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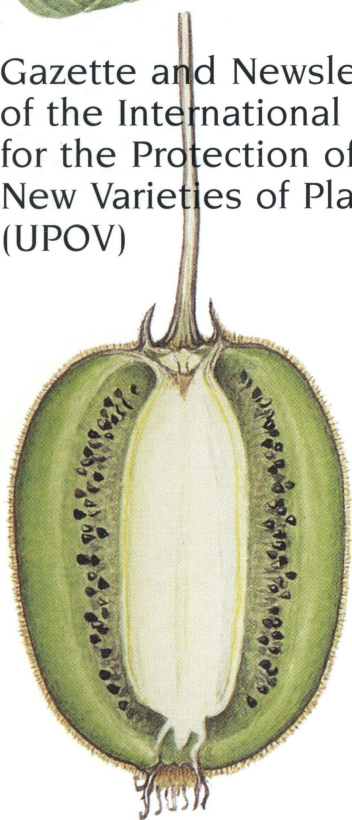
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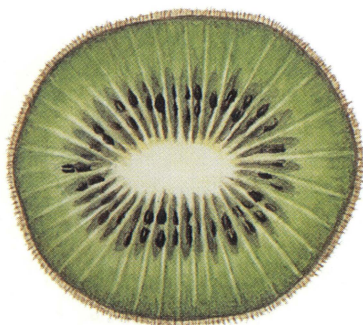


# PLANT VARIETY PROTECTION

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



Z. Nov.



UPOV

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The International Union for the Protection of New Varieties of Plants (UPOV) – an international organization established by the International Convention for the Protection of New Varieties of Plants – is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plants breeders – for their benefit and for the benefit of agriculture and thus also of the community at large – in accordance with uniform and clearly defined principles.

*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 four issues per year. Requests for addition to the mailing list may be placed with:

**UPOV**

International Union for the Protection of New Varieties of Plants (UPOV)  
34, chemin des Colombettes, P.O.Box 18, CH-1211 Geneva 20, Switzerland

Telephone: +41-22-338 9111 Telefax: +41-22-733 0336 E-mail: [upov.mail@wipo.int](mailto:upov.mail@wipo.int)

The picture on the front cover shows the species  
Kiwi fruit (*Actinidia chinensis* Planch),  
painted by Ms. Takeko Yamamoto (Japan),  
courtesy of Tsukuba Botanical Garden, National Science Museum, Japan

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**GAZETTE****ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION****REPUBLIC OF ESTONIA**

On August 24, 2000, the Government of the Republic of Estonia 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 1991 Act entered into force for the Republic of Estonia one month after the deposit of its instrument of accession, i.e., on September 24, 2000.

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

## NEWSLETTER

### CASE LAW

#### THE GRAIN POOL OF WESTERN AUSTRALIA vs. THE COMMONWEALTH OF AUSTRALIA & AMOR (P34/98)\*

The plaintiff (the Grain Pool) is a statutory authority established under the Grain Marketing Act 1975 (WA) as the sole marketing authority of prescribed grains in Western Australia. Barley is a prescribed grain.

The Plant Variety Rights Act 1987 (Cth) (the PVR Act) commenced in 1987 and was repealed by the Plant Breeder's Rights Act 1994 (Cth) (the PBR Act). Australia also undertook international obligations in relation to plants by becoming a party to the 1978 International Convention for the Protection of New Varieties of Plants. The 1978 Convention provided for the recognition in member States, of certain rights in the breeders of new plant varieties. The 1978 Convention was revised in 1991 to provide for each member to grant and protect plant breeders' right. Australia acceded to the 1991 Convention in 1999.

The Grain Pool alleged that the PVR Act was not appropriate to give effect to the terms of the 1978 Convention and that the PBR Act was not appropriate to give effect to the terms of either the 1991 Convention or the 1978 Convention. The Grain Pool contended that neither the PVR Act nor the PBR Act were within the constitutional power of the Commonwealth and were therefore invalid. The Grain Pool further contended that the purported grant of PVR and/or PBR in 'Franklin' barley was invalid and of no effect.

The second defendant was Cultivaust Pty Ltd (Cultivaust). Cultivaust alleged that it is a licensee of 'Franklin' barley rights from the State of Tasmania, which gives it the exclusive right to sell and export 'Franklin'. Cultivaust alleges that the Grain Pool, in selling and exporting 'Franklin', has acted in breach of Cultivaust's rights in 'Franklin'.

Both defendants contended that PVR Act and the PBR Act were each

- (i) a law with respect to external affairs by virtue of Australia's membership of the Union for the Protection of New Varieties of Plants and the 1978 Convention
- (ii) a law with respect to matters incidental to the external affairs power and
- (iii) a law with respect to patents for invention.

Notice of a Constitutional Matter was served and the Attorneys-General for Western Australia and Tasmania intervened. Attorneys-General for Queensland withdrew his intervention.

In a lengthy judgment the full bench of the High Court unanimously concluded that both the PVR Act and the PBR Act were valid as they were directly supported by the patent powers included in the Constitution. The Court therefore found it unnecessary to consider whether validity of the Acts was also supported with respect to the "external affairs" or any other head of Commonwealth power.

Costs were awarded to the defendants.

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\* This summary has been provided by the Plant Breeders' Rights Office of Australia



## LEGISLATION

## BRAZIL

ESTABLISHING THE PLANT VARIETY PROTECTION LAW  
AND ENACTING OTHER MEASURES(LAW No. 9,456 of April 28, 1997<sup>1</sup>)

THE PRESIDENT OF THE REPUBLIC

Be it known that the National Congress has decreed and that I hereby sanction the following Law:

## TITLE I

## PRELIMINARY PROVISIONS

## Article 1

The right of plant variety protection is established in accordance with the provisions of this law.

## Article 2

The protection of the intellectual property rights in plant varieties is effected through the grant of a Plant Variety Protection Certificate, which shall be considered a commodity for all legal purposes and the sole form of protection in the Country for plant varieties and the rights therein that may be invoked against the free use of sexually or vegetatively propagated plants or parts thereof.

## Article 3

For the purposes of this Law, it is considered that:

- (i) “breeder” means the individual who breeds a plant variety and establishes descriptors that differentiate it from any other;
- (ii) “descriptor” means the morphological, physiological, biochemical or molecular characteristic that is genetically inherited and used to identify the plant variety;
- (iii) “minimum margin” means the minimum set of descriptors, in the judgement of the competent agency, that is sufficient to distinguish a new plant variety or an essentially derived plant variety from other known plant varieties;
- (iv) “plant variety” means a variety of any plant genus or species that is clearly distinguishable from other known plant varieties by a minimum margin of descriptors and by its own denomination, is homogenous and stable in its descriptors throughout successive generations and belongs to a species useful in farming and forestry, be-

ing described in a publicly available and accessible specialized publication, including the component lines of hybrids;

- (v) “new plant variety” means a plant variety that has not been offered for sale in Brazil for more than 12 months prior to the date of the application for protection and, with due regard to the period for commercialization in Brazil, has not been offered for sale in other countries, with the breeder’s authorization, for more than six years for tree and vine species and for more than four years for other species;
- (vi) “distinct plant variety” means a plant variety that is clearly distinct from any other the existence of which has been recognized on the date of the application for protection;
- (vii) “homogenous plant variety” means a plant variety that, when used in planting on a commercial scale, shows a minimum degree of variance in the descriptors identifying it, according to criteria established by the competent agency;
- (viii) “stable plant variety” means a plant variety that, when reproduced on a commercial scale, maintains its homogeneity throughout successive generations;
- (ix) “essentially derived plant variety” means one essentially derived from another plant variety provided that, cumulatively;
  - a) it is predominantly derived from the initial plant variety, or from another essentially derived plant variety, without loss of the ability to exhibit the essential characteristics resulting from the genotype or combination of genotypes of the plant variety from which it derived, except for differences resulting from the derivation;
  - b) it is clearly distinct from the plant variety from which it derived, by a minimum margin, according to criteria established by the competent agency;
  - c) it has not been offered for sale in Brazil for more than 12 months from the date of application for protection and, with due regard to the period for commercialization in Brazil, has not been offered for sale in other countries, with the breeder’s authorization, for more than six years for tree and vine species and for more than four years for other species;

<sup>1</sup> Translation provided by the collaboration between the Brazilian authorities and UPOV

- (x) "lines" means homogenous genetic material obtained by some continuous process of self-fertilization;
- (xi) "hybrid" means the direct product of the crossing of genetically different lines;
- (xii) "testing of distinctness, homogeneity and stability (DHS)" means the technical procedure to verify that the new plant variety or the essentially derived plant variety differs from another whose descriptors are known, is homogenous in its characteristics in each reproductive cycle and is stable in terms of the recurrence of the same characteristics throughout successive generations;
- (xiii) "live sample" means that which is supplied by the applicant for the right of protection and which, if used in the propagation of the plant variety, confirms the descriptors submitted;
- (xiv) "seed" means every and any plant structure used in the propagation of a plant variety;
- (xv) "propagation" means the reproduction and multiplication of a plant variety, or the concurrence of those actions;
- (xvi) "propagating material" means every and any part of the plant or plant structure that is used in the reproduction and multiplication thereof;
- (xvii) "whole plant" means the plant with all those of its parts capable of being used in the propagation of a plant variety;
- (xviii) "farming and forestry" means the set of activities that relate to the growing of genera and species for, among other things, human or animal nourishment and the production of fuels, oils, dyes, fibers and other material for industrial, medical, forestry and ornamental purposes.

## TITLE II

## INTELLECTUAL PROPERTY

## CHAPTER I

## PROTECTION

## SECTION I

*Plant Varieties Eligible for Protection*

## Article 4

A new plant variety or an essentially derived variety of any genus or species is eligible for protection.

(1) Plant varieties not conforming to the above provisions that have already been offered for sale before the date of the application shall also be entitled to protection, provided that the following cumulative conditions are met:

- (i) the application for protection must be submitted within 12 months following compliance with the provisions of paragraphs 2 of this Article, for each plant species or variety;
  - (ii) the first instance of commercialization of the plant variety must not have occurred more than ten years before the date of the application for protection;
  - (iii) the protection shall be effective only for the purpose of the use of the plant variety to obtain essentially derived varieties;
  - (iv) protection shall be granted for the remaining period of the terms provided for in Article 11, the reference date for the purposes being that of first commercialization.
- (2) The agency responsible for the protection of plant varieties shall progressively disclose plant species and the relevant minimum descriptors required to initiate applications for protection, and also the time limits for the purposes of item (i) of the preceding paragraph.
- (3) The disclosure referred to in the preceding paragraph shall take place according to a scale of species and the following schedule, expressed as cumulative totals of protected species:
- (i) on the date of entry into force of the regime introduced by this Law: at least five species;
  - (ii) after three years: at least ten species;
  - (iii) after six years: at least 18 species;
  - (iv) after eight years: at least 24 species.

