee shall designate one of its members as rapporteur on its behalf.
2. The rapporteur may in particular:
 - (a) perform the duties under Article 25 and monitor the submission of reports by the Examination Offices;
 - (b) pursue the procedure within the Office, including the communication of any deficiencies to be remedied by a party to proceedings and the setting of time limits; and
 - (c) ensure a close consultation and exchange of information with the parties to the proceedings.

Article 9

Role A the President

The President of the Office shall ensure the consistency of decisions taken under his authority. He shall in particular lay down the conditions under which decisions on objections lodged pursuant to Article 59 of the Basic Regulation, and also decisions pursuant to Articles 61, 62, 63 or 66 of that Regulation, are taken.

Article 10

Consultations

Members of the staff of the Office may use, free of charge, the premises of national agencies designated pursuant to Article 30 (4) of the Basic Regulation, and those of Examination Offices, for holding periodical consultation days with parties to proceedings and third persons.

*Section 2**Boards of Appeals*

Article 11

Boards of Appeal

1. For the purpose of deciding on appeals from the decisions referred to in Article 67 of the Basic Regulation, a Board of Appeal is hereby established. If necessary, the Administrative Council may, on a proposal from the Office, establish more Boards of Appeal. In that event, it shall determine the allocation of work between the Boards of Appeal thus established.
2. Each Board of Appeal shall consist of technical and legally qualified members; Article 6 (2) and (3) shall apply *mutatis mutandis*. The chairman shall be a legally qualified number.
3. The examination of an appeal shall be assigned by the chairman of the Board of Appeal to one of its members as rapporteur. Such assignment may include, where appropriate, the taking of evidence.
4. Decisions of the Board of Appeal shall be taken by a majority of its members.

Article 12

Registry attached to a Board of Appeal

1. The President of the Office shall attach a registry to the Board of Appeal; members of the staff of the Office shall be excluded from the registry if they have participated in proceedings relating to the decisions under appeal.
2. The employees of the registry shall in particular be responsible for:

- drawing up the minutes of oral proceedings and taking evidence pursuant to Article 63 of this Regulation,
- apportioning costs pursuant to Article 85 (5) of the Basic Regulation and Article 76 of this Regulation, and
- confirming any settlement of costs referred to in Article 77.

CHAPTER III

EXAMINATION OFFICES

Article 13

Designation of an Examination Office referred to in Article 55 (1) of the Basic Regulation

1. When the Administrative Council entrusts the competent office in a Member State with responsibility for technical examination, the President of the Office shall notify the designation to such office, hereinafter referred to as Examination Office. It shall take effect on the day of issue of the notification by the President of the Office. This provision shall apply *mutatis mutandis* to the cancellation of the designation of an Examination Office, subject to Article 15 (6) of this Regulation.
2. A member of the staff of the Examination Office taking part in a technical examination is not allowed to make any unauthorized use of, or disclose to any unauthorized person, any facts, documents and information coming to their knowledge in the course of or in connection with the technical examination; they shall continue to be bound by this obligation after the termination of the technical examination concerned, after leaving the service and after the cancellation of the designation of the Examination Office concerned.
3. Paragraph 2 shall apply *mutatis mutandis* to material of the plant variety which has been made available to the Examination Office by the applicant.
4. The Office shall monitor compliance with paragraphs 2 and 3 and shall decide on the exclusion of or objections raised to members of the staff of Examination Offices in accordance with Article 81 (2) of the Basic Regulation.

Article 14

Designation of an Examination Office referred to in Article 55 (2) of the Basic Regulation

1. Where the Office intends to entrust agencies with responsibility for the technical examination of varieties in accordance with Article 55 (2) of the Basic Regulation, it shall transmit an explanatory statement on the technical suitability of such agency as Examination Office to the Administrative Council for consent.
2. Where the Office intends to establish its own sub-office for the technical examination of varieties, it shall transmit an

explanatory statement on the technical and economic appropriateness of establishing such a sub-office for that purpose and on the siting of such sub-office to the Administrative Council for consent.

3. When the Administrative Council gives its consent to the explanatory statements referred to in paragraphs 1 and 2, the President of the Office may notify such designation to the agency referred to in paragraph 1, or may publish the designation of a sub-office as referred to in paragraph 2 in the *Official Journal of the European Communities*. It may be cancelled only with the consent of the Administrative Council. Article 13 (2) and (3) shall apply *mutatis mutandis* to the members of the staff of the agency referred to in paragraph 1.

Article 15

Procedure for designation

1. The designation of an Examination Office shall be effected by a written agreement between the Office and the Examination Office providing for the performance of the technical examination of plant varieties by the Examination Office and for the payment of the fee referred to in Article 58 of the Basic Regulation. In the case of a sub-office referred to in Article 14 (2) of this Regulation, the designation shall be by internal rules on working-methods issued by the Office.
2. The effect of the written agreement shall be such that acts performed or to be performed by members of the staff of the Examination Office in accordance therewith shall be considered, as far as third parties are concerned, to be acts of the Office.
3. Where the Examination Office intends to avail itself of the services of other technically qualified bodies in accordance with Article 56 (3) of the Basic Regulation, such bodies shall be named in the written agreement with the Office. Article 81 (2) of the Basic Regulation and Article 13 (2) and (3) of this Regulation shall apply *mutatis mutandis* to the staff members concerned, who shall sign a written undertaking to observe confidentiality.
4. Payment of the fee by the Office to the Examination Office shall be within the scales to be inserted later in this Regulation, by 31 December 1999, on the basis of the requirements laid down in Article 93 (1) hereof. The scales, once adopted, may be amended only subject to amendment of Commission Regulation (EC) No 1238/95 (1) (fees).
5. The Examination Office shall periodically submit to the Office a breakdown of the costs of the technical examination performed and of the maintenance of the necessary reference collections. In the circumstances set out in paragraph 3, a separate auditing report of the bodies shall be submitted to the Office by the Examination Office.
6. Any cancellation of designation of an Examination Office may not take effect prior to the day on which revocation of the written agreement referred to in paragraph 1 takes effect.

TITLE II

SPECIFIC PROCEEDINGS BEFORE THE OFFICE

CHAPTER I

APPLICATION FOR A COMMUNITY PLANT
VARIETY RIGHT*Section 1**Actions of the applicant*

Article 16

Filing of the application

1. The application for a Community plant variety right shall be filed in duplicate at the Office, or in triplicate at the national agencies or suboffices established pursuant to Article 30 (4) of the Basic Regulation.

2. The 'information' sent to the Office under indent (b) of Article 49 (1) of the Basic Regulation shall contain:

- particulars for identifying the applicant and, where appropriate, his procedural representative,
- the national agency or sub-office at which the application for a Community plant variety right was filed, and
- the provisional designation of the variety concerned.

3. The Office shall make the following forms available free of charge, to be filled out and signed by the applicant:

- (a) an application form and a technical questionnaire, for the purposes of filing an application for a Community plant variety right;
- (b) a form for forwarding the information referred to in paragraph 2, indicating the consequences of any failure of the forwarding.

Article 17

Receipt of the application

1. Where a national agency designated pursuant to Article 30 (4) of the Basic Regulation or a sub-office established thereunder, receives an application, it shall forward to the Office, together with the application to be forwarded in accordance with Article 49 (2) of the Basic Regulation, a confirmation of receipt. The confirmation of receipt shall include the file number of the national agency, the number of forwarded documents and the date of receipt at the national agency or sub-office. A copy of the forwarded receipt shall be issued to the applicant by the national agency or sub-office.

2. Where the Office receives an application from the applicant direct or via a sub-office or a national agency, it shall, without prejudice to other provisions, mark the documents making up the application with a file number and the date of receipt at the Office and shall issue a receipt to the applicant.

The receipt shall include the file number of the Office, the number of documents received, the date of receipt at the Office and the date of application within the meaning of Article 51 of the Basic Regulation. A copy of the receipt shall be issued to the national agency or sub-office via which the Office has received the application.

3. If the Office receives an application via a sub-office or national agency more than one month after its filing by the applicant, the 'date of application' within the meaning of Article 51 of the Basic Regulation may not be earlier than the date of receipt at the Office, unless the Office establishes on the basis of sufficient documentary evidence that the applicant has forwarded an information to it in accordance with indent (b) of Article 49 (1) of the Basic Regulation and Article 16 (2) of this Regulation.

Article 18

Conditions referred to in Article 50 (1)
of the Basic Regulation

1. If the Office finds that the application does not comply with the conditions in Article 50 (1) of the Basic Regulation, it shall notify to the applicant the deficiencies it has found, stating that only such date as sufficient information remedying those deficiencies is received shall be treated as the date of application for the purposes of Article 51 of the Regulation.

2. An application complies with the condition in indent (i) of Article 50 (1) of the Basic Regulation only if date and country of any first disposal within the meaning of Article 10 (1) of that Regulation are indicated, or if, in the absence of such disposal a declaration is made that no such disposal has occurred.

3. An application complies with the condition in indent (j) of Article 50 (1) of the Basic Regulation only if the date and the country given in any earlier application for the variety are, to the best of the applicant's knowledge, indicated in respect of:

- an application for a property right in respect of the variety, and
- an application for official acceptance of the variety for certification and marketing where official acceptance includes an official description of the variety, in a Member State or as a Member of the International Union for the Protection of New Varieties of Plants.

Article 19

Conditions referred to in Article 50 (2)
of the Basic Regulation

1. If the Office finds that the application does not comply with the provisions of paragraphs 2, 3 and 4 of this Article or with Article 16 of this Regulation, it shall apply Article 17 (2) hereof, but shall require the applicant to remedy the deficiencies it has found within such time limit as it may specify. Where those deficiencies are not remedied in good time the Office shall without delay refuse the application, pursuant to Article 61 (1) (a) of the Basic Regulation.

2. The application shall contain the following details:

- (a) the nationality of the applicant, if he is a natural person, and his designation as party to proceedings referred to in Article 2 of this Regulation and, if he is not the breeder, the name and address of the breeder;
- (b) the Latin name of the genus, species or sub-species to which the variety belongs, and the common name;
- (c) the characteristics of the variety which, in the applicant's opinion, are clearly distinguishable from other varieties, such other varieties being named (if appropriate) as reference varieties for testing;
- (d) breeding, maintenance and propagation of the variety, including information on:
 - the characteristics, the variety denomination or, in the absence thereof, the provisional designation, and the cultivation of any other variety or varieties the material of which has to be used repeatedly for the production of the variety, or
 - characteristics which have been genetically modified, where the variety concerned represents a genetically modified organism within the meaning of Article 2 (2) of Council Directive 90/220/EEC (1);
- (e) the region and the country in which the variety was bred or discovered and developed;
- (f) date and country of any first disposal of varietal constituents or harvested material of the variety, for the purposes of assessing novelty in accordance with Article 10 of the Basic Regulation, or a declaration that such disposal has not yet occurred;
- (g) the designation of the authority applied to and the file number of the applications referred to in Article 18 (3);
- (h) existing national plant variety rights or any patent for the variety operating within the Community.

3. The Office may call for any necessary information and documentation, and, if necessary, sufficient drawings or photographs for the conduct of the technical examination within such time limit as it shall specify.

4. Where the variety concerned represents a genetically modified organism within the meaning of Article 2 (2) of Directive 90/220/EEC, the Office may require the applicant to transmit a copy of the written attestation of the responsible authorities stating that a technical examination of the variety under Articles 55 and 56 of the Basic Regulation does not pose risks to the environment according to the norms of the aforesaid Directive.

Article 20

Claiming priority

If the applicant claims a right of priority for an application within the meaning of Article 52 (2) of the Basic Regulation, which is not the earliest of those to be indicated pursuant to the first indent of Article 18 (3), the Office shall state that a priority date can only be given to such earlier application. Where the Office has issued a receipt including the date of filing of an application which is not the earliest of those to be indicated, the priority date notified shall be considered void.

Article 21

Entitlement to a Community plant variety right during proceedings

1. When the commencement of an action against the applicant in respect of a claim referred to in Article 98 (4) of the Basic Regulation has been entered in the Register of Applications for Community plant variety rights, the Office may stay the application proceedings. The Office may set a date on which it intends to continue the proceedings pending before it.

2. When a final decision in, or any other termination of, the action referred to in paragraph 1 has been entered in the Register of Community plant variety rights, the Office shall resume proceedings. It may resume them at an earlier date, but not prior to the date already set pursuant to paragraph 1.

3. Where entitlement to a Community plant variety right is validly transferred to another person for the purposes of the Office, that person may pursue the application of the first applicant as if it were his own, provided that he gives notice to this effect to the Office within one month of the entry of final judgment in the Register of Applications for Community plant variety rights. Fees due pursuant to Article 83 of the Basic Regulation and already paid by the first applicant shall be deemed to have been paid by the subsequent applicant.

Section 2

Conduct of the technical examination

Article 22

Decision on test guidelines

1. Upon proposal of the President of the Office, the Administrative Council shall take a decision as to the test guidelines. The date and the species concerned of the decision shall be published in the Official Gazette referred to in Article 87 of this Regulation.

2. In the absence of a decision of the Administrative Council as to test guidelines, the President of the Office may take a provisional decision thereon. The provisional decision shall lapse on the date of the decision of the Administrative Council. Where the provisional decision of the President of

the Office deviates from the decision of the Administrative Council, a technical examination started prior to the decision of the Administrative Council shall not be affected; the Administrative Council may decide otherwise, if circumstances so dictate.

Article 23

Powers vested in the President of the Office

1. Where the Administrative Council takes a decision on test guidelines, it shall include a power whereby the President of the Office may insert additional characteristics and their expressions in respect of a variety.

2. Where the President of the Office makes use of the power in paragraph 1, Article 22 (2) of this Regulation shall apply *mutatis mutandis*.