## SECTION II

*Breeders*

## Article 5

The natural or legal person who has bred a plant variety or an essentially derived plant variety in the country shall be entitled to protection of his property rights therein as provided in this Law.

- (1) Protection may be applied for by a natural or legal person who has bred a plant variety, by his heirs or successors or by assignees, if any, subject to submission of the proper authority.
- (2) When the breeding process has been conducted by two or more persons jointly, the protection may be applied for jointly or separately, each applicant being named and his qualification attested, for their individual rights to be guaranteed.
- (3) In the case of breeding arising from an employment contract, a service contract or other labor activity, the application for protection should state the names of all the breeders who, as employees or providers of services, have bred the new plant variety or the essentially derived plant variety.



## Article 6

The provisions of this Law shall also apply to:

- (i) applications for plant variety protection originating abroad and filed within the country by a person whose protection is ensured by a treaty effective in Brazil.
- (ii) nationals or residents of a country that affords Brazilians or residents of Brazil reciprocity in the form of equal or equivalent rights.

## Article 7

The provisions of treaties effective in Brazil shall be applicable on equal terms to natural or legal persons who are nationals of or resident in the Country.

## SECTION III

*Right to Protection*

## Article 8

The protection of a plant variety shall cover the reproductive or vegetative propagating material of the whole plant.

## Article 9

The protection shall afford its holder the right to commercial reproduction on the territory of Brazil, third parties being prohibited during the term of protection from producing for commercial purposes, offering for sale or marketing propagating material of the plant variety without his authorization.

## Article 10

The breeder's right in the plant variety shall not be deemed infringed by a person who:

- (i) stores and plants seeds for his own use on his premises or on the premises of third parties of which he has possession;
  - (ii) uses or sells as food or raw material the product of his planting, except for the purposes of reproduction;
  - (iii) uses the plant variety as a source of variation in genetic improvement or in scientific research;
  - (iv) being a small rural producer, multiplies seed, for donation or exchange in dealings exclusively with other small rural producers, under programs of financing or support for small rural producers conducted by public bodies or non-governmental agencies, authorized by the Government.
- (1) The provisions of the first paragraph specifically do not apply to the cultivation of sugar cane, for which the following

additional provisions on the right of ownership of the plant variety shall apply:

- (i) to multiply vegetative propagating material, even for his own use, the producer is obliged to secure authorization from the owner of the right to the plant variety;
  - (ii) when payment is required for the grant of authorization, that must not impair the economic and financial balance of the producer's farm;
  - (iii) the provisions of item (i) shall only apply to farms operated by producers having possession or ownership of rural properties with an area corresponding to at least four fiscal modules, calculated in accordance with the provisions of Law No. 4,504 of November 30, 1964, when the farm is dedicated to production for the purposes of industrial processing;
  - (iv) the provisions of this paragraph shall not apply to producers able to provide proof of having initiated, before the date of enactment of this Law, a process of multiplication for his own use of a plant variety that may be protected.
- (2) For the purposes of item (iii) of the first paragraph above, whenever:
- (i) it is indispensable to use the protected plant variety repeatedly for commercial production of another plant variety or hybrid, the holder of the latter shall be obliged to secure authorization from the holder of the right to protection of the former;
  - (ii) a plant variety is characterized as being essentially derived from a protected plant variety, the commercial exploitation thereof shall be subject to authorization by the holder of protection of the said protected plant variety.
- (3) For the purposes of the provisions of item (ii) of the first paragraph above, a small rural producer is one who simultaneously meets the following requirements:
- (i) he exploits a parcel of land as owner, titleholder, leaseholder or partner;
  - (ii) he employs up to two permanent staff, the enlistment where necessary of eventual third-party assistance being admissible when dictated by the seasonal nature of agriculture and livestock breeding;
  - (iii) he does not hold, under any title, an area exceeding four fiscal modules calculated in accordance with the legislation in force;
  - (iv) he has at least 80 per cent of his annual gross income derived from agriculture and livestock breeding or exploitation; and
  - (v) he resides on the property or in a nearby urban or rural community.

## SECTION IV

*Term of Protection*

## Article 11

The protection of the plant variety shall be effective for a period of fifteen years from the date of grant of the Provisional Certificate of Protection, except for vines and fruit, forest and ornamental trees, including in each case the rootstock thereof, for which the term shall be eighteen years.

## Article 12

When the term of validity of the right to protection expires, the plant variety shall pass into the public domain and no other right may prevent free use thereof.

## SECTION V

*Application for Protection*

## Article 13

The application for protection shall be formalized in a request signed by the natural or legal person who has bred the plant variety or his agent and endorsed by the competent agency.

**Sole Paragraph.** The protection on the national territory of a plant variety bred by a natural or legal person domiciled abroad, as provided in items (i) and (ii) of Article 6, should be applied for directly by that person's agent domiciled in Brazil in accordance with the provisions of Article 50 of this Law.

## Article 14

In addition to the request for protection, the application, which may only refer to a single plant variety, shall include:

- (i) the botanical species;
- (ii) the name of the plant variety;
- (iii) the genetic origin;
- (iv) a descriptive specification including all the required descriptors;
- (v) a statement attesting the existence of a live sample at the disposal of the competent agency and the location thereof for examination if required;
- (vi) the names and addresses of the applicant and breeders;
- (vii) evidence of the DHS characteristics in the case of national and foreign plant varieties;
- (viii) an account of other descriptors indicative of the variety's distinctness, homogeneity and stability, or evidence of the applicant having performed tests on it together with

either specific checks or checks required by the competent agency;

- (ix) proof of payment of the fee for the application for protection;
  - (x) a statement attesting the commercialization of the plant variety within the Country or abroad;
  - (xi) a statement attesting the existence in another country of protection, or an application for protection, or any request for the right of priority, concerning a plant variety for which protection is sought;
  - (xii) an abstract serving to identify the subject matter of the application.
- (1) The application and the completion thereof with the descriptors specified and the new descriptors shall meet the conditions laid down by the competent agency.
- (2) The documents referred in this Article shall be submitted in Portuguese.

## Article 15

Every plant variety shall have a denomination that identifies it, serves as its generic designation and conforms to the following criteria for the purposes of protection:

- (i) it must be unique, and not expressed in the form of numerals only;
- (ii) it must consist of a designation that is different from that of a pre-existing plant variety;
- (iii) it must not mislead as to the essential characteristics or origin of the variety.

## Article 16

The application for protection, in the form of an abstract allowing identification of the subject matter of the application, shall be published within 60 calendar days of the filing thereof.

**Sole Paragraph.** On publication of the application for protection, there shall begin a period of 90 days for the submission of any appeals, the applicant being informed thereof.

## Article 17

The specification and the descriptors evidencing distinctness, homogeneity and stability may not be amended by the applicant, except:

- (i) in order to correct printing or typing errors;
- (ii) where amendment is indispensable to clarify or specify the application, and then only up to the date of publication thereof;



- (iii) if it is the subject of official action owing to non-compliance with the provisions of paragraph (2) of Article 18.

#### Article 18

In the processing of the application for protection, a preliminary formal examination for the existence of synonyms shall be made, and if none are found to exist, the application shall be recorded, provided that it is in order.

(1) The recorded data concerning the application for plant variety protection shall include the hour, day, month, year and the number of the filing of the application, the full name and address of the person concerned and of his agent, if any.

(2) The examination, which shall not be subject to any appeals that may be filed, shall determine whether the application for protection conforms to the legal requirements and is technically in order, and ensure that there is no anticipation, even if under a different denomination.

(3) The application shall be rejected if the plant variety does not conform to the provisions of Article 4.

(4) If necessary, any additional requirements judged appropriate shall be imposed, including the filing of a new specification or of additions thereto and the provision of other information deemed relevant for the completion of the examination of the application.

(5) Failure to comply with or respond to an official requirement within 60 days following receipt of notice thereof shall cause the application to be shelved, and the administrative stage to be thereby concluded.

(6) The application shall likewise be shelved if the response to the official requirement is considered unfounded.

(7) Except as provided in paragraph (5) of this Article, the decision rejecting or allowing the application for protection may be appealed within 60 days of the date of publication thereof.

(8) On the filing of an appeal, the competent agency shall have up to 60 days within which to rule thereon.

#### Article 19

On publication of the application for protection, a Provisional Certificate of Protection shall be conditionally granted under which the holder has the right to exploit the plant variety commercially in accordance with this Law.

### SECTION VI

#### *Grant of the Plant Variety Protection Certificate*

#### Article 20

The plant variety protection certificate shall be issued immediately after the time limit for appeal or, where an appeal has been filed, on the official publication of the ruling thereon.

(1) Where the application has been allowed and no appeal has been filed in due time under paragraph (7) of Article 18, publication shall take place within a period not exceeding fifteen days.

(2) The plant variety protection certificate shall give the relevant number, the name and nationality of the holder or his heir, successor or assignee, if any, and the term of protection.

(3) In addition to the data referred to in the preceding paragraph, the plant variety protection certificate shall give the name of the breeder and, where applicable, the fact that the new variety resulted from an employment or service contract or from another labor activity, which fact should be clearly stated in the relevant application for protection.

#### Article 21

The protection granted shall be made known by official publication within a period not exceeding 15 days following the date of grant.

#### Article 22

Having obtained the provisional certificate of protection or the plant variety protection certificate, the holder is obliged, throughout the term of protection, to keep a live sample of the protected plant variety at the disposal of the competent agency, on pain of cancellation of the relevant certificate if, on being called upon to do so, he fails to submit it with a period of 60 days.

**Sole Paragraph.** Notwithstanding the provisions of the first paragraph of this Article, on obtaining the provisional certificate of protection or the plant variety protection certificate, the holder is bound to convey to the competent agency two live samples of the protected plant variety, one for handling and examination, the other for inclusion in the germ plasm collection.

### SECTION VII

#### *Alterations in the Plant Variety Protection Certificate*

#### Article 23

The ownership of plant variety protection may be transferred by *inter vivos* transaction or by legal or testamentary succession.

#### Article 24

The transfer by *inter vivos* transaction or legal or testamentary succession of a plant variety protection certificate, a change in the name, domicile or head office of the holder thereof, the terms of a compulsory license or a license for restricted public use, or temporary suspension or cancellation of protection, on having been noted in the relevant process, shall be recorded in the protection certificate.

(1) Notwithstanding other applicable requirements, the original transfer document shall include the full credentials of the

assignor and assignee and also those of the witnesses, with precise details of the protected plant variety.

(2) Acts relating, among other things, to the declaration of a compulsory license or a license for public use, temporary suspension, lapse of the protection or cancellation of the certificate, by order of an administrative or judicial authority.

(3) Recording shall have no effect on the remuneration payable by third parties to the holder for the exploitation of a protected plant variety when it relates to a plant variety the right to protection of which has lapsed or is in the process of being invalidated or cancelled.

(4) The transfer shall be binding on third parties only on publication of the decision to allow it.

(5) A refusal to note or to record may be appealed against within a period of 60 days following notice of the relevant decision.

#### Article 25

At the request of any person having a legitimate interest who may have entered a judicial action claiming the ineffectiveness of acts relating to an application for protection or of a transfer of ownership or alteration of the name, address or headquarters of the holder, the judge may order the process of protection, noting or recording to be suspended until a final decision is reached.

#### Article 26

The payment of the annual fees for protection of the plant variety, which are to be specified by regulation, shall be made as from the period following that of the date of grant of the protection certificate.

### SECTION VIII

#### *Right of Priority*

#### Article 27

Natural or legal persons who have filed an application for protection in a country that has an agreement with Brazil, or in a international organization of which Brazil is a member, the latter application having the effect of a domestic filing, shall have a right of priority for a period of up to 12 months.

(1) Events occurring within the period provided for in the foregoing paragraph, such as the filing of another application for protection, or publication or use of the plant variety to which the first application related, do not constitute grounds for rejection of the later application and shall not generate rights in favor of third parties.

(2) The period provided for in the first paragraph above shall be counted from the filing date of the first application, excluding the day of filing.

(3) To be able to benefit from the provisions of the first paragraph above, the applicant shall:

- (i) mention, explicitly, in the later application for protection, the claim of the priority of the first application;
- (ii) submit, within a period not exceeding three months, copies of the documents that supported the first application, duly certified by the agency or authority with which they were filed, and also sufficient evidence that the plant variety to which the two applications relate is the same.

(4) The natural or legal persons mentioned in the first paragraph of this Article shall have a period not exceeding two years after the expiry of the priority period within which to submit information, additional documents or a live sample, should they be so required.

### CHAPTER II

#### COMPULSORY LICENSE

#### Article 28

The plant variety protected under this Law may be the subject of a compulsory license, which will ensure:

- (i) the availability of the plant variety on the market, at reasonable prices, when the maintenance of a regular supply is being unduly hindered by the holder of the protection rights in the plant variety;
- (ii) the regular distribution of the plant variety and the maintenance of its quality;
- (iii) reasonable remuneration of the holder of the protection rights in the plant variety.

Sole Paragraph. When assessing undue restriction of competition, the authority shall comply with such of the provisions of Art. 21 of Law No. 8,884 of July 11, 1994, as are applicable.

#### Article 29

A compulsory license shall be understood to mean the act of the competent authority whereby, at the request of a party having a legitimate interest, the exploitation of the plant variety is authorized, independently of any authorization by its holder, for a period of three years, renewable for equal periods, without exclusive rights and against remuneration as provided by regulation.

#### Article 30

The request for a compulsory license shall contain, in particular:

- (i) the qualifications of the applicant;
- (ii) the qualifications of the holder of the right to protection of the plant variety;



- (iii) a sufficient description of the plant variety;
- (iv) the reasons underlying the request, due regard being had to the provisions of Article 28 of this Law;
- (v) evidence that the requester has attempted, unsuccessfully, to obtain a voluntary license from the holder of the plant variety;
- (vi) evidence that the requester is financially and technically capable of exploiting the plant variety.

## Article 31

The request for a license shall be submitted to the Ministry of Agriculture and Supply and ruled upon by the Administrative Board for Economic Defense (CADE) created by Law No. 8,884 of July 11, 1994.

(1) On receiving the request, the Ministry shall call upon the holder of the protection right to submit a statement, if he so desires, within a period of ten days.

(2) With or without the statement referred to in the preceding paragraph, the Ministry shall convey the file to the CADE, together with the technical opinion of the competent agency, within a period not exceeding 15 days, advising the grant or refusal of the compulsory license.

(3) Where there is no need for further action, the CADE shall consider the request within a period not exceeding 30 days.

## Article 32

The Ministry of Agriculture and Supply and the Ministry of Justice, each within the limits of its competence, shall issue additional rulings on the procedure and the conditions for the consideration of the request and the grant of the compulsory license, due regard being had to the procedural requirements inherent in the broad defense and protection of the property rights instituted by this Law.

## Article 33

The decision of the CADE to grant the license requested shall not be appealable within the Administration, nor may it be attacked in a first-instance judicial proceeding, except, in the latter case, where due legal process has not been observed.

## Article 34

The provisions of Law No. 9,279, of May 14, 1995, shall apply as appropriate to compulsory licenses.

## Article 35

A compulsory license may only be requested after three years have elapsed since the grant of the provisional certificate of protection, except in the case of abuse of economic power.

## CHAPTER III

## RESTRICTED PUBLIC USE

## Article 36

The protected plant variety shall be declared subject to restricted public use *ex officio* by the Ministry of Agriculture and Supply, on the basis of a technical opinion issued by the relevant competent agencies, such use being exclusively in the public interest to meet the needs of agricultural policy in cases of national emergency, abuse of economic power or other circumstances of extreme urgency, and in cases of non-commercial public use.

(1) A plant variety shall be deemed subject to restricted public use if, by order of the Ministry of Agriculture and Supply, it may be exploited directly by the Federal Union or by third parties designed by the latter without exclusive rights, but without authorization by its holder, for a period of three years, renewable for equal periods, on condition that the said holder is notified and remunerated as provided by regulation.

## CHAPTER IV

## PENALTIES

## Article 37

Any person who sells, offers for sale, reproduces, imports or exports, or who packs or holds in storage for such purposes, or for any purpose supplies the propagating material of a protected plant variety, under the correct designation or any other, without being authorized to do so by the holder thereof, shall be bound to indemnify the said holder, in amounts to be specified by regulation, in addition to having the material seized, shall also pay a fine in an amount equivalent to 20 per cent of the commercial value of the seized material, and shall be deemed guilty of the crime of infringement of the rights of the breeder, without prejudice to whatever other legal penalties may be applicable.

(1) In the event of recidivism involving the same or other material, the percentage of the fine shall be twice that applied to the last penalty, without prejudice to whatever additional penalties may be applicable.

(2) The competent agency shall turn the seized material over at no cost - provided that it is of adequate quality - for distribution, as seed for planting, to farmers engaged in agrarian reform programs or established in areas where public programs of support for family agriculture may be in progress, the marketing of such seed being prohibited.

(3) The provisions of the first paragraph and paragraph (1) of this Article shall not apply to the cases provided for in Article 10.

## CHAPTER V

VARIETIES BRED DURING THE CURRENCY OF AN  
EMPLOYMENT OR SERVICE  
CONTRACT OR IN THE COURSE OF ANOTHER  
LABOR ACTIVITY

## Article 38

The rights in new plant varieties and in essentially derived plant varieties developed or bred by an employee or service provider during the period of validity of the employment or service contract or in the course of another labor activity, being the result of the performance of duties or fulfillment of a contract relating to research work in Brazil, shall belong exclusively to the employer or client, but it shall be mandatory to include the application and in the protection certificate.

(1) Except where expressly provided otherwise in the contract, the consideration payable to the employee or the provider of the service or other labor activity in the case provided for in this Article shall be limited to the salary or the agreed remuneration.

(2) Unless otherwise agreed, the new plant variety or essentially derived plant variety in respect of which a protection certificate is applied for by the employee or service provider within 36 months following the lapse of the relevant contract shall be deemed bred during the currency of the employment or service contract or in the course of other labor activity.

## Article 39

Unless expressly provided otherwise, the new plant varieties and also essentially derived plant varieties bred by the employee or provider of services or other labor activity that are not covered by the provisions of Article 38, but are the result of a personal contribution and the use of resources, data, means, materials, installations or equipment belonging to the employer or client, shall belong to both parties.

(1) For the purposes of this Article, the employer or the party contracting for the service or other labor activity is invested with the exclusive right to exploit the new plant variety or essentially derived plant variety, and the employee or provider of the service or other labor activity is assured of the remuneration agreed between the parties, without prejudice to the payment of his salary or contractual remuneration.

(2) Where there are two or more employees or providers of the service or other labor activity, the share accruing to them shall be equally divided between them, unless otherwise agreed.

## CHAPTER VI

## EXTINCTION OF THE RIGHT TO PROTECTION

## Article 40

The protection of the plant variety shall lapse:

(i) on expiry of the term of protection specified in this Law;

(ii) on renunciation by the holder or his successors;

(iii) on cancellation of the protection certificate under Article 42.

Sole Paragraph. Renunciation of protection shall only be allowed if it does not prejudice third-party rights.

## Article 41

On the lapse of protection, the subject matter thereof shall pass into the public domain.

## Article 42

The protection certificate shall be administratively cancelled *ex officio*, or at the request of any person having a legitimate interest, in any of the following cases:

- (i) loss of homogeneity or stability;
- (ii) failure to effect payment of the annual fee;
- (iii) failure to comply with the requirements of Article 49;
- (iv) failure to submit a live sample as provided in Article 22;
- (v) evidence that the plant variety has had an adverse effect, after commercialization, on the environment or human health.

(1) The holder shall be notified of the institution of cancellation proceedings and shall be allowed a period of 60 days with which to respond, counted from the date of notification.

(2) The decision allowing or refusing cancellation may be appealed within a period of 60 days following the publication thereof.

(3) The decision to cancel shall produce effects from the date of the request or of publication of the *ex officio* institution of proceedings.

## CHAPTER VII

## NULLITY OF PROTECTION

## Article 43

Protection shall be null and void when:

- (i) the conditions of novelty and distinctness of the plant variety within the meaning of items (v) and (vi) Article 3 of this Law have not been met;
- (ii) it has been granted in defiance of third-party rights;
- (iii) the title does not correspond to its true subject matter;
- (iv) one or more of the measures laid down in this Law as

being necessary for the examination of the application and the issue of the protection certificate have been omitted.

Sole Paragraph. The nullity of the certificate shall be effective as from the date of the application.

#### Article 44

Nullity proceedings may be instituted *ex officio* or at the request of any person having a legitimate interest.

### TITLE III

#### NATIONAL PLANT VARIETIES PROTECTION SERVICE

##### CHAPTER I

##### ESTABLISHMENT

#### Article 45

The National Plant Varieties Protection Service (SNPC), which shall be in charge of the protection of plant varieties, is hereby established under the authority of the Ministry of Agriculture and Supply.

(1) The structure, prerogatives and purposes of the SNPC shall be specified by regulation.

(2) The SNPC shall administer the National Registry of Protected Plant Varieties.