Article 24

Notification by the Office of the Examination Office

In accordance with Article 55 (3) of the Basic Regulation, the Office shall transmit copies of the following documents relating to the variety to the Examination Office:

- (a) the application form, the technical questionnaire and each additional document submitted by the applicant containing information needed for the conduct of the technical examination;
- (b) the forms filled out by the applicant pursuant to Article 86 of this Regulation;
- (c) documents relating to an objection based on the contention that the conditions laid down in Articles 7 to 9 of the Basic Regulation have not been met.

Article 25

Cooperation between the Office and the Examination Office

The staff of the Examination Office responsible for the technical examination and the rapporteur designated in accordance with Article 8 (1) of this Regulation shall cooperate in all phases of a technical examination. Cooperation shall cover at least the following aspects:

- (a) monitoring of the conduct of the technical examination, including inspection of the locations of the test plots and the methods used for the tests by the rapporteur; and
- (b) without prejudice to other investigations by the Office, information from the Examination Office about details of any previous disposal of the variety;
- (c) submission by the Examination Office to the Office of interim reports on each growing period.

Article 26

Form of the examination reports

1. The examination report referred to in Article 57 of the Basic Regulation shall be signed by the responsible member of the staff of the Examination Office and shall expressly acknowledge the exclusive rights of disposal of the Office under Article 57 (4) of the Regulation.

2. The provisions of paragraph 1 shall apply *mutatis mutandis* to any interim reports to be submitted to the Office. The Examination Office shall issue a copy of such interim report direct to the applicant.

Article 27

Other examination reports

1. An examination report on the results of any technical examination which has been carried out or is in the process of being carried out for official purposes in a Member State by one of the offices responsible for the species concerned pursuant to Article 55(1) of the Basic Regulation may be considered by the Office to constitute a sufficient basis for decision, provided that:

- the material submitted for the technical examination has complied, in quantity and quality, with any standards that may have been laid down pursuant to Article 55(4) of the Basic Regulation,
- the technical examination has been carried out in a manner consistent with the designations by the Administrative Council pursuant to Article 55(1) of the Basic Regulation, and has been conducted in accordance with the test guidelines issued, on general instructions given, pursuant to Article 56(2) of that Regulation and Articles 22 and 23 of this Regulation,
- the Office has had the opportunity to monitor the conduct of the technical examination concerned, and
- where the final report is not immediately available, the interim reports on each growing period are submitted to the Office prior to the examination report.

2. Where the Office does not consider the examination report referred to in paragraph 1 to constitute a sufficient basis for a decision, it may follow the procedure under Article 55 of the Regulation, after consultation of the applicant and the Examination Office concerned.

3. The Office and each competent national plant variety office in a Member State shall give administrative assistance to the other by making available, upon request, any examination reports on a variety, for the purpose of assessing distinctiveness, uniformity and stability of that variety. A specific amount shall be charged by the Office or the competent national plant variety office for the submission of such a report, such amount being agreed by the offices concerned.

4. An examination report on the results of a technical examination which has been carried out or is in the process of being carried out for official purposes in a third country which is Member of the International Union for the Protection of New Varieties of Plants may be considered by the Office to constitute a sufficient basis for decision, provided the technical examination complies with the conditions laid down in a written agreement between the Office and the competent authority of such third country. Such conditions shall at least include:

- those related to the material, as referred to in paragraph 1, first indent,
- that the technical examination has been conducted in accordance with the test guidelines issued, or general instructions given, pursuant to Article 56(2) of the Basic Regulation,
- that the Office has had the opportunity to assess the suitability of facilities for carrying out a technical examination for the species concerned in that third country and to monitor the conduct of the technical examination concerned, and
- those related to the availability of reports, as laid down in paragraph 1, fourth indent.

Section 3

Variety denomination

Article 28

Proposal for a variety denomination

The proposal for a variety denomination shall be signed and shall be filed in duplicate at the Office, or, if the proposal accompanies the application for a Community plant variety right filed at the national agency designated, or sub-office established, pursuant to Article 30 (4) of the Regulation, in triplicate. The Office shall make available, free of charge, a form for the purposes of proposing a variety denomination.

Article 29

Examination of a proposal

1. Where the proposal does not accompany the application for a Community plant variety right or where a proposed variety denomination cannot be approved by the Office, the Office shall without delay communicate this to the applicant, shall require him to submit a proposal or a new proposal and shall indicate the consequences of failure.
2. Where the Office establishes at the time of receipt of the results of the technical examination pursuant to Article 57 (1) of the Regulation that the applicant has not submitted any proposal for a variety denomination, it shall

without delay refuse the application for a Community plant variety right in accordance with Article 61 (1) (c) of the Regulation.

Article 30

Guidelines for variety denomination

The Administrative Council shall adopt guidelines establishing uniform and definitive criteria for determining impediments to the generic designation of a variety denomination referred to in Article 63 (3) and (4) of the Basic Regulation.

CHAPTER II

OBJECTION

Article 31

Filing of objections

1. Objections under Article 59 of the Basic Regulation shall contain:
 - (a) the name of the applicant and the file number of the application to which the objection is lodged;
 - (b) the designation of the objector as party to proceedings as set out in Article 2 of this Regulation;
 - (c) if the objector has appointed a procedural representative, his name and the address;
 - (d) a statement on the contention referred to in Article 59 (3) of the Basic Regulation on which the objection is based, and on particulars, items of evidence and arguments presented in support of the objection.
2. If several objections in respect of the same application for a Community plant variety right are filed, the Office may deal with those objections in one set of proceedings.

Article 32

Rejection of objections

1. If the Office finds that the objection does not comply with Article 59 (1) and (3) of the Basic Regulation or Article 31 (1) (d) of this Regulation or that it does not provide sufficient identification of the application against which objection is lodged, it shall reject the objection as inadmissible unless such deficiencies have been remedied within such time limit it may specify.
2. If the Office notes that the objection does not comply with other provisions of the Basic Regulation or of this Regulation, it shall reject the objection as inadmissible unless such deficiencies have been remedied prior to the expiry of the objection periods.

CHAPTER III

MAINTENANCE OF COMMUNITY
PLANT VARIETY RIGHTS

Article 33

Obligations of the holder under Article 64 (3)
of the Basic Regulation

1. The holder shall permit inspection of material of the variety concerned and of the location where the identity of the variety is preserved, in order to furnish the information necessary for assessing the continuance of the variety in its unaltered state, pursuant to Article 64 (3) of the Regulation.

2. The holder shall be required to keep written records in order to facilitate verification of appropriate measures referred to in Article 64 (3) of the Regulation.

Article 34

Technical verification of the protected variety

Without prejudice to Article 87 (4) of the Regulation, a technical verification of the protected variety shall be conducted in accordance with the test guidelines duly applied when the Community plant variety right was granted in respect of that variety. Articles 22 and 24 to 27 of this Regulation shall apply *mutatis mutandis* to the Office, the Examination Office and to the holder.

Article 35

Other material to be used for a technical verification

When the holder has submitted material of the variety in accordance with Article 64 (3) of the Basic Regulation, the Examination Office may, with the consent of the Office, verify the submitted material by inspecting other material which has been taken from holdings where material is produced by the holder, or with his consent, or taken from material being marketed by him, or with his consent, or taken by official bodies in a Member State by virtue of their powers.

Article 36

Amendments of the variety denominations

1. Where the variety denomination has to be amended in accordance with Article 66 of the Regulation, the Office shall communicate the grounds thereof to the holder, shall set up a time limit within which the holder must submit a suitable proposal for an amended variety denomination, and shall state that, should he fail to do so, the Community plant variety right may be cancelled pursuant to Article 21 of the Regulation. Each proposal of the holder shall be filed in duplicate at the Office.

2. Where the proposal for an amended variety denomination cannot be approved by the Office, the Office shall without delay inform the holder, shall again set a time limit within which the holder must submit a suitable proposal,

and shall state that, should he fail to comply, the Community plant variety right may be cancelled pursuant to Article 21 of the Regulation.

3. Articles 31 and 32 of this Regulation shall apply *mutatis mutandis* to an objection lodged pursuant to Article 66 (3) of the Basic Regulation.

CHAPTER IV

COMMUNITY LICENCES TO BE
GRANTED BY THE OFFICE

Section 1

*Compulsory licences pursuant to Article 29
of the Basic Regulation*

Article 37

Applications for a compulsory licence

1. The application for a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain:

- (a) the designation of the applicant and the opposing holder of the variety concerned as parties to proceedings;
- (b) the variety denomination and the plant species of the variety or varieties concerned;
- (c) a proposal for the type of acts to be covered by the compulsory licence;
- (d) a statement setting out the public interest concerned, including details of facts, items of evidence and arguments presented in support of the public interest claimed;
- (e) in the case of an application referred to in Article 29(2) of the basic Regulation, a proposal for the category of persons to which the compulsory licence shall be granted, including, as the case may be, the specific requirements related to that category of persons.
- (f) a proposal for an equitable remuneration and the basis for calculating the remuneration.

2. The application for a compulsory licence referred to in Article 29 (5a) of the basic Regulation shall contain:

- (a) the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;
- (b) the variety denomination and the plant species of the variety or varieties concerned;
- (c) a certified copy of the patent certificate showing the number and claims of the patent for a biotechnological invention and the granting authority of the patent;

- (d) a proposal for the type of acts to be covered by the compulsory licence;
- (e) a proposal for an equitable remuneration and the basis for calculating the remuneration;
- (f) a statement setting out why the biotechnological invention constitutes significant technical progress of considerable economic interest compared with the protected variety, including details of facts, items of evidence and arguments in support of the claim;
- (g) a proposal for the territorial scope of the licence, which may not exceed the territorial scope of the patent referred to in point (c).

3. The application for a cross-licence referred to in Article 29(5a) of the basic Regulation shall contain:

- (a) the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;
- (b) the variety denomination and the plant species of the variety or varieties concerned;
- (c) a certified copy of the patent certificate showing the number and claims of the patent for a biotechnological invention and the granting authority of the patent;
- (d) an official document showing that a compulsory licence for a patented biotechnological invention has been granted to the holder of the plant variety right;
- (e) a proposal for the type of acts to be covered by the cross-licence;
- (f) a proposal for an equitable remuneration and the basis for calculating the remuneration;
- (g) a proposal for the territorial scope of the cross-licence, which may not exceed the territorial scope of the patent referred to in point (c).

4. The application for a compulsory licence shall be accompanied by documents evidencing that the applicant has applied unsuccessfully to obtain a contractual licence from the holder of the plant variety right. Should the Commission or a Member State be the applicant for a compulsory licence pursuant to Article 29(2) of the basic Regulation, the Office may waive this condition in the case of *force majeure*.

5. A request for a contractual licence shall be considered unsuccessful within the meaning of paragraph 4 if:

- (a) the opposing holder has not given a final reply to the person seeking such right within a reasonable period, or
- (b) the opposing holder has refused to grant a contractual licence to the person seeking it, or
- (c) the opposing holder has offered a licence to the person seeking it, on obviously unreasonable fundamental terms

including those relating to the royalty to be paid, or on terms which, seen as a whole, are obviously unreasonable.

Article 38

Examination of the application for a compulsory licence

1. Oral proceedings and the taking of evidence shall in principle be held together in one hearing.
2. Requests for further hearings shall be inadmissible except for those requests based on circumstances which have undergone change during or after the hearing.
3. Before taking a decision, the Office shall invite the parties concerned to come to an amicable settlement on a contractual licence. If appropriate, the Office shall make a proposal for such an amicable settlement.

Article 39

Tenure of a Community plant variety right during the proceedings

1. If the commencement of an action in respect of a claim referred to in Article 98(1) of the basic Regulation against the holder has been entered in the Register of Community Plant Variety Rights, the Office may suspend the proceedings on the grant of a compulsory licence. It shall not resume them prior to the entry in the same Register of the final judgment upon, or any other termination of, such action.
2. If a transfer of the Community plant variety right is binding on the Office, the new holder shall enter the proceedings as party thereto, upon request of the applicant, if that applicant has unsuccessfully requested the new holder to grant him a licence within two months of receipt of communication from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights. A request from the applicant shall be accompanied by sufficient documentary evidence of his vain attempt and, if appropriate, of the conduct of the new holder.
3. In the case of an application referred to in Article 29(2) of the basic Regulation, the new holder shall enter the proceedings as party thereto. Paragraph 1 of this Article shall not apply.

Article 40

Contents of the decision on the application

The written decision shall be signed by the President of the Office. The decision shall contain:

- (a) a statement that the decision is delivered by the Office;
- (b) the date when the decision was taken;
- (c) the names of the members of the committee having taken part in the proceedings;
- (d) the names of the parties to proceedings and of their procedural representatives;

- (e) the reference to the opinion of the Administrative Council;
- (f) a statement of the issues to be decided;
- (g) a summary of the facts;
- (h) the grounds on which the decision is based;
- (i) the order of the Office; if need be, the order shall include the stipulated acts covered by the compulsory licence, the specific conditions pertaining thereto and the category of persons, including where appropriate the specific requirements relating to that category.

Article 41

Grant of a compulsory licence

The decision to grant a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain a statement setting out the public interest involved.

1. The following grounds may in particular constitute a public interest:

- (a) the protection of life or health of humans, animals or plants,
- (b) the need to supply the market with material offering specific features,
- (c) the need to maintain the incentive for continued breeding of improved varieties.

2. The decision to grant a compulsory licence pursuant to Article 29(5a) of the basic Regulation shall contain a statement setting out the reasons why the invention constitutes significant technical progress of considerable economic interest. The following grounds may in particular constitute reasons why the invention constitutes significant technical progress of considerable economic interest compared with the protected plant variety:

- (a) improvement of cultural techniques;
- (b) improvement of the environment;
- (c) improvement of techniques to facilitate the use of genetic biodiversity;
- (d) improvement of quality;
- (e) improvement of yield;
- (f) improvement of resistance;
- (g) improvement of adaptation to specific climatological and/or environmental conditions.