### TITLE IV

#### GENERAL PROVISIONS

##### CHAPTER I

##### ACTIONS, ORDERS AND TERMS

#### Article 46

Acts, rulings and decisions concerning administrative procedures in connection with the protection of plant varieties shall be effective only on publication in the Official Gazette of the Union, with the exception of:

- (i) interlocutory rulings that need not be made known to the parties;
- (ii) expert opinions, which shall however be accessible to the parties for examination if they so require;
- (iii) others as specified in the Implementing Decree.

#### Article 47

The SNPC shall publish a specialized periodical for the National Registry of Protected Plant Varieties provided for in paragraph (2) of Article 45 and in the first paragraph and items (i), (ii) and (iii) of Article 46.

#### Article 48

The periods referred to in this Law shall be counted from the date of their publication.

### CHAPTER II

#### CERTIFICATES

#### Article 49

Certificates relating to matters provided for in this Law shall be issued within a period of 30 days from the date of receipt of the request, provided that they have been properly requested and payment of the appropriate fees is proved.

### CHAPTER III

#### POWER OF ATTORNEY FOR PERSONS DOMICILED ABROAD

#### Article 50

A natural or legal person domiciled abroad shall appoint and maintain an agent duly qualified and domiciled in Brazil, invested with the power to represent him and receive administrative notices and legal writs relating to matters provided for in this Law as from the date of application for protection and throughout its term, on pain of invalidation of the right to protection.

(1) The power of attorney shall qualify the agent to apply for protection and maintain it in dealings with the SNPC, and shall be specific to each case.

(2) When the application for protection is not filed by the applicant in person, it shall be accompanied by a power of attorney conferring the necessary powers, which shall have been duly translated by a sworn public translator if executed abroad.

### CHAPTER IV

#### FINAL PROVISIONS

#### Article 51

The application for protection of a plant variety essentially derived from a plant variety eligible for protection under paragraph (1) of Article 4 shall be examined, and if applicable the



relevant certificates shall be granted, only after the period provided in item (i) of the said paragraph, due regard being had to the chronological order of filing of the applications.

**Sole Paragraph.** The SNPC may waive observance of the period mentioned in the first paragraph when, regarding the plant variety eligible for protection under paragraph (1) of Article 4:

- (i) a protection certificate has been granted; or
- (ii) there is express authorization from the breeder thereof.

#### Article 52

Plant varieties already marketed in Brazil for which a duly examined application for protection has not been recorded within the period provided for in item (i) of paragraph (1) of Article 4 shall be automatically treated as being in the public domain.

#### Article 53

The services provided for in this Law shall be remunerated according to the tariff for specific public services, the Minis-

try of Agriculture and Supply being responsible for setting the individual amounts and the manner of their collection.

#### Article 54

The Executive shall enact regulations under this Law within a period of 90 days following its publication.

#### Article 55

This Law shall enter into force on the date of its publication.

#### Article 56

Provisions to the contrary are hereby repealed.

Brasilia, April 25, 1997, 176th year of Independence and 109th Year of the Republic.

FERNANDO HENRIQUE CARDOSO  
Ailton Barcelos Fernandes

## BRAZIL

### DECREE No. 2,366 of November 5, 1997<sup>1</sup>

Enacts regulations under Law No. 9,456 of April 25, 1997, on plant variety protection and rules on the National Plant Varieties Protection Service (SNPC), and introduces other measures.

THE PRESIDENT OF THE REPUBLIC, exercising the prerogatives vested in him by Article 84 (iv) of the Constitution, and having due regard to the provisions of Law No. 9,456 of April 25, 1997,

DECREES AS FOLLOWS:

#### CHAPTER I

#### GENERAL PROVISIONS

##### SECTION I

##### *Preliminary Provisions*

##### Article 1

The protection of plant varieties under Law No. 9,456 of April 25, 1997, shall take place in accordance with the rules laid down in this Decree.

##### Article 2

The protection of the intellectual property rights in plant varieties shall be effected by the grant of a plant variety protection certificate, which is considered a commodity for all legal purposes and the sole form of plant variety protection and the legal form that may be invoked against the free use within the country of plants or of such parts thereof as may be used for reproduction or vegetative multiplication.

##### SECTION II

##### *The Plant Variety Protection Agency*

##### Article 3

The National Plant Varieties Protection Service (SNPC), created by Law No. 9,456 of 1997 under the authority of the Ministry of Agriculture and Supply, is the agency responsible for the protection of plant varieties within the country, and shall in particular be responsible for:

- (i) protecting new plant varieties and essentially derived plant varieties, and granting the appropriate protection certificates for them;

- (ii) progressively disclosing plant species and the relevant minimum descriptors necessary for the filing of applications for protection, and also the time limit under paragraph (1)(a) of this Decree for such filing;
- (iii) drafting, and submitting to the State Minister of Agriculture and Supply for approval, such additional rules as are within its competence concerning the protection of new plant varieties and essentially derived plant varieties, and also that of plant varieties eligible for protection under paragraph (1) of Article 4 of Law No. 9,456 of 1997 belonging to any plant genus or species, and introducing the forms necessary for the processing of the applications for protection;
- (iv) receiving, recording, allowing and disallowing applications for protection filed in the form of a request signed by the natural or legal person who has bred a plant variety, or by his duly authorized agent;
- (v) receiving, recording, ruling on, allowing and disallowing oppositions filed by third parties or by the applicant for protection rights;
- (vi) receiving, recording and examining, and forwarding to the State Minister of Agriculture and Supply, appeals filed by third parties or by the applicant for protection rights;
- (vii) disclosing, by publication in the Official Gazette of the Union and in a specialized periodical, extracts from applications for protection, the protection granted, transfers of ownership, declarations of compulsory licenses or licenses for restricted public use, temporary suspension, the lapse of protection and the nullity or the cancellation of certificates of protection and other acts, rulings and administrative decisions relating to the protection of plant varieties;
- (viii) granting, maintaining, transferring, cancelling and invalidating provisional protection certificates and plant variety protection certificates;
- (ix) creating or authorizing depositaries for the conservation of live samples which shall constitute the germ plasm collection of protected plant varieties;
- (x) ordering the conduct of field and laboratory tests to determine the distinctness of the plant variety when considered necessary;
- (xi) overseeing compliance with the pertinent legal provisions regarding protection and the right to protection;
- (xii) issuing certificates relating to subject matter provided for in Law No. 9,456 of 1977;

<sup>1</sup> Translation provided by collaboration between Brazilian Authorities and UPOV

- (xiii) establishing models for protection certificates;
- (xiv) issuing final technical opinions in request procedures for the compulsory licensing of protected plant varieties, and also adopting related measures including notice to interested parties and the monitoring of license implementation after grant;
- (xv) issuing final technical opinions in support of declarations of restricted public use of protected plant varieties;
- (xvi) creating working groups of experts to render assistance in connection with specific matters;
- (xvii) pronouncing on the appropriateness of signing, ratifying or denouncing conventions, treaties, agreements and other arrangements concerning the protection of plant varieties;
- (xviii) recording, in the Protected Plant Variety Register, decisions arising from proceedings concerning compulsory licenses and declarations of restricted public use;
- (xix) designating officials to participate in technical meetings, committees and working groups of both national and of international scope concerning plant variety protection;
- (xx) engaging in relations with national, international and foreign institutions, public and private, with a view to maintaining a database of plant variety denominations and descriptors and also conducting technical and scientific exchanges in field of plant variety protection;
- (xxi) establishing and updating the National Registry of Plant Varieties (CNCP);

Sole paragraph. The technical services provided for in items (ix) and (x) of this Article may be rendered by public or private agencies under agreements or contracts or the licensing system.

#### Article 4

Whenever necessary, the SNPC shall consult with the National Institute of Industrial Property (INPI), in order to determine whether the denomination proposed for the plant variety is already on record as a trademark or service mark connected with the plant field or corresponds to that of a plant variety applied for or already registered at the said Institute.

Sole paragraph. The SNPC shall coordinate with INPI in the exchange of information on the protection of plant varieties by means of trademarks filed and registered at the said Institute.

### SECTION III

#### *Plant Variety Protection in General*

#### Article 5

For the purposes of this Decree:

- (i) “breeder” means the individual who breeds a plant variety and establishes descriptors that differentiate it from others;
- (ii) “descriptor” means the morphological, physiological, biochemical or molecular characteristic that is genetically inherited and is used to identify the plant variety;
- (iii) “minimum margin” means the minimum set of descriptors, in the judgement of the SNPC, sufficient to distinguish a new plant variety or an essentially derived plant variety from other known plant varieties;
- (iv) “plant variety” means a variety of any higher plant genus or species that is clearly distinguishable from other known plant varieties by a minimum margin of descriptors and by its own denomination, is homogenous and stable in its descriptors throughout successive generations and belongs to a species useful in farming and forestry, being described in a publicly available and accessible specialized publication, including the component lines of hybrids;
- (v) “new plant variety” means a variety that has not been offered for sale in Brazil for more than 12 months prior to the date of the application for protection and has not, due regard being had to the period for commercialization in Brazil, been offered for sale in other countries, with the breeder’s permission for more than six years for tree and vine species and for more than four years for the remaining species;
- (vi) “distinct plant variety” means a plant variety that is clearly distinguishable from any other whose existence is acknowledged on the date of the application for protection;
- (vii) “homogenous plant variety” means a plant variety that, when used in planting on a commercial scale, shows a minimum degree of variance as to the descriptors which identify the same, in accordance with criteria having been established by the SNPC;
- (viii) “stable plant variety” means a plant variety that, when reproduced on a commercial scale, retains its homogeneity throughout successive generations;
- (ix) “essentially derived plant variety” means one derived from another plant variety, provided that, cumulatively:
  - (a) it is predominantly derived from the initial plant variety or from another essentially derived plant variety, without ceasing to display the essential characteristics resulting from the genotype or of the combination of genotypes of the plant variety from which it derives, subject to differences resulting from the derivation;
  - (b) it is clearly distinct from the plant variety from which it derives by a minimum margin of descriptors, according to criteria established by the SNPC;