3. The compulsory licence shall be non-exclusive.

4. The compulsory licence may not be transferred, otherwise than together with that part of an enterprise which makes use of the compulsory licence, or, in the circumstances set out in Article 29(5) of the basic Regulation, together with the assignment of the rights of an essentially derived variety.

Article 42

Conditions pertaining to the person to whom a compulsory licence is granted

1. Without prejudice to the other conditions referred to in Article 29 (3) of the basic Regulation, the person to whom the compulsory licence is granted shall have the appropriate financial and technical capacity to make use of the compulsory licence.

2. Compliance with the conditions pertaining to the compulsory licence and laid down in the decision thereupon shall be considered a 'circumstance' under Article 29(4) of the basic Regulation.

3. The Office shall provide that the person to whom a compulsory licence is granted may not bring a legal action for infringement of a Community plant variety right unless the holder has refused or neglected to do so within two months after being so requested.

Article 43

Category of persons satisfying specific requirements pursuant to Article 29(2) of the basic Regulation

1. Any person intending to make use of a compulsory licence who comes under the category of person satisfying specific requirements referred to in Article 29(2) of the basic Regulation shall declare his intention to the Office and to the holder by registered letter with advice of delivery. The declaration shall include:

- (a) the name and address of that person as laid down for parties to proceedings pursuant to Article 2 of this Regulation;
- (b) a statement on the facts meeting the specific requirements;
- (c) a statement setting out the acts to be effected; and
- (d) an assurance that that person has the appropriate financial resources as well as information about his technical capacity, to make use of the compulsory licence.

2. Upon request, the Office shall enter a person in the Register of Community Plant Variety Rights if such person has fulfilled the conditions relating to the declaration referred to in paragraph 1. Such person shall not be entitled to make use of the compulsory licence prior to the entry. The entry shall be communicated to that person and the holder.

3. Article 42(3) of this Regulation shall apply *mutatis mutandis* to a person entered in the Register of Community Plant Variety Rights pursuant to paragraph 2 of this Article.

Any judgment, or other termination, of the legal action in respect of the act of infringement shall apply to the other persons entered or to be entered.

4. The entry referred to in paragraph 2 may be deleted on the sole grounds that the specific requirements laid down in the decision on the grant of a compulsory licence or the financial and technical capacities established pursuant to paragraph 2 have undergone change more than one year after the grant of the compulsory licence and within any time-limit stipulated in that grant. The deletion of the entry shall be communicated to the person entered and the holder.

Section 2

Exploitation rights pursuant to Article 100(2) of the Basic Regulation

Article 44

Exploitation rights pursuant to Article 100(2) of the basic Regulation

1. A request for a contractual non-exclusive exploitation right from a new holder, as referred to in Article 100(2) of the basic Regulation, shall be made, in the case of the former holder within two months, or in the case of a person having enjoyed an exploitation right within four months, of receipt of notification from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights.

2. An application for an exploitation right to be granted pursuant to Article 100(2) of the basic Regulation shall be accompanied by documents supporting the unsuccessful request referred to in paragraph 1. The provisions of Article 37(1)(a), (b), (c) and (5), Article 38, Article 39(3), Article 40 except letter (f), Article 41(3) and (4) and Article 42 of this Regulation shall apply *mutatis mutandis*.

TITLE III

PROCEEDINGS BEFORE THE BOARD OF APPEAL

Article 45

Contents of the notice of appeal

The notice of appeal shall contain:

- (a) the designation of the appellant as party to appeal proceedings in accordance with Article 2 of this Regulation;
- (b) the file number of the decision against which the appeal is lodged and a statement as to the extent to which amendment or cancellation of the decision is sought;

Article 46

Receipt of the notice of appeal

Where the Office receives a notice of appeal, it shall mark it with a file number of the appeal proceedings and the date of

receipt at the Office and shall notify the appellant of the time limit for setting out the grounds of the appeal; any omission of such notice may not be pleaded.

Article 47

Participation as party to the appeal proceedings

1. The Office shall promptly transmit a copy of the notice of appeal marked with the file number and the date of its receipt to the parties to proceedings having participated in the proceedings before the Office.

2. The parties to proceedings referred to in paragraph 1 may intervene as parties to the appeal proceedings within two months of transmission of a copy of the notice of appeal.

Article 48

Role of the Office

1. The body of the Office referred to in Article 70 (1) of the Basic Regulation and the chairman of the Board of Appeal shall ensure by internal preparatory measures that the Board of Appeal can examine the case immediately after its remittal; the chairman shall in particular select the two other members in accordance with Article 46 (2) of that Regulation and shall designate a rapporteur, prior to the remittal of the case.

2. Prior to the remittal of the case, the body of the Office referred to in Article 70 (1) of the Basic Regulation shall promptly transmit a copy of the documents received by a party to the appeal proceedings to the other parties to the appeal proceedings.

3. The President of the Office shall provide for the publication of the information referred to in Article 89 of this Regulation, prior to the remittal of the case.

Article 49

Rejection of the appeal as inadmissible

1. If the appeal does not comply with the provisions of the Basic Regulation and in particular Articles 67, 68 and 69 thereof or those of this Regulation and in particular Article 45 thereof, the Board of Appeal shall so inform the appellant and shall require him to remedy the deficiencies found, if possible, within such period as it may specify. If the appeal is not rectified in good time, the Board of Appeal shall reject it as inadmissible.

2. Where an appeal is lodged against a decision of the Office against which an action under Article 74 of the Basic Regulation is likewise lodged, the Board of Appeal shall forthwith submit the appeal as an action to the Court of Justice of the European Communities, with the consent of the appellant; if the appellant does not consent, it shall reject the appeal as inadmissible. In the case of the submission of an appeal to the Court of Justice, such an appeal shall be deemed to have been lodged with the Court of Justice as at the date of receipt at the Office under Article 46 of this Regulation.

Article 50

Oral proceedings

1. After the remittal of the case, the chairman of the Board of Appeal shall, without delay, summon the parties to the appeal proceedings to oral proceedings as provided for in Article 77 of the Basic Regulation and shall draw their attention to the contents of Article 59 (2) of this Regulation.
2. The oral proceedings and the taking of evidence shall in principle be held in one hearing.
3. Requests for further hearings shall be inadmissible except for requests based on circumstances which have undergone change during or after the hearing.

Article 51

Examination of appeals

Unless otherwise provided, the provisions relating to proceedings before the Office shall apply to appeal proceedings *mutatis mutandis*; parties to proceedings shall in that regard be treated as parties to appeal proceedings.

Article 52

Decision on the appeal

1. Within three months after closure of the oral proceedings, the decision on the appeal shall be forwarded in writing to the parties to the appeal proceedings.
2. The decision shall be signed by the chairman of the Board of Appeal and by the rapporteur designated pursuant to Article 48 (1) of this Regulation. The decision shall contain:
 - (a) a statement that the decision is delivered by the Board of Appeal;
 - (b) the date when the decision was taken;
 - (c) the names of the chairman and of the other members of the Board of Appeal having taken part in the appeal proceedings;
 - (d) the names of the parties to the appeal proceedings and their procedural representatives;
 - (e) a statement of the issues to be decided;
 - (f) a summary of the facts;
 - (g) the grounds on which the decision is based;
 - (h) the order of the Board of Appeal, including, where necessary, a decision as to the award of costs or the refund of fees.
3. The written decision of the Board of Appeal shall be accompanied by a statement that further appeal is possible, together with the time limit for lodging such further appeal. The parties to the appeal proceedings may not plead the omission of the statement.

TITLE IV

GENERAL PROVISIONS RELATING TO PROCEEDINGS

CHAPTER I

DECISIONS, COMMUNICATIONS AND DOCUMENTS

Article 53

Decisions

1. Any decision of the Office is to be signed by and to state the name of the member of staff duly authorized by the President of the Office in accordance with Article 35 of the Basic Regulation.
2. Where oral proceedings are held before the Office, the decisions may be given orally. Subsequently, the decision in writing shall be served on the parties to proceedings.
3. Decisions of the Office which are open to appeal under Article 67 of the Basic Regulation or to direct appeal under Article 74 thereof shall be accompanied by a statement of that appeal or direct appeal if possible, together with the time limits provided for lodging such appeal or direct appeal. The parties to proceedings may not plead to omission of the statement.
4. Linguistic errors, errors of transcription and patent mistakes in decisions of the Office shall be corrected.

Article 54

Certificate for a Community plant variety right

1. Where the Office grants a Community plant variety right, it shall issue, together with the decision thereon, a certificate for the Community plant variety right as evidence of the grant.
2. The Office shall issue the certificate for the Community plant variety right in whichever official language or languages of the Communities is requested by the holder.
3. On request, the Office may issue a duplicate to the person entitled if it establishes that the original certificate has been lost or destroyed.

Article 55

Communications

Unless otherwise provided, any communication by the Office or an Examination Office shall include the name of the competent member of the staff.

Article 56

Right of audience

1. If the Office finds that a decision may not be adopted in the terms sought, it shall communicate the deficiencies noted to the party to the proceedings and shall require him to remedy those deficiencies within such time limit as it may specify. If

the deficiencies noted and communicated are not remedied in good time, the Office shall proceed to take its decision.

2. If the Office receives observations from a party to proceedings, it shall communicate those observations to the other parties to the proceedings and shall require them, if it considers it necessary, to reply within such time limit as it may specify. If a reply is not received in good time, the Office shall disregard any document received later.

Article 57

Documents filed by parties to proceedings

1. The date of receipt of any document filed by parties to proceedings shall be deemed to be the date on which a document is in fact received on the premises of the Office, on the national agency, or the sub-office designated pursuant to Article 30 (4) of the Basic Regulation.

2. With the exception of annexed documents, any documents filed by parties to proceedings must be signed by them or their procedural representative.

3. With the consent of the Administrative Council, the Office may allow documents of a party to proceedings to be filed by telegraph, telex, telecopier, or other information equipment and lay down conditions governing their use.

4. If a document has not duly been signed or has been allowed to be filed in accordance with paragraph 3, the party to proceedings shall be required to supply the original of the document signed pursuant to the provision of paragraph 2 within a time limit of one month. If such document is supplied within such time limit, the date of receipt of the former document shall be maintained; otherwise, it shall be deemed not to have been received.

5. The Office may permit a derogation from the time limit required under paragraph 4 where the party to proceedings concerned may file the document concerned only at the Office direct. Such derogation may not exceed two further weeks.

6. Such documents as must be communicated to other parties to proceedings as well as to the Examination Office concerned, or documents relating to two or more applications for a Community plant variety right or an exploitation right, must be filed in a sufficient number of copies. Missing copies shall be provided at the expense of the party to the proceedings.

Article 58

Documentary evidence

1. Documentary evidence of final judgments or decisions other than those of the Office shall be deemed sufficient where a copy thereof is furnished that has been certified by the court or authority responsible for the judgment or decision.

2. Documentary evidence of other documents to be submitted by parties to proceedings shall be deemed sufficient where it is the original document or a certified copy thereof.

CHAPTER II

ORAL PROCEEDINGS AND TAKING OF EVIDENCE

Article 59

Summons to oral proceedings

1. The parties to proceedings shall be summoned to oral proceedings provided for in Article 77 of the Basic Regulation and their attention shall be drawn to paragraph 2 hereof. At least one month's notice of the summons dispatched to the parties to proceedings shall be given unless the parties to proceedings and the Office agree on a shorter period.

2. If a party to proceedings who has duly been summoned to oral proceedings before the Office does not appear as summoned, the proceedings may continue without him.

Article 60

Taking of evidence by the Office

1. Where the Office considers it necessary to hear the oral evidence of parties to proceedings or of witnesses or experts, or to carry out an inspection, it shall take a decision to that effect, stating the means by which it intends to obtain evidence, the relevant facts to be proved and the date, time and place of hearing or inspection. If oral evidence from witnesses and experts is requested by a party to proceedings, the decision of the Office shall state the period of time within which the party to proceedings filing the request must make known to the Office the names and addresses of the witnesses and experts whom the party to proceedings wishes to be heard.

2. At least one month's notice of a summons dispatched to a party to proceedings, witness or expert to give evidence shall be given unless the Office and they agree to a shorter period. The summons shall contain:

- (a) an extract from the decision referred to in paragraph 1, indicating in particular the date, time and place of the investigation ordered and setting out the facts regarding which parties to proceedings, witnesses and experts are to be heard;
- (b) the names of the parties to proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Article 62 (2) to (4) of this Regulation;
- (c) a statement that the party to proceedings, witness or expert may ask to be heard by the competent judicial or other authority in his country of domicile and a request that he inform the Office within a time limit to be fixed by the Office whether he is prepared to appear before it.

3. Before a party to proceedings, a witness or an expert may be heard, he shall be informed that the Office may request the competent judicial or another authority in his country of domicile to re-examine his evidence on oath or in some other binding form.

4. The parties to proceedings shall be informed of the hearing of a witness or expert before a competent judicial or other authority. They shall have the right to be present and to put questions to the testifying parties to proceedings, witnesses and experts, either through the intermediary of the authority or direct.

Article 61

Commissioning of experts

1. The Office shall decide in what form the report to be made by an expert whom it appoints shall be submitted.
2. The mandate of the expert shall contain:
 - (a) a precise description of his task;
 - (b) the time limit laid down for the submission of the report;
 - (c) the names of the parties to the proceedings;
 - (d) particulars of the rights which he may invoke under Article 62 (2) to (4) of this Regulation.
3. For the purposes of the expert's report, the Office may require the Examination Office having conducted the technical examination of the variety concerned to make available material in accordance with instructions given. If necessary, the Office may also require material from parties to proceedings or third persons.
4. The parties to proceedings shall be provided with a copy and, where appropriate, a translation of any written report.
5. The parties to proceedings may object to an expert. Articles 48 (3) and 81 (2) of the Basic Regulation shall apply *mutatis mutandis*.
6. Article 13 (2) and (3) shall apply *mutatis mutandis* to the expert appointed by the Office. When appointing the expert, the Office shall inform him of the requirement of confidentiality.

Article 62

Costs of taking evidence

1. The taking of evidence may be made conditional upon deposit with the Office, by the party to proceedings who requested that such evidence be taken, of a sum to be quantified by the Office by reference to an estimate of the costs.
2. Witnesses and experts who are summoned by and who appear before the Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance may be granted to them.
3. Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts unless members of the staff of the

Examination Offices, to fees for their work. Those payments shall be made to the witnesses after the taking of evidence and to the experts after they have fulfilled their duties or tasks.

4. Payments of amounts due pursuant to paragraphs 2 and 3 and in accordance with the details and scales laid down in the Annex shall be made by the Office.

Article 63

Minutes of oral proceedings and of taking of evidence

1. Minutes of oral proceedings and of the taking of evidence shall record the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties to proceedings, the testimony of the parties to proceedings, witnesses or experts and the result of any inspection.
2. The minutes of the testimony of a witness, expert or party to proceedings shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. Where his approval is not given, his objections shall be noted.
3. The minutes shall be signed by the employee who drew them up and by the employee who conducted the oral proceedings or the taking of evidence.
4. The parties to proceedings shall be provided with a copy and, where appropriate, a translation of the minutes.

CHAPTER III

SERVICE

Article 64

General provisions on service

1. In proceedings before the Office, any service of documents to be made on a party to proceedings shall take the form of the original document, in the case of the certificate, or of a copy of the original document certified by the Office. Copies of documents emanating from other parties to proceedings shall not require such certification.
2. If a procedural representative has been appointed by one or more parties to proceedings, service shall be made on him in accordance with the provisions of paragraph 1.
3. Service shall be made:
 - (a) by post in accordance with Article 65 of this Regulation;
 - (b) by delivery by hand in accordance with Article 66 hereof;
 - (c) by public notice in accordance with Article 67 hereof.

Article 65

Service by post

1. Documents or copies thereof containing actions for which service is provided in Article 79 of the Regulation shall be served by registered letter with advice of delivery.
2. Service on addressees not having their domicile or their seat or establishment within the Community and who have not appointed a procedural representative in accordance with Article 82 of the Basic Regulation shall be effected by posting the documents to be served by ordinary letter to the addressee's last address known to the Office. Service shall be deemed to have been effected by posting even if the letter is returned as undeliverable.
3. Where service is effected by registered letter, whether or not with advice of delivery, this shall be deemed to have been delivered to the addressee on the 10th day following its posting, unless the letter has failed to reach the addressee or has reached him on a later day; in the event of any dispute, it shall be for the Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.
4. Service by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if the addressee refuses to accept the letter or to acknowledge receipt thereof.
5. Where service by post is not covered by paragraphs 1 to 4, the law of the State on the territory of which the service is made shall apply.

Article 66

Service by hand delivery

On the premises of the Office, service of a document may be effected by delivery by hand to the addressee, who shall on delivery acknowledge its receipt. Service shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Article 67

Public notice

If the address of the addressee cannot be established, or if service in accordance with Article 65 (1) has proved to be impossible even after a second attempt by the Office, service shall be effected by public notice, to be issued in the periodical publication referred to in Article 89 of the Basic Regulation. The President of the Office shall determine details as to the issue of public notice.

Article 68

Irregularities in service

If the Office is unable to prove that a document which has reached the addressee has been duly served, or if provisions

relating to its service have not been observed, the document shall be deemed to have been served on the date established by the Office as the date of receipt.

CHAPTER IV

TIME LIMITS AND INTERRUPTION OF PROCEEDINGS

Article 69

Computation of time limits

1. Time limits shall be laid down in terms of full years, months, weeks or days.
2. Time limits shall run from the day following the day on which the relevant event occurred, the event being either an action or the expiry of another time limit. Unless otherwise provided, the event considered shall be the receipt of the document served, where the action consists in service.
3. Notwithstanding the provisions of paragraph 2, the time limits shall run from the 15th day following the day of publication of a relevant action, where the action is either the public notice referred to in Article 67 of this Regulation, a decision of the Office unless served to the relevant person, or any action of a party to proceedings to be published.
4. When a time limit is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred; where the relevant subsequent month has no day bearing the same number the time limit shall expire on the last day of that month.
5. When a time limit is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred; where the relevant subsequent month has no day bearing the same number the period shall expire on the last day of that month.
6. Where a time limit is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Article 70

Duration of time limits

Where either the Basic Regulation or this Regulation specifies a time limit to be determined by the Office, such a time limit shall be not less than one month and not more than three months. In certain special cases, the time limit may be extended by up to six months upon a request presented before the expiry of such time limit.

Article 71

Extension of time limits

1. If a time limit expires on a day on which the Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the Office is situated, the time limit shall extend until the first day thereafter on which the Office is open for receipt of documents and on which ordinary mail is delivered. The days referred to in the first sentence shall be as stated and communicated by the President of the Office before the commencement of each calendar year.

2. If a time limit expires on a day on which there is a general interruption or a subsequent dislocation in the delivery of mail in a Member State or between a Member State and the Office, the time limit shall extend until the first day following the end of the period of interruption or dislocation for parties to proceedings having their domicile or seat or establishment in the State concerned or having appointed procedural representatives with a seat in that State. Should the Member State concerned be the State in which the Office is located, this provision shall apply to all parties to proceedings. The duration of the period of interruption or dislocation shall be as stated and communicated by the President of the Office.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to the national agencies, or the sub-offices designated, pursuant to Article 30 (4) of the Regulation as well as to the Examination Offices.

Article 72

Interruption of proceedings

1. Proceedings before the Office shall be interrupted:

- (a) in the event of the death or legal incapacity of the applicant for, or holder of, a Community plant variety right or of the applicant for an exploitation right to be granted by the Office or of the person entitled to enjoy such exploitation right, or of the procedural representative of any of those parties; or
- (b) in the event of a supervening legal impediment to such person's continuation of proceedings before the Office, due to some action taken against his property.

2. When the necessary particulars in respect of the identity of the person authorized to continue proceedings as party thereto or procedural representative have been entered in the relevant register, the Office shall inform such person and the other parties that the proceedings shall be resumed as from the date to be determined by the Office.

3. The time limits in force shall begin afresh as from the day on which proceedings are resumed.

4. The interruption of proceedings shall not affect the pursuit of the technical examination or verification of the variety concerned by an Examination Office where the relevant fees have already been paid to the Office.

CHAPTER V

PROCEDURAL REPRESENTATIVES

Article 73

Designation of a procedural representative

1. Any designation of a procedural representative shall be communicated to the Office. The communication shall contain the name and address of the procedural representative; Article 2 (2) and (3) of this Regulation shall apply *mutatis mutandis*.

2. Without prejudice to Article 2 (4), the communication referred to in paragraph 1 shall also identify as such employee of the party to proceedings. An employee may not be designated as procedural representative within the meaning of Article 82 of the Basic Regulation.

3. Failure to comply with the provisions of paragraphs 1 and 2 shall lead to the communication being deemed not to have been received.

4. A procedural representative whose mandate has ended shall continue to be considered as procedural representative until the termination of his mandate has been communicated to the Office. Subject to any provisions to the contrary contained therein, a mandate shall however, terminate *vis-à-vis* the Office upon the death of the person who conferred it.

5. If there are two or more parties to proceedings acting in common, which have not notified a procedural representative to the Office, the party to proceedings first named in an application for a Community plant variety right or for an exploitation right to be granted by the Office or in an objection shall be deemed to be designated as the procedural representative of the other party or parties to proceedings.

Article 74

Credentials of procedural representatives

1. Where the appointment of a procedural representative is notified to the Office, the necessary signed credentials shall be presented for inclusion in the files within such period as the Office may specify unless otherwise provided. If the credentials are not filed in due time, any procedural step taken by the procedural representative shall be deemed not to have been taken.

2. Credentials may cover one or more proceedings and shall be filed in the corresponding number of copies. General credentials enabling a procedural representative to act in all the proceedings of the party giving the credentials may be filed. A single document embodying the general credentials shall be sufficient.

3. The President of the Office may determine the contents of, and make available, forms for credentials, including the general credentials referred to in paragraph 2, free of charge.

CHAPTER VI

APPORTIONMENT AND DETERMINATION OF COSTS

Article 75

Awards of costs

1. A decision as to costs shall be dealt with in the decision on the revocation or cancellation of a Community plant variety right, or the decision on the appeal.
2. In the case of an award of costs pursuant to Article 85 (1) of the Regulation, the Office shall set out that award in the statement of the grounds of the decision on the revocation or cancellation of a Community plant variety right, or the decision on the appeal. The parties to proceedings may not plead the omission of the indication.

Article 76

Determination of costs

1. A request for the determination of costs shall be admissible only if the decision has been taken in respect of which the determination of costs is required and if, in the event of an appeal against such decision, the Board of Appeal has decided upon that appeal. A bill of costs, with supporting documents, shall be attached to the request.
2. Costs may be determined once their credibility is established.
3. Where one party to proceedings incurs the costs of another party to the proceedings, it shall not be required to reimburse any costs other than those referred to in paragraph 4. Where the successful party to proceedings is represented by more than one agent, adviser or advocate, the losing party shall bear the costs referred to in paragraph 4 for one such person only.
4. The costs essential to proceedings shall cover:
 - (a) costs of witnesses and experts paid by the Office to the witness or expert concerned;
 - (b) expenses for travel and subsistence of a party to proceedings and an agent, adviser or advocate duly designated as a procedural representative before the Office, within the relevant scales applicable to witnesses and experts laid down in the Annex;
 - (c) remuneration of an agent, adviser or advocate duly designated as the procedural representative of a party to proceedings before the Office, within the scales laid down in the Annex.

Article 77

Settlement of costs

In the event of a settlement of costs referred to in Article 85 (4) of the Basic Regulation, the Office shall confirm such settlement in a communication to the parties to the

proceedings. Where such communication confirms also a settlement as to the amount of costs to be paid, a request for the determination of costs shall be inadmissible.

TITLE V

INFORMATION GIVEN TO THE PUBLIC

CHAPTER I

REGISTERS, PUBLIC INSPECTION AND PUBLICATIONS

*Section 1**The Registers*

Article 78

Entries related to proceedings and to Community plant variety rights, to be entered in the Registers

1. The following 'other particulars' referred to in Article 87 (3) of the Regulation shall be entered in the Register of Applications for Community Plant Variety Rights:
 - (a) date of publication where such publication is a relevant event for the computation of time limits;
 - (b) any objection, together with its date, the name and address of the objector and those of his procedural representative;
 - (c) priority data (date and State of the earlier application);
 - (d) any institution of actions in respect of claims referred to in Articles 98 (4) and 99 of the Regulation as to entitlement to the Community plant variety right, and the final decision in, or of any other termination of, such action.
2. The following 'other particulars' referred to in Article 87 (3) of the Regulation shall be entered in the Register of Community Plant Variety Rights, upon request:
 - (a) the giving of a Community plant variety right as a security or as the object of any other rights *in rem*; or
 - (b) any institution of actions on claims referred to in Articles 98 (1) and (2) and 99 of the Regulation and relating to the Community plant variety right, and the final decision in, or of any other termination of, such institution.
3. The President of the Office shall decide upon the details of the entries to be made and may decide upon further particulars to be entered in the Registers for the purpose of the management of the Office.

Article 79

Entry of transfer of a Community plant variety right

1. Any transfer of Community plant variety rights shall be entered in the Register of Community Plant Variety Rights on

production of documentary evidence of the transfer, or of official documents confirming the transfer, or of such extracts from those documents as suffice to establish the transfer. The Office shall retain a copy of those papers in its files.

2. The entry of a transfer may be refused only in the event of failure to comply with the conditions laid down in paragraph 1 and Article 23 of the Regulation.

3. Paragraphs 1 and 2 shall apply to any transfer of an entitlement to a Community plant variety right for which an application has been entered in the Register of Applications for Community Plant Variety Rights. The reference to the Register of Community Plant Variety Rights shall be understood as a reference to the Register of Applications for Community Plant Variety Rights.

Article 80

Conditions for entries in the Registers

Without prejudice to other provisions of the Basic Regulation or of this Regulation, a request for an entry or a deletion of an entry in the Registers may be made by any interested person. The request shall be made in writing, accompanied by supporting documents.

Article 81

Conditions for specific entries in the Registers

1. Where a Community plant variety right applied for or granted is involved in bankruptcy or like proceedings, an entry to this effect shall be made, free of charge, in the Register for Community Plant Variety Rights at the request of the competent national authority. This entry shall also be deleted at the request of the competent national authority, free of charge.

2. Paragraph 1 shall apply *mutatis mutandis* to the institution of actions on claims referred to in Article 98 and 99 of the Regulation and the final decision in, or of any other termination of, such institution.

3. Where varieties are identified respectively as initial and essentially derived, a request for entry by all the parties to proceedings may be made jointly or separately. In the event of a request from only one party to proceedings, the request shall be accompanied by sufficient documentary evidence of the actions referred to in Article 87 (2) (h) of the Regulation to replace the request of the other party.

4. Where the entry of a contractual exclusive exploitation right or of a Community plant variety right given as security or as the subject of rights *in rem* is requested, such request shall be accompanied by sufficient documentary evidence.

Article 82

Public inspection of the Registers

1. The Registers shall be open for public inspection on the premises of the Office. Access to the Registers and the documents held therein shall be granted under the same terms

and conditions as apply to the access to documents held by the Office within the meaning of in Article 84.

2. On the spot inspection of the Registers shall be free of charge. The production and delivery of extracts from the Registers in any form that requires the processing or manipulating of data other than the mere reproduction of a document or parts thereof shall be subject to the payment of a fee.