- (c) it has not been offered for sale in Brazil for more than 12 months prior to the date of the application for protection and, due regard being had to the period for commercialization in Brazil, it has not been offered for sale in other countries, with the authorization of the breeder, for over six years for tree and vine species and for over four years for the remaining species;
  - (x) “strains” means the homogenous genetic material obtained by means of a certain continuous process of self-fertilization;
  - (xi) “hybrid” means the direct product of the crossing of genetically different strains;
  - (xii) “testing of distinctness, homogeneity and stability (DHS)” means the technical procedure whereby it is established that the new plant variety or the essentially derived plant variety is distinguishable from others whose descriptors are known, is homogenous with respect to their characteristics in each reproduction cycle and is stable with respect to the recurrence of the same characteristics throughout successive generations;
  - (xiii) “live sample” means that supplied by the applicant for protection rights which, if used in the propagation of the plant variety, confirms the descriptors specified;
  - (xiv) “seed” means every and any kind of plant structure used for the propagation of a plant variety;
  - (xv) “propagation” means the reproduction and multiplication of a plant variety, or the concurrence of such acts;
  - (xvi) “propagation material” means every and any part of the plant or plant structure that is used in the reproduction and multiplication thereof;
  - (xvii) “whole plant” means the plant with all the parts thereof that are capable of being used in the propagation of a plant variety;
  - (xviii) “farming and forestry complex” means the group of activities concerned with the cultivation of plant genera and species among other things with a view to human and animal nourishment and the production of fuels, oils, dyes, fibers and other material for industrial, medical, forestry and ornamental purposes.
- of paragraph (2) of this Article, for each species or plant variety;
- (b) the first commercialization of the plant variety must have occurred not more than ten years before the date of the application for protection;
  - (c) the protection shall be effective only for the purpose of using the plant variety to obtain essentially derived plant varieties;
  - (d) protection shall be granted for the balance of the terms provided for in Article 11 of Law No. 9,456 of 1997, the reference date for the purpose being that of the first commercialization.
- (2) The SNPC shall be responsible for progressively disclosing the plant species and the relevant minimum descriptors necessary for the filing of applications for protection, and also for setting the time limits for the purposes of subparagraph (a) of paragraph (1) above.
- (3) The disclosure referred to in paragraph (2) above shall follow a scale of species according to the following schedule, expressed as a cumulative total of protected species:
- (a) on the date of entry into force of this Decree: at least five species;
  - (b) after three years: at least ten species;
  - (c) after six years: at least 18 species;
  - (d) after eight years: at least 24 species.

#### Article 7

The denomination of the plant variety to be protected shall consist of at least one word but not more than three words, an alphanumeric combination, a combination of words and letters or a combination of words and numerals.

- (1) The holder of the right to protection may not use as a denomination for the plant variety a designation that:
- (a) does not allow the plant variety to be identified;
  - (b) may mislead or confuse as to the origin, source, characteristics, value or identity of the plant variety, or as to the identity of the breeder;
  - (c) is identical or confusingly similar to another denomination used for an existing variety of the same or a similar botanical species;
  - (d) is identical or confusingly similar to another designation in which a third party holds previously acquired protection rights;
  - (e) is contrary to morality and proper practice;
  - (f) refers solely to attributes shared by other varieties of the same species;

#### Article 6

A new plant variety or an essentially derived variety of any plant genus or species is entitled to protection.

(1) Plant varieties not conforming to the provisions of the first paragraph above that have already been offered for sale prior to the date of the application shall also be entitled to protection, provided that the following cumulative conditions are met:

- (a) the application for protection must be submitted within 12 months of compliance with the provisions

- (g) consists of the botanical or a common name of a genus or species;
- (h) implies that the plant variety is derived from or related to another plant variety when that is not the case;
- (i) includes terms such as variety, plant variety, form, hybrid or cross, or translations thereof;
- (j) for different reasons does not constitute a generic denomination of the plant variety;
- (l) reproduces, wholly or in part, a trademark or service mark relating to the field of plants or to the field of application of the plant variety, or a well-known trademark.

(2) When the plant variety is already protected or in the process of acquiring protection in another country, the same denomination must be retained, except where it is unsuitable for linguistic reasons or for any of the reasons listed in paragraph (1) above, in which case the applicant is responsible for proposing another denomination, on pain of the shelving of the application for protection.

#### Article 8

The natural or legal person who for commercial purposes produces, sells, offers for sale, reproduces, imports or exports, and also packages or stores for such purposes, the propagation material of a protected plant variety shall be bound to use the designation approved at the time of protection thereof.

Sole paragraph. For the purposes of the first paragraph of this Article, the denomination of the protected plant variety may be combined with an industrial or commercial trademark or trade name or even to a similar denomination, provided that it may be easily recognized and is duly authorized by the holder of the rights in the plant variety concerned.

#### Article 9

During the term of protection of the plant variety, the holder of the rights in it shall ensure that the protected plant variety remains consistent with its description after repeated reproduction or multiplication or, where a particular cycle of reproduction and multiplication has been specified, at the end of each such cycle.

#### Article 10

The original document evidencing transfer, by *inter vivos* transaction, of the ownership of protection of a plant variety shall include the full particulars of the assignor and assignee, and also those of the witnesses, and the precise details of the protected plant variety.

## CHAPTER II

### SPECIFIC PROVISIONS

#### SECTION I

#### *Plant Variety Protection Application*

#### Article 11

An application seeking protection for a new plant variety or for an essentially derived plant variety shall only be allowed if the SNPC has previously disclosed the plant species and its relevant minimum descriptors.

Sole paragraph. The provisions of the first paragraph above shall also apply to plant varieties protectable under Article 4(1) of Law No. 9,456 of 1997.

#### Article 12

The application for plant variety protection shall be filed on a special form to be introduced by the SNPC.

Sole paragraph. In the case of an application for protection of an essentially derived plant variety, the interested party shall, notwithstanding the requirements of Article 14 of Law No. 9,456 of 1977, mention the variety's essentially derived status as well as its genetic origin as provided in subparagraph (iii) of the said Article.

#### Article 13

The application for plant variety protection shall be filed with the SNPC, which shall undertake the preliminary examination as to form to determine the existence of synonyms, and where none are found to exist shall record the application provided that it is in due form.

#### Article 14

The recorded data concerning the application for plant variety protection shall include the date and hour of the registration, the filing number of the application, the full name and address of the interested party and of his agent if any, in order to establish the precedence of the protection applied for.

#### Article 15

On the recording of the application for plant variety protection, an examination shall be made to verify compliance with legal and technical requirements, notably concerning the descriptors determining the DHS characteristics, and evidence of the conduct of tests and trials of the plant variety.

(1) Where a similarity is detected between two or more plant varieties of the same species in the course of the procedural examination, the priority of the applications for protection shall be determined as provided in the preceding Article.



(2) When the application for protection does not provide sufficient data for a complete procedural examination, the SNPC shall require the applicant to submit, within a period of 60 days counted from receipt of notice to that effect, a new technical specification and also other complementary information.

(3) Where the requirement provided for in the preceding paragraph has been complied with and doubt persists as to the differentiation of the plant variety, the SNPC may perform the tests or comparative field trials at the applicant's expense, if the latter agrees thereto, or decide to shelve the application.

(4) In the event of intervening business, the period of up to 60 days for publication of the application for plant variety protection, provided for in Article 16 of Law No. 9,456 of 1997, shall be counted from the date of completion of the said business.

(5) On publication of the application, there shall be a period of 90 days for the filing of oppositions.

(6) On receipt of opposition, the SNPC shall within 30 days serve notice on the applicant for protection, enclosing a copy of the entire contents of the opposition, to submit his response within 30 days of the date of receipt of the said notice.

(7) Upon receipt of the applicant's rebuttal of the opposition or on the expiry of the term of 30 days provided for in the preceding paragraph without any response, the SNPC shall rule on whether or not to allow the application for protection.

(8) The decision allowing or rejecting the application for protection may be appealed within 60 days of the date of publication thereof, as provided in paragraph (7) of Article 18 of Law No. 9,456 of 1997.

(9) On receipt and recording of the appeal, the SNPC shall conduct the proceedings and submit them to the State Minister of Agriculture and Supply, who shall issue a decision within a period of 60 days counted from the said recording.

#### Article 16

The SNPC shall be responsible for officially requiring, after the application for protection has been published, that the name of the plant variety be changed where:

- (1) a fact is noted that would have prevented the acceptance of the denomination had it been noted at the time of examination of the application for protection;
  - (2) it is requested by the holder of the right or by his legal representative with due justification;
  - (3) it is requested by a third party, the existence of a prior right to the denomination having been ascertained.
- (1) Where a request for a change of denomination under items (ii) and (iii) of this Article has been allowed, the SNPC shall require the holder of the right to submit a new denomi-

nation within a period of 60 days counted from the date of receipt of the notification.

(2) Should the requirement fail to be met within the period specified in paragraph (1) above, the application shall be shelved and the provisional protection certificate, if one has been issued, shall be cancelled.

(3) When a new plant variety denomination has been specified, the application for protection shall be republished, the period of 90 days for oppositions restarted and the applicant informed accordingly.

#### Article 17

The holder of the protection rights in a plant variety shall provide the SNPC with all the information and clarifications concerning it that may be requested of him, including inspection of the means adopted to conserve the live sample of the plant variety in his possession.

(1) The samples supplied for inclusion in the plant variety germ plasm collection referred to in item (ix) of Article 3 of this Decree may only be used for evidentiary purposes in matters pertaining to plant variety protection.

(2) The handling and examination of the live samples referred to in the sole paragraph of Article 22 of Law No. 9,456 of 1997 shall be confined to evidentiary use in the DHS testing of the plant variety.

#### Article 18

For the plant variety protection application, the period to be observed for the purposes of Article 6 of this Decree with respect to offering for sale or commercialization shall be that of the first commercial operation involving the plant variety concerned in the form of basic, registered, certified or inspected seed.

#### Article 19

Certificates of the original documents attesting public powers of attorney, as issued by the competent agencies, shall be considered valid for the conduct of the administrative procedure relating to plant variety protection applications, and for the subsequent monitoring of that procedure.

### SECTION II

#### *National Register of Protected Plant Varieties (CNCP)*

#### Article 20

The National Register of Protected Plant Varieties (CNCP) shall record at least:

- (i) the file number of the application for protection;
- (ii) the number of the provisional protection certificate;

- (iii) the number of the plant variety protection certificate;
- (iv) the name of the species (botanical name and common name);
- (v) the denomination of the plant variety;
- (vi) the starting date of the protection;
- (vii) the expiry date of the protection;
- (viii) the name and address of the holder of the protection rights;
- (ix) the name(s) of the breeder(s);
- (x) the name and address of the legal representative;
- (xi) the name and address of the technical supervisor;
- (xii) the country of origin of the plant variety;
- (xiii) any changes in the protection certificate;
- (xiv) recorded annotations.

### SECTION III

#### *Compulsory License*

##### Article 21

The compulsory license is the instrument used by the public authority to allow the exploration of a protected plant variety at the request of a legitimately interested party with or without the permission of the holder of the rights therein for a period of three years, renewable for identical periods but without exclusiveness and against remuneration, as provided in this Decree.

(1) For the purpose of requesting a compulsory license, a producer of seeds as defined in the Law shall be considered a legitimately interested party, provided that there is no action pending against him for infringement of the economic order as provided in Law No. 8,884 of July 11, 1994.

(2) The remuneration referred in the first paragraph above shall be determined by SNPC arbitration in the absence of agreement between the holder of the rights in the protected plant variety and the party requesting the compulsory license, and shall be based on freely negotiated percentages consistent with current market practice for that species.