3. The President of the Office may provide for public inspection of the Registers on the premises of national agencies, or sub-offices designated, pursuant to Article 30(4) of the basic Regulation.

Section 2

Keeping of documents, public inspection of documents and varieties grown

Article 83

Keeping of the files

1. Documents relating to proceedings shall be kept in files, a file number being attached to such proceedings, except for those documents relating to the exclusion of, or objection to, members of the Board of Appeal, or to the staff of the Office or the Examination Office concerned, which shall be kept separately.

2. The Office shall keep one copy of the file referred to in paragraph 1 (file copy) which shall be considered the true and complete copy of the file. The Examination Office may keep a copy of the documents relating to such proceedings (examination copy), but shall at all times ensure delivery of those originals which the Office does not hold.

3. The President of the Office shall determine details as to the form of the files to be kept.

Article 84

Access to documents held by the Office

1. The Administrative Council shall adopt the practical arrangements for access to the documents held by the Office, including the Registers.

2. The Administrative Council shall adopt the categories of documents of the Office to be made directly accessible to the public by way of publication, including publication by electronic means.

Article 85

Inspection of the growing of the varieties

1. A request for inspection of the growing of the varieties shall be addressed in writing to the Office. With the consent of the Office, access to the test plots shall be arranged by the Examination Office.

2. Without prejudice to Article 88 (3) of the Basic Regulation, general access to the test plot by visitors shall not be affected by the provisions of this Regulation, provided that all grown varieties are coded, that appropriate measures against any removal of material are taken by the Examination Office entrusted and are approved by the Office, and that all necessary steps are taken to safeguard the rights of the applicant for, or holder of, a Community plant variety right.

3. The President of the Office may lay down the details of the procedure for the inspection of the growing of the varieties, and may review the safeguards to be provided under paragraph 2.

Article 86

Confidential information

For the purpose of keeping information confidential, the Office shall make available, free of charge, forms to be used by the applicant for a Community plant variety right in order to request the withholding of all data relating to components as referred to in Article 88 (3) of the Regulation.

Section 3

Publications

Article 87

Official Gazette

1. The publication to be issued at least every two months pursuant to Article 89 of the Basic Regulation shall be called the Official Gazette of the Community Plant Variety Office (hereinafter 'the Official Gazette').

2. The Official Gazette shall also contain the information entered in the Registers pursuant to Articles 78 (1) (c), (d) and (2) and 79 of this Regulation.

Article 88

Publication of applications for exploitation rights to be granted by the Office and decisions thereupon

The date of receipt of an application for an exploitation right to be granted by the Office and of delivery of the decision on such application, the names and addresses of the parties to proceedings and the form of order sought, or decided upon, shall be published in the Official Gazette. In the case of a decision to grant a compulsory exploitation right, the contents of such decision shall likewise be published.

Article 89

Publication of appeals and decisions thereupon

The date of receipt of a notice of appeal and of delivery of the decision on such appeal, the names and addresses of the parties to the appeal proceedings and the form of order sought, or decided upon, shall be published in the Official Gazette.

CHAPTER II

ADMINISTRATIVE AND LEGAL COOPERATION

Article 90

Communication of information

1. Information to be exchanged in accordance with Article 90 of the Basic Regulation shall be communicated direct between the authorities referred to in that provision.

2. Communication of information referred to in Article 91 (1) of the Regulation by or to the Office may be effected through the competent plant variety offices of the Member States, free of charge.

3. Paragraph 2, shall apply *mutatis mutandis* to communication of information under Article 91 (1) of the Regulation effected to or by the Examination Office. The Office shall receive a copy of such communication.

Article 91

Inspection by or via courts or public prosecutors' offices of the Member States

1. Inspection of files under Article 91 (1) of the Regulation shall be of duplicate file copies issued by the Office exclusively for that purpose.

2. Courts or public prosecutors' offices of the Member States may, in the course of proceedings before them, lay the documents transmitted by the Office open to inspection by third parties. Such inspection shall be subject to Article 88 of the Basic Regulation, the Office shall not charge any fee for it.

3. The Office shall, at the time of transmission of the files to the courts or public prosecutor's offices of the Member States, indicate the restrictions to which the inspection of documents relating to applications for, or to grants of Community plant variety rights is subject pursuant to Article 88 of the Basic Regulation.

Article 92

Procedure for letters rogatory

1. Each Member State shall designate a central authority which will undertake to receive letters rogatory issued by the Office and to transmit them to the court or authority competent to execute them.

2. The Office shall draw up letters rogatory in the language of the competent court or authority or shall attach to such letters a translation into that language.

3. Subject to paragraphs 4 and 5, the competent court or authority shall apply its own law as to the procedures to be followed in executing such requests. In particular, it shall apply suitable coercive measures in accordance with its law.

4. The Office shall be informed of the time when, and the place where, the enquiry or other legal measures is to take place and shall inform the parties to proceedings, witnesses and experts concerned.

5. If so requested by the Office, the competent court or authority shall permit the attendance of the staff of the Office concerned and allow them to question any person giving evidence, either directly or through the competent court or authority.

6. The execution of letters rogatory shall not give rise to any charge of fees or to costs of any kind. Nevertheless, the Member State in which letters rogatory are executed has the right to require the Office to reimburse any fees paid to experts and interpreters and the costs arising from the procedure under paragraph 5.

TITLE VI

FINAL PROVISIONS

Article 93

Transitional provisions

1. In accordance with Article 15 (4) of this Regulation, the Office shall pay the Examination Office a fee for the conduct of the technical examination, on the basis of full recovery of costs incurred. By 27 April 1997 the Administrative Council shall have determined uniform methods for calculating the costs and the uniform constituents of the costs, which shall apply to all designated Examination Offices.

2. The Administrative Council shall take a decision by 27 October 1996 on the test guidelines referred to in Article 22 of this Regulation; the President of the Office shall submit a proposal for such test guidelines by 27 April 1996, taking into account those examination reports which form part of the findings referred to in Article 116 (3) of the Basic Regulation.

3. The applicant for a Community plant variety right pursuant to Article 116 (1) or (2) of the Basic Regulation shall provide a certified copy of the findings referred to in Article 116 (3) of that Regulation by 30 November 1995. Such copy shall include the relevant documents relating to the proceedings for the grant of a national plant variety right and shall be certified by the authority before which the proceedings were held. Where such certified copy is not provided in good time, Article 55 of the Basic Regulation shall apply.

Article 94

Derogations

Notwithstanding Article 27 (1) of this Regulation, the Office may consider examination reports on the results of a technical examination on that variety for official purposes in a Member State provided that examination has begun by 27 April 1996 unless a decision by the Administrative Council on the test guidelines concerned has been taken prior to that date.

Article 95

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*. This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

1. The compensation payable to witnesses and experts in respect of travel and subsistence expenses provided for in Article 62 (2) shall be calculated as follows:

1.1. Travel expenses:

For the outward and return journey between the domicile or seat and the place where oral proceedings are held or where evidence is taken:

- (a) the cost of the first-class rail transport including usual transport supplements shall be paid where the total distance by the shortest rail route does not exceed 800 km;
- (b) the cost of the tourist-class air transport shall be paid where the total distance by the shortest rail route exceeds 800 km or the shortest route requires a sea-crossing.

1.2. Subsistence expenses shall be paid equal to the daily subsistence allowance of officials in grades A4 to A8 as laid down in Article 13 of Annex VII of the Staff Regulations of Officials of the European Communities.

1.3. When a witness or expert is summoned to proceedings at the Office he will receive with the summons a travel order containing details of those amounts payable under 1.1 and 1.2, together with a request form covering an advance on expenses. Before an advance can be paid to a witness or expert his entitlement must be certified by the member of the staff of the Office who ordered the evidence to be taken or, in the case of appeal proceedings, the chairman of the responsible Board of Appeal. The request form must therefore be returned to the Office for certification.

2. The compensation payable to witnesses in respect of loss of earnings provided for in Article 62 (3) shall be calculated as follows:

2.1. If a witness is required to be absent for a total period of more than 12 hours or less, the compensation for loss of earnings shall be equal to one sixtieth of the basic monthly salary of an employee of the Office at the lowest step of grade A4.

2.2. If a witness is required to be absent for a total period of more than 12 hours, he shall be entitled to payment of further compensation equal to one sixtieth of the basic salary referred to in 2.1 in respect of each further period of 12 hours which is commenced.

3. The fees payable to experts provided for in Article 62 (3) shall be determined, case by case, taking into account a proposal by the expert concerned. The Office may decide to invite the parties to proceedings to submit their comments on the amount proposed. Fees may be paid to an expert only if he adduces evidence by supporting documents of not being a member of the staff of an Examination Office.

4. Payments to witnesses or experts for loss of earnings or fees under points 2 and 3 will be made following certification of the entitlement of the witness or expert concerned by the member of the staff of the Office who ordered the evidence to be taken or, in the case of the appeal proceedings, the chairman of the responsible Boards of Appeal.

5. The remuneration of an agent, adviser or advocate acting as a representative of a party to proceedings as provided for in Article 76 (3) and (4) (c) shall be borne by the other party to proceedings on the basis of the following maximum rates:

- (a) in the case of appeal proceedings except for the taking of evidence which involves the examination of witnesses, opinions by experts or inspection: ECU 500;
- (b) in the case of taking of evidence in appeal proceedings which involves the examination of witnesses, opinions by experts or inspection: ECU 250;
- (c) in the case of proceedings for revocation or cancellation of a Community plant variety right: ECU 250.

COMMISSION REGULATION (EC) NO 1768/95*
OF 24 JULY 1995
IMPLEMENTING RULES ON THE AGRICULTURAL EXEMPTION
PROVIDED FOR IN ARTICLE 14(3) OF
COUNCIL REGULATION (EC) NO. 2100/94 ON
COMMUNITY PLANT VARIETY RIGHTS

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (the basic Regulation) (1), and in particular Article 14 (3) thereof,

Whereas Article 14 of the basic Regulation provides for a derogation from Community plant variety right for the purposes of safeguarding agricultural production (agricultural exemption);

Whereas the conditions to give effect to this derogation and to safeguard the legitimate interests of the breeder and of the farmer shall be established in implementing rules, on the basis of criteria laid down in Article 14 (3) of the basic Regulation;

Whereas this Regulation establishes those conditions in specifying, in particular, the obligations of farmers, processors and holders resulting from the aforesaid criteria;

Whereas these obligations relate essentially to the payment, by farmers, of an equitable remuneration to the holder for the use made of the derogation, to the supply of information, to the safeguarding of the identity of the product of the harvest entered for processing with that resulting from processing as well as to the monitoring of compliance with the provisions on the derogation;

Whereas, also, the definition of 'small farmers' who shall not be required to pay a remuneration to the holder for the use made of the derogation, is completed in particular in respect of farmers growing certain fodder plants and potatoes;

Whereas the Commission will thoroughly monitor, throughout the Community, the effects which the definition of 'small farmers' as laid down in the basic Regulation and, in particular concerning the implications of set aside and - in the case of potatoes - the maximum size of the area, in this Regulation

may produce with regard to the role of the remuneration as specified in Article 5 (3) of this Regulation, and where necessary, make the appropriate proposals or take the appropriate steps with a view to establishing Community-wide coherence in respect of the ratio between the use of licensed propagating material and that of the product of the harvest under the derogation provided for in Article 14 of the basic Regulation;

Whereas, however, it has not yet been possible to assess the extent to which use has been made of comparable derogations under the current legislations of Member States, in relation with the amounts currently charged for the licensed production of propagating material of varieties protected under the aforesaid legislations of Member States;

Whereas, therefore, the Commission can at present not properly define, within the scope of the discretion left to the Community legislator under Article 14 (3) of the basic Regulation, the level of the equitable remuneration which must be sensibly lower than the amount charged for the licensed production of propagating material;

Whereas, however, the initial level as well as the system for subsequent adaptations should be specified as soon as possible and not later than 1 July 1997;

Whereas, moreover, this Regulation aims at specifying the connection between the Community plant variety right and the rights which derive from the provisions of Article 14 of the basic Regulation, on one hand, and that between the authorization granted to the farmer and his holding, on the other hand;

Whereas, finally, the consequences of not fulfilling obligations which derive from the provisions concerned should be clarified;

Whereas the Administrative Council has been consulted;

Whereas the provisions provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

Consolidated text of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14 (3) of Council Regulation (EC) No 2100/94 on Community plant variety rights
Official Journal of the European Communities L 173 , 25/07/1995 p. 0014 - 0021

Amendments: Amended by **398R2605** (OJ L 328 04.12.98 p.6)

(1) OJ No L 181, 1. 7. 1992, p. 12.

(2) OJ No L 98, 24. 4. 1993, p. 1.

(1) OJ No L 227, 1. 9. 1994, p. 1.

(1) OJ No L 181, 1. 7. 1992, p. 12.

(2) OJ No L 98, 24. 4. 1993, p. 1.

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation establishes the implementing rules on the conditions to give effect to the derogation provided for in Article 14 (1) of the basic Regulation.
2. The conditions shall apply to the rights and their exercise, and to the obligations and their fulfilment, of the holder within the meaning of Article 13 (1) of the basic Regulation, as well as to the authorization and its use, and to the obligations and their fulfilment, of the farmer, to the extent that such rights, authorization and obligations derive from the provisions of Article 14 of the basic Regulation. They shall also apply in respect of rights, authorization and obligations which derive from the provisions of Article 14 (3) of the basic Regulation for others.
3. Unless otherwise specified in this Regulation, the details relating to the exercise of the rights, to the use of the authorizations or to the fulfilment of the obligations shall be governed by the law of the Member State, including its international private law, in which the farmer's holding on which the derogation is used, is located.

Article 2

Safeguarding interests

1. The conditions referred to in Article 1 shall be implemented both by the holder, representing the breeder, and by the farmer in such a way as to safeguard the legitimate interests of each other.
2. The legitimate interests shall not be considered to be safeguarded if one or more of these interests are adversely affected without account being taken of the need to maintain a reasonable balance between all of them, or of the need for proportionality between the purpose of the relevant condition and the actual effect of the implementation thereof.