##### Article 22

The request for a compulsory license shall be supported by:

- (i) the qualifications of the requester;
- (ii) the particulars of the holder of the right to the plant variety;

- (iii) the denomination and a sufficient description of the plant variety;
- (iv) the grounds for the request, due regard being had to the provisions of Article 28 of Law No. 9,456 of 1977;
- (v) written evidence that the requester has exhausted all measures at his disposal for the negotiation of a voluntary license proposal made to the holder of the right to the plant variety or to his agent;
- (vi) proof that the requester is financially and technically able to exploit the plant variety, evidenced by:
  - (a) an area that he owns or shares within a cooperative;
  - (b) the capacity for seed processing;
  - (c) storage capacity;
  - (d) a technical supervisor;
  - (e) an owned or contracted laboratory for seed analysis;
  - (f) a seed distribution network;
  - (g) a client list;
  - (h) a descriptive list of plant varieties produced and commercialized by him, classified by genus or species;
  - (i) proof of registration with the Ministry of Agriculture and Supply as a seed producer;
  - (j) capital commensurate with production costs;
- (vii) other evidence specifically required by the Administrative Board of Economic Defense (CADE), due regard being had where applicable, to the provisions of Article 35 of this Decree.

(1) The requester shall also mention the existence of any voluntary licenses in relation to the plant variety granted to third parties, and any pending court proceedings concerning the same subject, should he have knowledge thereof.

(2) The SNPC and the CADE are bound to treat information provided by the applicant in strict confidence, as provided by Law.

##### Article 23

On receipt of a request for a compulsory license, the Ministry of Agriculture and Supply shall, where it considers the requirements of the preceding Article satisfactorily complied with, order:

- (i) the processing of the request together with its attachments;

- (ii) the preparation of a technical opinion by the SNPC;
- (iii) the service of notice on the holder of the plant variety, and, where applicable on the holder of the compulsory license, to submit a response, should they wish to do so, within a period of ten days counted from the date on which the said notice is served;
- (iv) publication of an extract from the compulsory license request, for third-party information and opposition within a period of ten days.

(1) On expiry of the ten-day period accorded to the holder of the protected plant variety and to the holder of a voluntary license, if any, provided for in item (iii) of this Article, the file shall be forwarded to the CADE, with or without comment, together with the technical opinion provided for in the following Article, within a maximum period of 15 days.

(2) Should the request be insufficiently supported by documents evidencing compliance with the requirements provided for in the preceding Article, the Ministry of Agriculture and Supply shall demand that the requester submit documentation to complement that specified within a period of 15 days counted from the date of receipt of the relevant notice, failing which the request shall be shelved.

#### Article 24

The technical opinion of the SNPC on a request for a compulsory license shall include:

- (i) a report concerning the request which, in addition to complying with the provisions of Article 22 of this Decree, shall mention the existence of prior compulsory license requests, if any have been filed;
- (ii) an objective appraisal of the adverse effects on trade that the license is intended to remedy;
- (iii) a proposal that the compulsory license be allowed or rejected, with an objective statement of the reasons therefor.

Sole paragraph. The SNPC shall provide the CADE on request with the additional information with which to conduct the compulsory license proceedings.

#### Article 25

Where no additional action is necessary, the CADE shall examine the compulsory license request within a maximum period of 30 days.

#### Article 26

Save for legitimate reasons, in the judgement of the CADE, based on the technical opinion submitted by the SNPC, the compulsory license shall lapse with or without notice if, within

a period of six months of publication of its grant, the requester has not taken the necessary steps to implement it.

Sole paragraph. The period for implementation of the provisions of this Article may be renewed once, at the request of the interested party, provided that it is duly justified.

#### Article 27

The provisions of Law No. 9,279 of May 14, 1996, shall be applied as appropriate to compulsory licenses.

### SECTION IV

#### *Restricted Public Use*

#### Article 28

The protected plant variety shall be declared subject to restricted public use *ex officio* by the State Minister of Agriculture and Supply on the basis of a technical opinion issued by the relevant competent agencies, such use being exclusively in the public interest to meet the needs of agricultural policy in cases of national emergency, abuse of economic power or other circumstances of extreme urgency, and in cases of non-commercial public use.

(1) A plant variety shall be deemed subject to restricted public use if, by order of the Ministry of Agriculture and Supply, it may be exploited directly by the Federal Union or by third parties designated by the latter, without exclusive rights but without authorization by its holder, for a period of three years, renewable for equal periods, on condition that the holder is notified and remunerated as provided in this Decree.

(2) The notice provided for in the preceding paragraph shall be immediately issued on publication of the declaration of restricted public use and shall contain at least:

- (a) the reasons for the declaration;
- (b) a list of the natural or legal persons authorized to exploit the plant variety, including names, addresses and registration numbers in the Brazilian Individual Taxpayers Register (CPF) or the Brazilian Corporate Taxpayers Register (CGC) within the Ministry of Finance;
- (c) the remuneration payable;
- (d) the minimum annual volume of reproductive or vegetative propagating material of the plant variety that is necessary for its exploitation.

(3) The remuneration payable for exploitation of a protected plant variety declared subject to restricted public use shall be calculated on the basis of the market prices for the species applicable on the date of the declaration, due regard being had to the factors that determined them.

## SECTION V

*Public Services*

## Article 29

The services provided for in Article 53 of Law No. 9,456 of 1997 that are subject to remuneration under the regime of specific public service prices include the following:

- (i) the application for protection;
- (ii) the annual fee;
- (iii) transfer of ownership;
- (iv) other amendments to the protection certificate;
- (v) laboratory tests;
- (vi) comparative field trials to determine the DHS of the plant variety;
- (vii) status certificates.

## Article 30

The Ministry of Agriculture and Supply shall set, collect and apportion funds deriving from the services provided for in the preceding Article, and also update the said funds.

Sole paragraph. The product of the collection referred to in the foregoing paragraph shall be used for the training of personnel and in the introduction, operation, improvement and provision of the services provided for in this Decree.

## SECTION VI

*National Plant Varieties Protection Board (CNPC)*

## Article 31

The National Plant Varieties Protection Board (CNPC) is hereby established within the Ministry of Agriculture and Supply, in an advisory capacity, to provide support for the SNPC, under the chairmanship of the titular head of the SNPC, composed of one representative each of the agencies and entities designated below:

- (i) Farming and Livestock Defense Secretary Office, in the Ministry of Agriculture and Supply;
- (ii) Ministry of Foreign Affairs;
- (iii) Ministry of Industry, Trade and Tourism;
- (iv) Ministry of Science and Technology;

- (v) Ministry of the Environment, Water Resources and the Law of the Amazon Basin;
- (vi) a national association of plant breeders;
- (vii) the Brazilian Association of Seed Producers;
- (viii) the Brazilian Cooperatives Organization;
- (ix) the National Agriculture Confederation;
- (x) the National Confederation of Agriculture Workers;
- (xi) the Federal Board of Engineering, Architecture and Agronomy.

(1) The members of the CNPC shall be appointed by the State Minister of Agriculture and Supply for a two-year term which may be renewed once.

(2) Within a period of 30 days following the publication of this Decree, the agencies and entities listed in the first paragraph of this Article shall designate their representatives on the CNPC and the corresponding substitutes.

(3) The Board shall meet in the presence of a simple majority of the members.

(4) The decisions of the Board shall be taken by a simple majority of the members present, with the chairman having a casting vote.

(5) The members of the CNPC shall not receive remuneration, the services rendered by them being, for all purposes, considered relevant to the cause of the Country's development.

(6) The travel and accommodation costs arising from the participation of CNPC members in meetings of the Board shall be borne by the agencies and entities that they represent.

(7) The SNPC shall provide the CNPC with administrative and operational support.

(8) The CNPC shall have a period of 60 days, counted from the establishment thereof, within which to draw up its rules of procedure, which shall be approved in an administrative ruling by the State Minister of Agriculture and Supply.

## Article 32

The CNPC shall be responsible for:

- (i) issuing statements concerning matters submitted to it by the SNPC for appraisal;
- (ii) suggesting rules and regulations on the protection of plant varieties;
- (iii) providing the SNPC with support in matters relating to plant variety protection, and especially in connection with domestic and international treaties and agreements.

## CHAPTER III

## FINAL PROVISIONS

## Article 33

For the purposes of the indemnification provided for in Article 37 of Law No. 9,456 of 1997, the remuneration of the holder shall be calculated on the basis of the market prices for the species applicable at the time of the reporting of the infringement, without prejudice to such legal additions as may be applicable.

## Article 34

The following plant species are hereby disclosed for the purposes of the filing of applications for plant variety protection: cotton, rice, potato, beans, corn, soybean, sorghum and wheat, the minimum descriptors of which are specified in Annexes I to VIII of this Decree.

Sole paragraph. The disclosure of the remaining plant species, their minimum descriptors and whatever alterations may be necessary shall be carried out by the SNPC.

## Article 35

The State Ministers of Agriculture and Supply and of Justice, within the scope of their respective responsibilities, shall issue complementary rules on the procedures and the conditions for the assessment and grant of compulsory licenses, due regard being had to the procedural requirements inherent in

the proper defense and protection of the property rights established by Law No. 9,456 of 1997.

## Article 36

The structure of the SNPC shall be specified in the regulations governing the structure of the Ministry of Agriculture and Supply.

Sole paragraph. Within a period of 60 days following the publication of this Decree, the State Minister of Agriculture and Supply shall approve the rules of procedure of the SNPC and also provide for the reorganization of the departments in charge of activities relating to seeds and seedlings, including those specific to seed testing laboratories, in order to make them structurally compatible with the SNPC.

## Article 37

The State Minister of Agriculture and Supply is hereby authorized, due regard being had where applicable to the provisions of Article 35, to enact such complementary rules as may be necessary for the implementation of this Decree.

## Article 38

This Decree shall enter into force on the date of its publication.

Brasilia, 1997; 176th year of independence and 109th year of the Republic.



## REPUBLIC OF ESTONIA

PLANT VARIETY RIGHTS ACT<sup>1</sup>

Passed 25 March 1998

(RT<sup>2</sup> 11998, 36/37, 553), entered into force 1 July, 1998,  
 amended by the following Act: January 19, 2000  
 entered into force March 1, 2000 - RT 12000, 10, 56.

## CHAPTER 1

## General Part

## Section 1

*Scope of application of Act*

- (1) This Act provides the legal regulation of applications for plant variety rights and the grant of plant variety rights, and ensures the rights of holders of plant variety rights.
- (2) This Act applies to varieties of all plant genera and species, including hybrids between genera or species.

## Section 2

*Variety and essentially derived variety*

- (1) "Variety" means a plant grouping within a single botanical taxon of the lowest known rank which is defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, is distinguished from other plant groupings by the expression of at least one of the said characteristics and is considered as a unit with regard to its suitability for being propagated unchanged. Such plant grouping is deemed to be a variety irrespective of whether the conditions for the grant of a plant variety right are fulfilled or not.
- (2) A plant grouping consists of entire plants or parts of plants (hereinafter variety constituents) which are capable of producing entire plants with the same characteristics.
- (3) A variety is deemed to be essentially derived from another variety if it is predominantly derived from the initial variety or a variety that is itself predominantly derived from the initial variety, it is clearly distinguishable from the initial variety, and, except for the differences which result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56).
- (4) Essentially derived varieties may be obtained by the selection of a mutant or a variant individual of the initial variety, by back-crossing, transformation by genetic engineering, so-

matic cloning, or other such method. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56).

## Section 3

*Conditions for grant of plant variety right*

- (1) A plant variety right shall be granted if a variety is:
- 1) new;
  - 2) distinct;
  - 3) uniform;
  - 4) stable; and
  - 5) has a suitable denomination.
- (2) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56).

## Section 4

*Novelty*

- (1) A variety is deemed to be new if, on the date of filing an application for the plant variety right with the registrar, the seed, propagating material, variety constituents or plant material of the variety have not been sold or otherwise disposed of to others, by or with consent of the owner, for the purposes of exploitation of the variety for longer than: (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56).
- 1) one year in the territory of Estonia;
  - 2) four years in the territory of another state or, in the case of trees and grapevine, for longer than six years.
- (2) The conditions for novelty of a variety are deemed not to be violated if:
- 1) the variety is sold or used for production without the knowledge of the owner in violation of the owner's rights;
  - 2) the variety is sold for the purpose of transfer of the right of ownership in the variety;

<sup>1</sup> RT = Riigi Teataja = State Gazette<sup>2</sup> Translation provided by the Slovenian Authorities

- 3) the owner of the variety enters into an agreement for the production of seeds or propagating material of the variety for the owner's own use, and the variety has not been sold or used for the production of seeds or propagating material for other varieties;
- 4) the variety is used under an agreement in field trials, laboratory trials or small scale processing trials with a view to evaluating the variety;
- 5) the variety is used in national agricultural value and use tests for the purpose of entry into the official list of plant varieties (hereinafter *Variety List*);
- 6) the variety is used in trials connected to the evaluation of resistance to plant diseases and pests;
- 7) the variety is displayed at an official exhibition or described in an exhibition catalogue;
- 8) the plant material produced or harvested in the course of the activities listed in clauses 3), 4) or 5) of this subsection is sold as a by-product without variety identification.

#### Section 5

##### *Distinctness of variety and known variety*

- (1) A variety is 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 at the time of filing of an application.
- (2) A variety is deemed to be a matter of common knowledge from the date of filing an application for the plant variety right or for entry in the *Variety List*, provided that after the submission of the application the plant variety right is granted or the variety is entered in the *Variety List*. All varieties which have been described in print materials, are used in production, sold or have been described in official catalogues are also deemed to be a matter of common knowledge. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### Section 6

##### *Uniformity of variety*

A variety is 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 of any others used for the variety description.

#### Section 7

##### *Stability of variety*

A variety is deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case

of a particular cycle of propagation, at the end of each such cycle.

## CHAPTER 2

### STATE PLANT VARIETIES REGISTER

#### Section 8

##### *Establishment and organisation of activities of plant variety rights register*

- (1) The register of protected varieties (hereinafter plant variety rights register) is a state register which is established pursuant to the Databases Act (RT 11997, 28, 423) on the basis of an application of the Minister of Agriculture and which contains data on applications for plant variety rights, protected varieties, holders of plant variety rights, breeders of protected varieties and issued licences.
- (2) The chief processor of the plant variety rights register is the Minister of Agriculture, and the authorised processor of the register (hereinafter registrar) is the Plant Production Inspectorate. The expenses of the plant variety rights register are covered from the budget of the Ministry of Agriculture.

#### Section 9

##### *Maintenance of plant variety rights register and state fees for register entries*

- (1) The plant varieties rights register is maintained, entries are made in the register and data from the register are retained pursuant to this Act, the Databases Act and the statutes of the plant variety rights register.
- (2) State fees shall be paid for the making of register entries specified in this Act in the amount and pursuant to the procedure provided for in the State Fees Act (RT 1 1997, 80, 1344; 86, 1461; 87, 1466 and 1467; 93, 1563; 1998, 2, 47; 4, 63; 23, 321).
- (3) Persons shall provide documentary evidence of payment of state fees before the making of corresponding register entries. The state fee for each year of the term of a plant variety right shall be paid by 31 December of the previous year and the documents certifying payment of the fee shall be submitted to the registrar by 31 January.

#### Section 10

##### *Data entered in plant variety rights register*

- (1) The plant variety rights register is maintained as a register of applications for plant variety rights and of plant variety rights.
- (2) The following is entered in the register with respect to an application for a plant variety right:
  - 1) the application for the plant variety right and the date of filing the application;

- 2) the name and address of the applicant for the plant variety right and, if necessary, a document certifying the legal succession of the applicant;
  - 3) the identification of the botanical taxon, that is, the Latin and common names;
  - 4) the denomination proposed for the variety and the breeder's reference;
  - 5) the name or names and addresses of the breeder or breeders of the variety and the percentage of their participation in the breeding of the variety. The names and addresses of an authorised representative or representatives;
  - 6) the names and addresses of the owner or owners of the variety, and the percentage of their shares if the variety is in common ownership. The names and addresses of an authorised representative or representatives;
  - 7) a technical description of the variety;
  - 8) the date of priority;
  - 9) information on acts related to the processing of the application for the plant variety right, including information on termination thereof, along with certification that the information provided by the applicant is true.
- (3) The following is entered in the register with respect to a plant variety right:
- 1) the variety denomination;
  - 2) the identification of the botanical taxon, that is, the Latin and common names;
  - 3) the official description of the variety;
  - 4) a reference of components of the variety if other varieties have to be used repeatedly for the production of propagating material;
  - 5) the names and addresses of the holder of the plant variety right, breeders and the names and addresses of their authorised representatives;
  - 6) the date of grant of the plant variety right, and data relating to the term, termination or extinguishment of the plant variety right;
  - 7) information on persons holding a licence with a reference to the type of licence.
- (4) A description of an initial variety and of a variety essentially derived variety therefrom is registered in the register of protected varieties, as are the variety denominations, names of holders of plant variety rights and breeders at the request of the holders of the plant variety rights or the breeders, or at the request of one of them with the consent of the others, or on the

basis of a court order which includes a decision on identification of the varieties as an initial variety and an essentially derived variety (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56).

#### Section 11

##### *Access to information registered in plant variety rights register*

(1) The following is released to persons at their request by the registrar:

- 1) data relating to applications for plant variety rights;
- 2) data relating to technical examinations;
- 3) data relating to plant variety rights.

(2) If the propagating material or constituents of another variety are used for the production of the propagating material of a variety, the information specified in subsection (1) of this section are not released to other persons at the request of the applicant for the plant variety right. Such information may be released on the basis of a court ruling or court judgment, and to state agencies for the performance of duties arising from the statutes. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(3) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(4) Access to information pertaining to the techniques used for breeding a variety and the proportional relationships of components used for production of an essentially derived variety provided in the official description of a variety registered in the plant variety rights register is restricted. Such information is released to state authorities for the performance of duties arising from their statutes and to other persons on the basis of a court ruling or court order.

#### Section 12

##### *Publication of information entered in plant variety rights register*

(1) The registrar publishes an official publication wherein the following information is published:

- 1) applications for plant variety rights received by the registrar;
- 2) denominations proposed for varieties;
- 3) denominations of protected varieties;
- 4) rejected applications for plant variety rights;
- 5) decisions on premature termination, nullification or cancellation of plant variety rights;

- 6) information concerning extinguishment of plant variety rights; (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- 7) information on applicants for plant variety rights, holders of plant variety rights and breeders, on the percentages of their shares, and on their representatives;
- 8) licences issued for the exploitation of varieties with reference to the type of licence;
- 9) new denominations proposed for protected varieties;
- 10) other official notices.

(2) The registrar shall publish the publication specified in subsection (1) of this section regularly according to the receipt of information subject to publication but not less than once every four months.

#### Section 13

##### *Preservation of data entered in register*

The registrar shall preserve all registered data and the documents which were the bases for registration thereof for five years from the date of denial of an application for a plant variety right, or of premature termination, revocation, cancellation or extinguishment of a plant variety right.

### CHAPTER 3

#### APPLICATION FOR PLANT VARIETY RIGHT

#### Section 14

##### *Persons entitled to apply for plant variety rights*

- (1) A natural person or a legal person who is the breeder or owner of a variety has a right to apply for the plant variety right. If the breeder and owner of a variety are not the same person, the owner of the variety has the right to apply.
- (2) The breeder of a variety is a natural person or a group of persons who has bred or identified the variety by using different breeding techniques.
- (3) The owner of a variety is the person who has acquired the proprietary rights attached to the variety on a legal basis. A breeder of a variety may also be the owner of the variety. If a variety is bred by a breeder in an employment or service relationship or on order, the employer or the customer is deemed to be the owner of the variety.
- (4) If the breeder and owner of a variety are not the same person, the non-proprietary rights attached to the variety belong to the breeder of the variety and the proprietary rights attached to the variety belong to owner of the variety.

#### Section 15

##### *Contestation of right to submit application for plant variety right*

- (1) If an application for a plant variety right is submitted by a person or persons who are not lawfully entitled thereto, an interested person has, regardless of whether the person has or has not previously filed an objection, the right of recourse to the courts to have the application for the plant variety right denied or to annul the rights arising therefrom, or to transfer the rights to the person who has the right to apply for the plant variety right, regardless of whether the variety is protected or not.
- (2) An interested person may request transfer of the rights arising from a plant variety right within five years after the date of publication of the notice concerning the grant of the plant variety right.

#### Section 16

##### *Conditions for application for plant variety right*

- (1) If there are several owners of a variety, they shall submit a joint application for a plant variety right with an indication of the percentage of the share of each owner.
- (2) If a variety is bred in an employment or service relationship or on order, notarised copies of documents proving such relationship or fulfilment of such order shall be appended to the application.
- (3) Foreign legal persons and citizens of foreign states shall submit an application through a representative. An Estonian citizen, a person who holds a permanent residence permit in Estonia or a legal person registered in Estonia may be a representative. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (4) If an applicant is the legal successor of a breeder or owner, a notarised copy of the document proving legal succession or, in the case of a legal person in private law, a copy issued by the registrar, shall be appended to the application. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### Section 17

##### *Application for plant variety right*

- (1) An application for a plant variety right shall be submitted to the registrar in Estonian in two copies, of which one is retained by the registrar and the other is returned to the applicant for the plant variety right after registration of the application. A separate application shall be submitted for the grant of a plant variety right for each variety.
- (2) The formal and substantive requirements for applications for plant variety rights are established by a regulation of the Minister of Agriculture.