CHAPTER 2

THE HOLDER AND THE FARMER

Article 3

The holder

1. The rights and obligations of the holder which derive from the provisions of Article 14 of the basic Regulation, as specified in this Regulation, other than the right on an already

quantifiable payment of the equitable remuneration referred to in Article 5, may not be the object of a transfer to others. However, they shall be included in the rights and obligations which are concerned by a transfer of the Community plant variety right in accordance with the provisions of Article 23 of the basic Regulation.

2. Rights referred to in paragraph 1 may be invoked by individual holders, collectively by several holders or by an organization of holders which is established in the Community at Community, national, regional or local level. An organization of holders may act only for its members, and only for those thereof which have given the respective mandate in writing to the organization. It shall act either through one or more of its representatives or through auditors accredited by it, within the limits of their respective mandates.

3. A representative of the holder or of an organization of holders as well as an accredited auditor shall: (a) be domiciled or shall have his seat or an establishment within the territory of the Community, and (b) be authorized by the holder or the organization in writing, and (c) provide evidence for the conditions laid down in (a) and (b), either through reference to relevant information published by holders or communicated by holders to organizations of farmers, or otherwise, and produce, on request, a copy of the written authorization referred to in (b), to any farmer against whom he invokes the rights.

Article 4

The farmer

1. The authorization and obligations of the farmer which derive from the provisions of Article 14 of the basic Regulation, as specified in this regulation or in provisions adopted pursuant to this Regulation, may not be the object of a transfer to others. However, they shall be included in the rights and obligations which are concerned by a transfer of the holding of the farmer, unless, in respect of the obligation to pay the equitable remuneration referred to in Article 5, otherwise agreed in the act of transfer of the holding. The transfer of the authorization and obligations shall take effect at the same time at which the transfer of the holding takes effect.

2. An 'own holding' within the meaning of Article 14 (1) of the basic Regulation shall be considered to be any holding or part thereof which the farmer actually exploits for plant growing, whether as his property or otherwise managed under his own responsibility and on his own account, in particular in the case of leaseholds. The disposal of a holding or part thereof for the purpose of exploitation by others shall be regarded as transfer within the meaning of paragraph 1.

3. The person or persons to whom the holding concerned belongs as property at the time at which the fulfilment of an obligation is claimed, shall be deemed to be the farmer, unless they provide the proof that another person is the farmer who must fulfil the obligation, in accordance with the provisions of paragraphs 1 and 2.

CHAPTER 3

REMUNERATION

Article 5

Level of remuneration

1. The level of the equitable remuneration to be paid to the holder pursuant to Article 14 (3), fourth indent of the basic Regulation may form the object of a contract between the holder and the farmer concerned.

2. Where such contract has not been concluded or does not apply, the level of remuneration shall be sensibly lower than the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the same area. If no licensed production of propagating material of the variety concerned has taken place in the area in which the holding of the farmer is located, and if there is no uniform level of the aforesaid amount throughout the Community, the level of remuneration shall be sensibly lower than the amount which is normally included, for the above purpose, in the price at which propagating material of the lowest category qualified for official certification, of that variety is sold in that area, provided that it is not higher than the aforesaid amount charged in the area in which that propagating material has been produced.

3. The level of remuneration shall be considered to be sensibly lower within the meaning of Article 14 (3), fourth indent of the basic Regulation as specified in paragraph 2 above, if it does not exceed the one necessary to establish or to stabilize, as an economic factor determining the extent to which use is made of the derogation, a reasonably balanced ratio between the use of licensed propagating material and the planting of the product of the harvest of the respective varieties covered by a Community plant variety right. Such ratio shall be considered to be reasonably balanced, if it ensures that the holder obtains, as a whole, a legitimate compensation for the total use of his variety.

4. Where in the case of paragraph 2 the level of remuneration is the subject of agreements between organisations of holders and of farmers, with or without participation of organisations of processors, which are established in the Community at Community, national or regional level respectively, the agreed levels shall be used as guidelines for the determination of the remuneration to be paid in the area and for the species concerned, if these levels and the conditions thereof have been notified to the Commission in writing by authorised representatives of the relevant organisations and if on that basis the agreed levels and conditions thereof have been published in the "Official Gazette" issued by the Community Plant Variety Office.

5. Where in the case of paragraph 2 an agreement as referred to in paragraph 4 does not apply, the remuneration to

be paid shall be 50 % of the amounts charged for the licensed production of propagating material as specified in paragraph 2.

However, if a Member State has notified the Commission before 1 January 1999 of the imminent conclusion of an agreement as referred to in paragraph 4 between the relevant organisations established at national or regional level, the remuneration to be paid in the area and for the species concerned shall be 40 % instead of 50 % as specified above, but only in respect of the use of the agricultural exemption made prior to the implementation of such agreement and not later than 1 April 1999.

6. Where in the case of paragraph 5 the farmer has made use, in the relevant period, of the agricultural exemption at a ratio of more than 55 % of the total material of the relevant variety used for his production, the level of the remuneration to be paid in the area and for the species concerned shall be the one which would apply in respect of such a variety if it was protected in the relevant Member State under its national system of plant variety rights, if a national system exists which has established such level, and provided that that level is more than 50 % of the amounts charged for the licensed production of propagating material as specified in paragraph 2. In the absence of such level under the national scheme, the provisions of paragraph 5 shall apply irrespective of the ratio of use.

7. By 1 January 2003 at the latest, the provisions of paragraph 5, first subparagraph, and of paragraph 6 shall be reviewed in the light of experiences gained under this Regulation and of developments of the ratio referred to in paragraph 3, with a view to their possible adaptation, by 1 July 2003, as may be necessary to establish or to stabilise the reasonably balanced ratio, stipulated in the aforesaid paragraph, in the whole or part of the Community.

Article 6

Individual obligation to payment

1. Without prejudice to the provisions of paragraph 2, the individual obligation of a farmer to pay the equitable remuneration shall come to existence at the time when he actually makes use of the product of the harvest for propagating purposes in the field.

The holder may determine the date and the manner of payment. However, he shall not determine a date of payment which is earlier than the date on which the obligation has come to existence.

2. In the case of a Community plant variety right granted pursuant to Article 116 of the basic Regulation, the individual obligation of a farmer entitled to invoke the provisions of Article 116 (4) second indent of the basic Regulation shall come to existence at the time when he actually makes use of the product of the harvest for propagating purposes in the field after 30 June 2001.

Article 7

Small farmers

1. An area on which plants are grown within the meaning of Article 14 (3) third indent of the basic Regulation shall be an area which has been planted for regular cultivation and harvesting. In particular, forest land, permanent pastures established for a duration of more than five years, permanent natural green land and assimilated cases as determined in the Standing Committee on Plant Variety Rights shall not be considered to be areas on which plants are grown.

2. Areas of the holding of the farmer on which plants have been grown, but which are land set aside, on a temporary or permanent basis, in the marketing year starting on 1 July and ending on 30 June of the subsequent calendar year ('the marketing year'), in which the payment of the remuneration would be due, shall be considered to be areas on which plants are still grown, if subsidies or compensatory payments are granted by the Community or by the Member State concerned in respect of that set aside.

3. Without prejudice to the provisions laid down in Article 14 (3), third indent, first sub-indent of the Basic Regulation, small farmers in the case of other plant species (Article 14 (3), third indent, second sub-indent of the Basic Regulation) shall be considered to be farmers who

- (a) in the case of fodder plants coming under that latter provision: irrespective of the area on which they grow plants other than those fodder plants, do not grow those fodder plants for a duration of not more than five years on an area bigger than the area which would be needed to produce 92 tonnes of cereals per harvest,
- (b) in the case of potatoes: irrespective of the area on which they grow plants other than potatoes, do not grow potatoes on an area bigger than the area which would be needed to produce 185 tonnes of potatoes per harvest.

4. The calculation of the areas referred to in paragraphs 1, 2 and 3 shall be made, for the territory of each Member State,

- in the case of plant species to which Council Regulation (EEC) No 1765/92 (1) applies, and in the case of fodder plants other than those already coming under the provisions thereof, in accordance with the provisions of that Regulation, and in particular Articles 3 and 4 thereof, or with provisions adopted pursuant to that Regulation, and
- in the case of potatoes, on the basis of the average yield per hectare established in the Member State concerned, in accordance with the statistical information delivered pursuant to Council Regulation (EEC) No 959/93 (2) concerning statistical information to be supplied by Member States on crop products other than cereals.

5. A farmer who claims to be a 'small farmer' shall, in the case of dispute, provide the proof that the requirements for this category of farmers are met. However, the requirements for a 'small producer' within the meaning of Article 8 (1) and

(2) of Council Regulation (EEC) No 1765/92 shall not be applicable for that purpose, unless the holder agrees to the contrary.

CHAPTER 4

INFORMATION

Article 8

Information by the farmer

1. The details of the relevant information to be provided by the farmer to the holder pursuant to Article 14 (3), sixth indent of the basic Regulation may form the object of a contract between the holder and the farmer concerned.

2. Where such contract has not been concluded or does not apply, the farmer shall, without prejudice to information requirements under other Community legislation or under legislation of Member States, on request of the holder, be required to provide a statement of relevant information to the holder. The following items shall be considered to be relevant:

- (a) the name of the farmer, the place of his domicile and the address of his holding,
- (b) the fact whether the farmer has made use of the product of the harvest belonging to one or more varieties of the holder for planting in the field or fields of his holding,
- (c) if the farmer has made such use, the amount of the product of the harvest belonging to the variety or varieties concerned, which has been used by the farmer in accordance with Article 14 (1) of the basic Regulation,
- (d) under the same condition, the name and address of the person or persons who have supplied a service of processing the relevant product of the harvest for him for planting,
- (e) if the information obtained under (b), (c) or (d) cannot be confirmed in accordance with the provisions of Article 14, the amount of licensed propagating material of the varieties concerned used as well as the name and address of the supplier or suppliers thereof, and (f) in the case of a farmer invoking the provisions of Article 116 (4) second indent of the Basic Regulation, whether he has already used the variety concerned for the purpose described in Article 14 (1) of the Basic Regulation without payment of a remuneration, and if so, since when.

3. The information under paragraph 2 (b), (c), (d) and (e) shall refer to the current marketing year, and to one or more of the three preceding marketing years for which the farmer had not previously provided relevant information on request made by the holder in accordance with the provisions of paragraphs 4 or 5.

However, the first marketing year to which the information refers, shall be not earlier than the one in which the first of such requests for information was made in respect of the variety

or varieties and the farmer concerned, or, alternatively, in which the farmer acquired propagating material of the variety or varieties concerned, if this was accompanied by information at least on the filing of the application for the grant of a Community plant variety right or on the grant of such right as well as on possible conditions relating to the use of that propagating material.

In the case of varieties coming under the provisions of Article 116 of the Basic Regulation and in respect of farmers entitled to invoke the provisions of Article 116 (4), second indent of the basic Regulation, the first marketing year shall be 2001/02.

4. In his request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information, as well as the reference or references to the relevant Community plant variety right or rights. If required by the farmer, the request shall be made in writing, and evidence for holdership shall be provided. Without prejudice to the provisions of paragraph 5, the request shall be made directly to the farmer concerned.

5. A request which has not been made directly to the farmer concerned, shall be considered to comply with the provisions of paragraph 4, third sentence, if it is sent to farmers through the following bodies or persons, with their prior agreement respectively:

- organizations of farmers or cooperatives, concerning all farmers who are members of such organization or cooperative, or,
- processors, concerning all farmers to whom they have supplied a service of processing the relevant product of the harvest for planting, in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 3, or,
- suppliers of licensed propagating material of varieties of the holder, concerning all farmers to whom they have supplied such propagating material in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 3.

6. For a request made in accordance with the provisions of paragraph 5, the specification of individual farmers is not required. The organizations, cooperatives, processors or suppliers may be authorized by the farmers concerned to forward the required information to the holder.

Article 9

Information by the processor

1. The details of the relevant information to be provided by the processor to the holder pursuant to Article 14 (3), sixth indent of the basic Regulation may form the object of a contract between the holder and the processor concerned.

2. Where such contract has not been concluded or does not apply, the processor shall, without prejudice to information requirements under other Community legislation or under legislation of Member States, on request of the holder, be required to provide a statement of relevant information to the holder. The following items shall be considered to be relevant:

- (a) the name of the processor, the place of his domicile and the name and address registered for his business;
- (b) the fact whether the processor has supplied a service of processing the product of the harvest belonging to one or more varieties of the holder for planting, where the variety or varieties were declared or otherwise known to the processor;
- (c) if the processor has supplied such service, the amount of the product of the harvest belonging to the variety or varieties concerned, which has been processed for planting, by the processor, and the total amount resulting from that processing;
- (d) the dates and places of the processing referred to in (c); and (e) the name and address of the person or persons to whom he has supplied the service of processing referred to in (c), and the respective amounts.

3. The information under paragraph 2 (b), (c), (d) and (e) shall refer to the current marketing year and to one or more of the three preceding marketing years for which the holder has not yet made an earlier request in accordance with the provisions of paragraphs 4 or 5; however, the first marketing year to which the information refers, shall be the one in which the first of such requests was made in respect of the variety or varieties and the processor concerned.

4. The provisions of Article 8 (4) shall apply *mutatis mutandis*.

5. A request which has not been made directly to the processor concerned, shall be considered to comply with the provisions of Article 8 (4), third sentence, if it is sent to processors through the following bodies or persons, with their prior agreement respectively:

- organizations of processors in the Community which are established at Community, national, regional or local level, concerning all processors who are members of, or represented in, such organization,
- farmers, concerning all processors who have supplied a service of processing the relevant product of the harvest to them for planting, in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 3.

6. For a request made in accordance with the provisions of paragraph 5, the specification of individual processors is not required. The organizations or farmers may be authorized by the processors concerned to forward the required information to the holder.

Article 10

Information by the holder

1. The details of the information to be provided by the holder to the farmer pursuant to Article 14 (3), fourth indent of the basic Regulation may form the object of a contract between the farmer and the holder concerned.

2. Where such contract has not been concluded or does not apply, the holder shall, without prejudice to information requirements under other Community legislation or under legislation of Member States, on request of the farmer from whom the holder has claimed the payment of the remuneration referred to in Article 5, be required to provide a statement of relevant information to the farmer. The following items shall be considered to be relevant:

- the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the area in which the holding of the farmer is located, or,
- if no licensed production of propagating material of the variety concerned has taken place in the area in which the holding of the farmer is located, and if there is no uniform level of the aforesaid amount throughout the Community, the amount which is normally included, for the above purpose, in the price at which propagating material of the lowest category qualified for official certification, of that variety is sold in that area, as well as the aforesaid amount charged in the area in which that propagating material has been produced.

Article 11

Information by official bodies

1. A request for information on the actual use of material, by planting, of specific species or varieties, or on the results of such use, which a holder addresses to an official body, must be made in writing. In this request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information and the type of information he seeks. He also shall provide evidence for his holdership.

2. The official body may, without prejudice to the provisions of Article 12, withhold the requested information only, if

- it is not involved in the monitoring of agricultural production, or
- it is not allowed, under Community rules or rules of Member States governing the general discretion applicable in respect of activities of official bodies, to provide such information to holders, or
- it is under its discretion, pursuant to the Community legislation or the legislation of Member States under which the information has been collected, to withhold such information, or

- the requested information is not or no longer available, or

- such information cannot be obtained through ordinary performance of the tasks of the official body, or

- such information can only be obtained with additional burden or costs, or

- such information relates specifically to material which does not belong to varieties of the holder. The official bodies concerned shall inform the Commission on the manner in which they exercise the discretion referred to in the third indent above.

3. In providing the information, the official body shall not differentiate between holders. The official body may provide the requested information in making copies available to the holder, which have been produced from documents containing information additional to that relating to material belonging to varieties of the holder, provided that it is ensured that any possibility to identify individuals protected under the provisions referred to in Article 12 has been removed.

4. If the official body takes the decision to withhold the requested information, it shall inform the requesting holder thereof in writing and indicate the reason for this decision.

Article 12

Protection of personal data

1. Any person who is providing or receiving information under the provisions of Articles 8, 9, 10 or 11 shall be subject, in respect of personal data, to the provisions of Community legislation or of legislation of Member States on the protection of individuals with regard to the processing and free movement of personal data.

2. Any person receiving information under the provisions of Articles 8, 9, 10 or 11 shall not, without prior consent of the person who has supplied the information, pass any of this information to another person or use it for any purpose other than for the exercise of the Community plant variety right or for the use of the authorization provided for in Article 14 of the Basic Regulation, respectively.

CHAPTER 5

OTHER OBLIGATIONS

Article 13

Obligations in the case of processing outside the holding of the farmer

1. Without prejudice to the restrictions which Member States may have established pursuant to Article 14 (3) second indent of the basic Regulation, the product of the harvest of a variety which is covered by a Community plant variety right

shall not, without the prior consent of the holder, be moved from the holding on which it was obtained, for the purpose of being processed for planting, unless the farmer:

(a) has implemented appropriate measures to ensure identity of the product entered for processing with that resulting from processing; and (b) makes sure that the actual processing is carried out by a processor for the supply of services of processing the product of the harvest for planting, who has:

- either been registered under legislation of the Member State concerned adopted on the grounds of public interest, or has undertaken to the farmer to notify this activity, as far as varieties covered by a Community plant variety right are concerned, to the competent body established, designated or authorized in the Member State for that purpose, either by an official body or by an organization of holders, farmers or processors, for subsequent inclusion in a list established by the said competent body, and
- has undertaken to the farmer to also implement appropriate measures to ensure identity of the product entered by the farmer for processing with that resulting from processing.

2. For the purpose of the listing of processors as specified in paragraph 1, Member States may lay down requirements of qualification to be met by processors.

3. The registers and the lists referred to in paragraph 1 shall be published or be made available to organisations of holders, farmers and processors respectively.

4. The lists referred to in paragraph 1 shall be established not later than 1 July 1997.

CHAPTER 6

MONITORING BY THE HOLDER

Article 14

Monitoring of farmers

1. For the purpose of monitoring, by the holder, compliance with the provisions of Article 14 of the basic Regulation as specified in this Regulation, as far as the fulfilment of obligations of the farmer is concerned, the farmer shall, on request of the holder:

- (a) provide evidence supporting his statements of information under Article 8, through disclosure of available relevant documents such as invoices, used labels, or any other appropriate device such as that required pursuant Article 13 (1) (a), relating to:
- the supply of services of processing the product of the harvest of a variety of the holder for planting, by any third person, or

- in the case of Articles 8 (2) (e), the supply of propagating material of a variety of the holder, or through the demonstration of land or storage facilities.

(b) make available or accessible the proof required under Article 4 (3) or 7 (5).

2. Without prejudice to other Community legislation or to legislation of Member States, farmers shall be required to conserve any of such document or device referred to in paragraph 1 for at least the period of time specified in Article 8 (3), provided that, in the case of used labels, the information by which the propagating material referred to in Article 8 (3) second subparagraph was accompanied included the advice for the conservation of the label relating to that material.

Article 15

Monitoring of processors

1. For the purpose of monitoring, by the holder, compliance with the provisions of Article 14 of the basic Regulation as specified in this Regulation, as far as the fulfilment of obligations of the processor is concerned, the processor shall, on request of the holder, provide evidence supporting his statements of information under Article 9, through disclosure of available relevant documents such as invoices, devices suitable for the identification of material, or any other appropriate device such as that required pursuant to Article 13 (1) (b), second indent, or samples of processed material, relating to his supply of services of processing the product of the harvest of a variety of the holder to farmers for planting, or through the demonstration of processing or storage facilities.

2. Without prejudice to other Community legislation or to legislation of Member States, processors shall be required to conserve any of such document or device referred to in paragraph 1 for at least the period of time specified in Article 9 (3).

Article 16

Manner of monitoring

1. The monitoring shall be carried out by the holder. He may make appropriate arrangements to ensure assistance from organizations of farmers, processors, cooperatives or other circles of the agricultural community.

2. Conditions relating to the methods of monitoring laid down in agreements between organizations of holders and of farmers or processors, which are established in the Community at Community, national, regional or local level respectively, shall be used as guidelines, if these agreements have been notified to the Commission in writing by authorized representatives of the relevant organizations and published in the 'Official Gazette' issued by the Community Plant Variety Office.

CHAPTER 7

INFRINGEMENT AND SPECIAL CIVIL LAW CLAIMS

Article 17

Infringement

The holder may invoke the rights conferred by the Community plant variety right against a person who contravenes any of the conditions or limitations attached to the derogation pursuant to Article 14 of the basic Regulation as specified in this Regulation.

Article 18

Special civil law claims

1. A person referred to in Article 17 may be sued by the holder to fulfil his obligations pursuant to Article 14 (3) of the basic Regulation as specified in this Regulation.
2. If such person has repeatedly and intentionally not complied with his obligation pursuant to Article 14 (3) 4th indent of the basic Regulation, in respect of one or more varieties of the same holder, the liability to compensate the holder for any further damage pursuant to Article 94 (2) of the basic Regulation shall cover at least a lump sum calculated on the basis of the quadruple average amount charged for the licensed production of a corresponding quantity of propagating material of protected varieties of the plant species concerned in the same area, without prejudice to the compensation of any higher damage.

CHAPTER 8

FINAL PROVISIONS

Article 19

Entry into force

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 July 1995.

For the Commission
Franz FISCHLER
Member of the Commission

SWEDEN**ACT (No. 2004:160)* AMENDING THE
ACT ON THE PROTECTION OF PLANT BREEDERS' RIGHTS (1997:306)**

In accordance with the decision by Parliament it is prescribed, as regards the Act on the Protection of Plant Breeders' Rights (1997:306)

that Chapter 7, Article 4, shall read as follows, and

that one new Article shall be inserted in the Act, numbered Chapter 7, Article 3 a, and reading as follows:

Chapter 7

Article 3 a

The holder of a patent on a biotechnological invention who cannot exploit it without infringing a prior plant breeders' right, may obtain a compulsory license to exploit the plant variety that is protected by the plant breeders' right. Such a license may be granted only if the applicant proves that the invention constitutes a significant technical progress of considerable economic interest in relation to the plant variety.

If the holder of a plant breeders' right obtains a compulsory license in a patent, the patent holder is entitled to obtain, on reasonable conditions, a compulsory license (cross-license) to exploit the protected plant variety.

Provisions on the possibility for a plant breeder to obtain, on certain conditions, a compulsory license to exploit an invention protected by a patent, are contained in Article 46 of the Patents Act (1967:837).

Article 4

A compulsory license may be granted only to a person who can be assumed to exploit the plant variety in an acceptable manner and in accordance with the license. The applicant must also prove that he or she has unsuccessfully turned to the holder of the plant breeders' right to obtain a contractual license on reasonable conditions.

A compulsory license does not prevent the holder of the plant breeders' right from exploiting himself or herself the plant variety or to grant licenses. A compulsory license may be assigned to someone else only together with a business where it is mentioned in Article 3 a, first Paragraph, also applies that the license may be assigned only together with the patent to which the license applies.

* Entered into force on May 1, 2004. The new provisions apply also to plant breeders' rights, which have been granted or applied for before the entry into force. Translation provided by the Government of Sweden.

**INDEX OF LEGISLATION PUBLISHED IN
IN PLANT VARIETY PROTECTION – UPOV GAZETTE AND NEWSLETTER**

(Up to and including Issue No. 99)

Title of Law, etc.	Plant Variety Protection Issue No.	Date
<u>Albania</u>		
Law No. 8880, of April 15, 2002, on Plant Breeder's Rights	99	Sept. 2005
<u>Andean Community</u>		
Decision 345 of the Subregional Integration Agreement (Cartagena Agreement), Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties, of October 21, 1993	75	Dec. 1994
<u>Argentina</u>		
Measures adopted in connection with the "farmer's privilege" provided for in Article 27 of Law No. 20.247	94	Dec. 2002
Implementing Decree No. 2183/91 to the Law on Seed and Phytogenetic Creations	70	Feb. 1993
Resolution No. 35/96 of February 28, 1996	81	April 1997
<u>Australia</u>		
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Taxa Covered by Plant Variety Protection Legislation (All species of plants including fungi and algae, but excluding bacteria, bacterioids, mycoplasmas, viruses, viroids and bacteriophages)	77	May 1995
Miscellaneous Information		
Tariff of Fees	64	Aug. 1991
Accession to the 1991 Act of the UPOV Convention	87	March 2000
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(All species of the plant kingdom, except bacteria, algae and fungi)	85	Oct. 1999
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Law No. 19.342 on the Rights of Breeders of New Varieties of Plants	81	April 1997
Decree approving Regulations under Law No. 19.342	81	April 1997
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Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	79	July 1996
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<u>Croatia</u>		
The Plant Variety Protection Law (1997)	96	Dec. 2003
The Law of Alterations and Amendments on The Plant Variety Protection Law (2000)	96	Dec. 2003
Regulations on the procedure and the conduct of tests for distinctness, uniformity and stability (DUS) of new varieties of plants for the purpose of granting the Breeder's Right	96	Dec. 2003
Regulations on the registration in the Registers for the Protection of New Varieties of Plants (2001)	96	Dec. 2003
Decree on the (amount of) costs relating to the Plant Variety Protection	96	Dec. 2003

Title of Law, etc.	Plant Variety Protection Issue No.	Date
<u>Czech Republic</u>		
Protection of Plant Variety Rights Act No. 408/2000	93	June 2002
Declaration of Continued Application	70	Feb. 1993
Law on the Legal Protection of the Varieties of Plants and Breeds of Animals ¹	64	Aug. 1991
Decree of the Federal Ministry of Agriculture and Food Concerning the Implementation of Certain Provisions of Law No. 132/1989 of the Collection of Laws on the Legal Protection of New Varieties of Plants and Breeds of Animals ¹	64	Aug. 1991
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	94	Dec. 2002
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<u>Denmark</u>		
The Danish Plant Variety Protection Act Order No. 51 of 5 February, 1996	87	March 2000
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	79	July 1996
Modification of Fees	73	April 1994
<u>Ecuador</u>		
Decision 345 (see “Andean Community”)	75	Dec. 1994
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	82	Aug. 1997
<u>Estonia</u>		
Plant Variety Rights Act	89	Sept. 2000
Miscellaneous Information		
Taxa covered by Plant Variety Protection Legislation (All botanical genera and species)	89	Sept. 2000

¹ Enacted by Czechoslovakia

Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<u>European Community</u>		
Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights	99	Sept. 2005
Council Regulation (EC) No. 2506/95 amending Regulation (EC) No. 2100/94	99	Sept. 2005
Council Regulation (EC) No. 2470/96 providing for an extension of the terms of a Community Plant Variety Right in respect of Potatoes	99	Sept. 2005
Council Regulation (EC) No. 1650/2003 amending Regulation (EC) No. 2100/94	99	Sept. 2005
Council Regulation (EC) No. 873/2004 amending Regulation (EC) No. 2100/94	99	Sept. 2005
Commission Regulation (EC) No. 1238/95 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the Community Plant Variety Office (CPVO) (Consolidated version)	99	Sept. 2005
Commission Regulation (EC) No. 1239/95 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the proceedings before the CPVO (Consolidated version)	99	Sept. 2005
Commission Regulation (EC) No. 1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94 (Consolidated version)	99	Sept. 2005
Commission Regulation (EC) No. 1238/95 of May 5, 1995	89	Sept. 2000
Commission Regulation (EC) No. 1239/95 of May 5, 1995	89	Sept. 2000
Commission Regulation (EC) No. 1768/95 of July 24, 1995	89	Sept. 2000
Council Regulation (EC) No. 2470/96 of December 17, 1996	89	Sept. 2000
Commission Regulation (EC) No. 2605/98 of December 3, 1998	89	Sept. 2000
Council Regulation (EC) No. 2100/94 of July 27, 1994	77	May 1995

Title of Law, etc.	Plant Variety Protection Issue No.	Date
<u>Finland</u>		
The Act on Plant Breeder's Right (No. 789/1992) as amended (No. 238/1999, 5.3.1999)	88	June 2000
Decree on the Plant Variety Board (No. 906 of October 9, 1992)	71	July 1993
Decree on Breeders' Rights (No. 907 of October 9, 1992)	71	July 1993
<u>France</u>		
Law on the Protection of New Plant Varieties (No. 70-489 of June 11, 1970) ²	33	April 1983
Decree Concerning the Committee for the Protection of New Plant Varieties (No. 71-454 of June 7, 1971)	33	April 1983
Order Concerning the Denomination of Plant Varieties in respect of which either an Entry has been made in the Catalogue of Species and Varieties of Cultivated Plants or a New Plant Variety Protection Certificate has been Issued (of September 1, 1982)	34	June 1983
Decree No. 95-1047 of December 28, 1995, amending the Intellectual Property Code (Regulatory Part) with respect to the scope of application of New Plant Variety Certificates and the Term and Scope of Breeders' Rights	81	April 1997
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation (All species of the plant kingdom)	80	Dec. 1996
Tariff of Fees	55	June 1988
<u>Germany</u>		
The Plant Variety Protection Law (Consolidated text of the Plant Variety Protection Law of December 11, 1985, as amended by: Article 7 of the Law of March 7, 1990 (entered into force on July 1, 1990); Article 1 of the Law of March 27, 1992 (entered into force on April 8, 1992); Article 2 of the Law of July 23, 1992 (entered into force on July 31, 1992); Article 72 of the Law of April 27, 1993 (entered into force on January 1, 1994); Article 18 of the Law of September 2, 1994 (entering into force partly on January 1, 2000, and partly on January 1, 2005); Article 40 of the Law of October 25, 1994 (entered into force on January 1, 1995); Article 1 of the Law of July 17, 1997 (entered into force on July 25, 1997))	86	Dec. 1999
Order on the Procedure Before the Federal Office of Plant Varieties of December 30, 1985	51	Sept. 1986

² These texts have been integrated into the Intellectual Property Code.

Title of Law, etc.	Plant Variety Protection Issue No.	Date
<u>Germany cont/d</u>		
Miscellaneous Information		
Reunification	61	Feb. 1991
Tariff of Fees	78	June 1995
<u>Hungary</u>		
Law No. XXXIII on the Protection of Inventions by Patents of April 25, 1995 (Part IV Patent Protection for Plant Varieties and Animal Breeds)	84	April 1998
Joint Decree Relating to the Execution of the Law on the Protection of Inventions by Patents (No. 4/1969 XII. 28) OMFB-IM of the President of the National Committee for Technical Development and the Minister of Justice, as Amended by Decree No. 4/1983 (V.12) IM of the Minister of Justice	49	Jan. 1986
<u>Ireland</u>		
Plant Varieties (Proprietary Rights) Act, 1980	32	Feb. 1983
Plant Varieties (Proprietary Rights) (Amendment) Act, No. 41, 1998	88	June 2000
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	78	June 1995
Tariff of Fees	72	Nov. 1993
<u>Israel</u>		
Law on the Rights of the Breeders of Plant Varieties (Consolidated Text of the Plant Breeders' Rights Law, 5733-1973, as Amended by the Plant Breeders' Rights (Amendment) Law, 5744-1984 and as Amended by the Plant Breeder's Rights (Amendment No. 2) 5756-1996)	86	Dec. 1999
Miscellaneous Information		
Tariff of Fees	67	Feb. 1992
<u>Italy</u>		
Legislative Decree No. 455 (November 3, 1998)	91	June 2001
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	76	Feb. 1995
Taxa Covered by Plant Variety Protection Legislation	79	July 1996
Tariff of Fees	70	Feb. 1993

Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
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<u>Japan</u>		
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Tariff of Fees	66	Dec. 1991
<u>Kenya</u>		
The Seeds and Plant Varieties Act of 1972 (as amended in 2002)	94	Dec. 2002
The Seeds and Plant Varieties Regulations (1994)	94	Dec. 2002
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<u>Kyrgyz Republic</u>		
Law on the Legal Protection of Selection Achievements (May 26, 1998)	90	Dec. 2000
Miscellaneous Information		
Accession to the 1991 Act of the UPOV Convention	88	June 2000
<u>Lithuania</u>		
Law on the Protection of Plant Varieties No. IX-618	96	Dec. 2003
<u>Mexico</u>		
Federal Law on Plant Varieties	82	Aug. 1997
Regulations of the Federal Plant Variety Law (Sept. 24, 1998)	87	March 2000
<u>Netherlands</u>		
Territorial Extension of the Application of the UPOV Convention	52	June 1987
Seeds and Planting Material Act (Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999)	88	June 2000
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation (All taxa of the plant kingdom)	61	Feb. 1991
Tariff of Fees	71	July 1993

Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<u>New Zealand</u>		
Amendment to Plant Variety Rights Act 1987 (October 14, 1999)	90	Dec. 2000
Plant Variety Rights Act 1987, as Amended by the Plant Variety Rights Amendment Act 1990 of August 1, 1990, and the Plant Variety Rights Amendment Act of July 1, 1994	78	June 1995
Plant Variety Rights Amendment, an Act to Amend the Plant Variety Rights Act 1987, 2 September 1996	82	Aug. 1997
Plant Variety Rights Amendment Regulations 1997	82	Aug. 1997
Act No. 122 - Plant Variety Rights Amendment	90	Dec. 2000
Miscellaneous Information		
Tariff of Fees	85	Oct. 1999
<u>Nicaragua</u>		
Law for the Protection of New Varieties of Plants No. 318	93	June 2002
<u>Norway</u>		
Act of March 12, 1993, Relating to the Plant Breeder's Rights Regulations concerning the Plant Breeder's Right as amended on February 6, 1995, and July 16, 1997	74	July 1994
	90	Dec. 2000
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	80	Dec. 1996
Tariff of Fees	72	Nov. 1993
<u>Panama</u>		
Law No. 23 of July 15, 1997 on Industrial Property, Title V	90	Dec. 2000
Executive Decree No. 13 Regulating Title V of Law No. 23	90	Dec. 2000
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<u>Paraguay</u>		
Law 385/94 on Seeds and Cultivar Protection	83	Dec. 1997
Decree No. 7797/00 enacting Regulations under Law 385/94	90	Dec. 2000
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	81	April 1997

Title of Law, etc.	Plant Variety Protection Issue No.	Date
<u>Poland</u>		
Law on the Legal Protection of Plant Varieties (June 26, 2003)	97	Sept. 2004
Extract from Decree of the Minister for Agriculture, Forestry and Food Economy Concerning the Register of Varieties, the Role of Exclusive Rights on Varieties and the Control of Propagating Materials of April 14, 1988, as Amended on September 25, 1990	68	April 1992
Miscellaneous Information		
Tariff of Fees	94	Dec. 2002
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	80	Dec. 1996
<u>Portugal</u>		
Decree-Law No. 213/90 of June 28, 1990	83	Dec. 1997
Ministerial Order No. 940/90 of October 4, 1990, as Amended by Ministerial order No. 351/91 of April 20, 1990	66	Dec. 1991
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	79	July 1996
Tariff of Fees	66	Dec. 1991
<u>Republic of Korea</u>		
Seed Industry Law of January 26, 2001, under Law No. 6374	92	Dec. 2001
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	92	Dec. 2001
<u>Republic of Latvia</u>		
Plant Varieties Protection Law (May 2002)	95	April 2003
<u>Republic of Moldova</u>		
Law on the Protection of Plant Varieties No. 915/1996	94	Dec. 2002
Law on the Protection of Plant Varieties	85	Oct. 1999
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<u>Romania</u>		
Law on the Protection of New Varieties of Plants No. 255/1998	91	June 2001
Implementing Regulations of the Law on the Protection of New Varieties of Plants No. 255/1998	91	June 2001

Title of Law, etc.	Plant Variety Protection Issue No.	Date
<u>Russian Federation</u>		
Law on the Protection of Selection Achievements (of August 6, 1993)	76	Feb. 1995
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Taxa Covered by Plant Variety Protection Legislation	87	March 2000
Taxa Covered by Plant Variety Protection Legislation	92	Dec. 2001
<u>Singapore</u>		
Plant Varieties Protection Act 2004 (No. 22 of 2004)	96	Sept. 2004
<u>Slovakia</u>		
Declaration of Continued Application	70	Feb. 1993
Law on the Protection Rights of New Varieties and Animal Breeds No. 132/1989 Coll. Laws, dated 15 Nov. 1989 (amended 22/1996 Coll. Laws)	87	March 2000
<u>Slovenia</u>		
Law on Plant Variety Protection	86	Dec. 1999
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<u>South Africa</u>		
Plant Breeder's Rights Act No. 15 of 1976 as amended by Plant Breeders' Amendment Act No. 5 of 1980, Plant Breeders' Amendment Act No. 14 of 1981, Plant Breeders' Amendment Act No. 38 of 1983, Transfer of Powers and Duties of the State President, Act. No. 97 of 1983 and Plant Breeders' Amendment Act, No. 15 of 1996	82	Aug. 1997
Regulations Relating to Plant Breeder's Rights No. R 1186 of 12 September, 1997	87	March 2000
Genetically Modified Organisms Act No. 15 of 1997	93	June 2002
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Tariff of Fees	85	Oct. 1999

Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<u>Spain</u>		
Law on the Protection of Plant Varieties No. 12/1975 of March 12, 1975	67	Feb. 1992
General Rules on the Protection of Plant Varieties (Approved by Royal Decree No. 1674/1977 of June 10, 1977)	67	Feb. 1992
Law 3/2000 Governing the Protection of Plant Varieties	91	June 2001
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	72	Nov. 1993
	90	Dec. 2000
<u>Sweden</u>		
Act (No. 2004:16) amending the Act on the Protection of Plant Breeders' Rights (1997:306)	91	June 2001
Act of the Protection of Plant Breeders' Rights	91	June 2001
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	81	Apr. 1997
Tariff of Fees	85	Oct. 1999
<u>Switzerland</u>		
Federal Law on the Protection of New Plant Varieties (Consolidated Text of the Federal Law of March 20, 1975, as Amended by the Federal Law of October 10, 1980)	56	July 1988
Ordinance on the Protection of Plant Varieties	61	Feb. 1991
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	61	Feb. 1991
Tariff of Fees	75	Dec. 1994
Tariff of Fees (Corrigendum)	76	Feb. 1995
<u>Trinidad and Tobago</u>		
The Protection of New Plant Varieties Regulations, 2000	92	Dec. 2001
The Protection of New Plant Varieties Act, 1997	85	Oct. 1999
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	84	Apr. 1998

Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<u>Tunisia</u>		
Law No. 99-42 on Seed, Seedlings and New Plant Varieties (May 10, 1999)	96	Dec. 2003
Decree No. 2000-102 of January 18, 2000	96	Dec. 2003
Order of the Minister of Agriculture of June 24, 2000	96	Dec. 2003
<u>Ukraine</u>		
Amendment to the Law on the Protection of Plant Variety Rights (July 1, 2002)	95	April 2003
Law on the Protection of Plant Variety Rights (of April 21, 1993)	76	Feb. 1995
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	86	Dec. 1999
<u>United Kingdom</u>		
Plant Varieties Act 1997	85	Oct. 1999
The Plant Breeder's Rights (Information Notices) (Extension to European Community Plant Variety Rights Regulations 1998)		
Statutory Instrument No. 1023 of 1998, The Plant Breeders' Rights (Information Notices) (Extension to European Community Plant Variety Rights) Regulations 1998	87	March 2000
Statutory Instrument No. 1024 of 1998, The Plant Breeders' Rights (Information Notices) Regulations 1998	87	March 2000
Statutory Instrument No. 1025 of 1998, The Plant Breeders' Rights (Farm Saved Seed)(Specification of Species and Groups) Order 1998	87	March 2000
Statutory Instrument No. 1026 of 1998, The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998	87	March 2000
Statutory Instrument No. 1027 of 1998, The Plant Breeders' Rights Regulations 1998	87	March 2000
The Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002	93	June 2002
<u>United States of America</u>		
Plant Variety Protection Act (Consolidated Text of Public Law 91-577 of December 24, 1970, as Amended by Public Law 96-574 of December 22, 1980, Public Law 97-164 of April 2, 1982, Public Law 100-203 of December 22, 1987, Public Law 102-560 of October 28, 1992, Public Law 103-349 of October 6, 1994 and Public 104-127 of April 4, 1996)	80	Dec. 1996
Regulations and Rules of Practice, 7 CFR, Part 97, as of January 4, 1996	80	Dec. 1996
Plant Patent Amendments Act of 1998	91	June 2001

Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
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Uruguay		
Law No. 15.173, Enacting Provisions to Regulate the Production Certification, Marketing, Export and Import of Seed (Extract)	76	Feb. 1995
Decree No. 84/983, Introducing Law No. 15.173, Regulating the Production, Certification and Marketing of Seed, as Amended by Decree No. 418/987 of August 12, 1987, and Decree No. 519/991 of September 17, 1991 (Extract)	76	Feb. 1995
Law No. 16.811	82	Aug. 1997
Miscellaneous Information		
Taxa Covered by Plant Variety Protection Legislation	76	Feb. 1995