(3) Documents certifying payment of the state fee shall be appended to an application for a plant variety right.

(4) An applicant for a plant variety right is responsible for the correctness of the information contained in the application for the plant variety right.

#### Section 18

##### *Priority*

(1) Priority for the grant of protection of a variety shall be determined by the date of receipt of an application for a plant variety right by the registrar. If several applications for the grant of a plant variety right for the same variety are received on one day, priority shall be determined according to the order in which they are received. Provisional protection of a variety commences from the date of priority.

(2) At the request of an applicant for a plant variety right, priority may be determined based on the date of application for a plant variety right in a foreign state if the applicant for the plant variety right applied for protection of the same variety in another state before submission of the application for the plant variety right, not more than one year has passed from the date of registration in the foreign state, and the person submits to the registrar a copy of the application for a plant variety right registered in a foreign state with a translation in Estonian within three months after the date of receipt of the application for the plant variety right by the registrar.

(3) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### CHAPTER 4

#### PROCESSING OF APPLICATIONS, TECHNICAL EXAMINATIONS AND OBJECTIONS

#### Section 19

##### *Preliminary processing of application*

(1) The preliminary processing of an application for a plant variety right shall be carried out by the registrar within one month after registration of the application, and includes the determination of priority, and the examination of the existence and conformity of required documents.

(2) During preliminary processing, the registrar has the right to request additional documents and materials from an applicant for a plant variety right. Such documents and materials shall be submitted by an applicant for a plant variety right within one month after receipt of a request.

(3) If an applicant for a plant variety right does not submit the requested documents or materials during the term prescribed, the registrar shall make a reasoned decision to deny the application for a plant variety right, of which the applicant

for the plant variety right shall be notified in writing. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

#### Section 20

##### *Official processing*

(1) Determination of a priority date, and ascertainment of the existence and conformity of necessary documents is followed by the official processing of an application for a plant variety right and the conduct of a state technical examination of the variety, of which the applicant for the plant variety right shall be notified in writing.

(2) In the course of the official processing of an application for a plant variety right, the registrar determines whether:

- 1) the variety is new, and
- 2) the person applying for the plant variety right is so entitled.
- (3) If in the course of official processing it is ascertained that a variety does not comply with the conditions for the grant of a plant variety right provided for in this Act, the registrar shall make a reasoned decision to deny the application for a plant variety right, of which the applicant for the plant variety right shall be notified in writing.

#### Section 21

##### *Technical examination*

(1) The technical examination of a variety determines:

- 1) whether it belongs to the botanical taxon stated in an application;
- 2) its distinctness;
- 3) its uniformity; and
- 4) its stability.

(2) Technical examination shall be carried out in a place and during a time prescribed by the registrar.

(3) The Procedure for technical examinations is established by a regulation of the Minister of Agriculture.

(4) The registrar may decline to carry out the technical examination of a variety if the distinctness, uniformity and stability of the variety have been determined previously by a technical examination by a corresponding national agency of a foreign state, and an official description and report on the results of the examination of the variety are available.



## Section 22

*Documents and materials required for technical examinations*

(1) An applicant for a plant variety right is required to submit the documents and seeds or propagating material necessary for a technical examination to the conductor of the technical examination.

(2) The conductor of a technical examination determines where, with what quality and in what quantity the seeds or propagating material of the variety specified in an application for a plant variety right, and of reference varieties which may be requested, are to be submitted by the applicant for a plant variety right for the technical examination.

(3) Upon failure to fulfil or unsatisfactory fulfillment of the obligations provided for in subsections (1) and (2) of this section without good reason the conductor of the technical examination may deem the examination to be a failure. Upon the failure of a technical examination, the registrar shall make a reasoned decision to deny the application for a plant variety right, of which the applicant for the plant variety right shall be notified in writing.

## Section 23

*Organisers, expenses and results of technical examinations*

(1) Technical examinations are organised by the Plant Production Inspectorate, state agencies or legal persons authorised by the Ministry of Agriculture for this purpose and state authorities of foreign states engaged in the protection of varieties. Authorised state agencies or legal persons and state authorities of foreign states engaged in the protection of varieties may conduct technical examinations pursuant to agreements entered into with the registrar and under the state supervision of the registrar. Such examination offices are required to conduct technical examinations in accordance with established guidelines for technical examinations. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(2) No state fee is charged for a technical examination. Expenses related directly to the organisation of a technical examination by the Plant Production Inspectorate shall be paid by the applicant for the plant variety right on the basis of an invoice submitted to the applicant. Direct expenses shall be substantiated by expense receipts, the copies of which shall be submitted to the applicant for the plant variety right together with the invoice.

(3) A technical examination conducted by an authorised state agency or legal person or in a foreign state shall be paid for by the applicant for the plant variety right on the basis of an invoice submitted to the applicant. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(4) If the results of a technical examination show that a variety meets the requirements established in this Act for distinctness, uniformity and stability, the registrar shall compile

an official description of the variety on the basis of the results of the technical examination.

(5) If a variety does not meet the requirements for distinctness, uniformity and stability, the registrar shall make a reasoned decision to refuse to grant a plant variety right with respect to the variety, of which the applicant shall be notified in writing. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## Section 24

*Filing of objections*

(1) Interested persons may file an objection to an application for a plant variety right within six months after publication of the application for the plant variety right. Objections may be filed with regard to:

- 1) novelty,
- 2) distinctness,
- 3) uniformity or
- 4) stability of a variety; or
- 5) the right to apply for the plant variety right.

(2) An objection shall be filed with the registrar in writing with documents substantiating the objection appended thereto. An objection remains in force until it is withdrawn. An objection may be withdrawn at any time by the person who files it. The registrar shall notify the applicant for the plant variety right of the filing and withdrawal of objections in writing.

(3) A person who files an objection has the right to obtain documents and seeds or propagating material from the registrar, the conductor of the technical examination or the applicant for the plant variety right in order to prove the facts presented in the objection of the person.

## Section 25

*Preparation for review of objection*

(1) Within three months after receipt of an objection or within a longer term agreed to with the registrar, an applicant for a plant variety right shall present the applicant's position concerning the objection and give notice whether the applicant wishes to maintain, amend or withdraw the application.

(2) If an applicant for a plant variety right does not respond to an objection within the prescribed term, the applicant's application for the plant variety right is deemed to have been withdrawn.

(3) If an applicant for a plant variety right wishes to maintain, amend or withdraw the application for the plant variety right, the registrar shall notify the person who filed the objection of the action of the applicant and send the position of the applicant with regard to the objection to the objector, and, if needed, the amendments made to the application for the plant variety right. On the basis of such information, the objector shall give notice within one month as to whether the objector wishes to maintain or withdraw the objection.

## Section 26

*Review of objections*

- (1) An objection filed with regard to the novelty of a variety or the rights of an applicant and which is maintained shall be reviewed separately from the processing of the application for the plant variety right. If an objection is filed with regard to the distinctness, uniformity or stability of a variety, a new technical examination may be conducted pursuant to a precept of the registrar.
- (2) The conditions for conduct of a new technical examination and the procedure for ascertainment or refutation of facts presented in an objection are established by the registrar.
- (3) The hearing of an objection is organised by the registrar and all persons interested in the ruling may participate personally or through a representative. A reference to the decision adopted at the hearing of an objection shall be made in the decision made by the registrar concerning the grant or refusal to grant the plant variety right.

## CHAPTER 5

## VARIETY DENOMINATION

## Section 27

*Variety denomination*

- (1) A proposal for a variety denomination shall be submitted to the registrar for approval in an application for a plant variety right.
- (2) In the case of a known variety, the variety denomination designated earlier shall be proposed in an application for a plant variety right.
- (3) If an applicant applies for a plant variety right simultaneously in Estonia and in one or several foreign states with respect to the same variety, the applicant for the plant variety right shall propose the same variety denomination.
- (4) After the grant of a plant variety right, persons who exploit, offer for sale or sell a variety shall use the variety only under its approved variety denomination.
- (5) After a plant variety right extinguishes, the variety shall continue to be used under the approved variety denomination.

## Section 28

*Requirements for variety denomination*

- (1) A variety denomination may consist of words or figures, or of a combination of letters and figures provided that the denomination allows the variety to be identified and is in accordance with good morals.
- (2) In addition to the requirements provided for in subsection (1) of this section, a variety denomination shall:

- 1) clearly differ from variety denominations used for other known varieties of the same or a closely related botanical taxon;
  - 2) be clearly distinguishable from relevant officially registered trade marks, trade names and business names registered in the commercial register; (19.01.2000 entered into force 0 1.03.2000 - RT 12000, 10, 56)
  - 3) be linguistically suitable.
- (3) A variety denomination shall not:
- 1) consist of signs or indications which are used in the production of seeds or propagating material and which designate a specific product, quality, quantity, intended purpose, or place or time of production;
  - 2) cause confusion or mislead as to the characteristics, value or geographical origin of the variety, or as to the use of the name of the breeder or owner of the variety.

## Section 29

*Grounds for refusal of proposed variety denomination*

A denomination proposed in an application for a plant variety right shall be declared unsuitable by the registrar if the denomination does not meet the requirements provided for in Section 28 of this Act.

## Section 30

*Objections to proposed variety denomination*

- (1) Interested persons may file an objection to the registration of a published denomination proposed for a variety within three months after the date of publication of the proposed variety denomination in the official publication of the registrar. An objection shall be filed in writing together with the reasons therefor.
- (2) The applicant for a plant variety right and persons who file objections shall be notified of all objections filed against a proposed variety denomination and of the reasoned decisions made by the registrar concerning such objections within one month after the date on which such decisions are made.

## Section 31

*Examination of variety denomination, proposal for new denomination and registration of variety denomination*

- (1) The registrar examines the conformity of variety denominations to the requirements provided for in this Act by making inquiries to corresponding databases in Estonia and foreign states. Applicants for plant variety rights are notified of the results of such inquiries.

(2) If the registrar ascertains that a denomination proposed for a variety does not meet the requirements provided for in this Act, the applicant for the plant variety right shall make a new proposal within thirty days. The new denomination proposed for the variety shall be examined according to subsection (1) of this section.

(3) If a new denomination proposed for a variety by an applicant for a plant variety right does not meet the requirements provided for in this Act, the registrar has the right to issue a precept to submit a proposal in conformity with the requirements. If an applicant for a plant variety right fails to propose a suitable variety denomination, the registrar shall make a reasoned decision to deny the application for the plant variety right, of which the applicant for the plant variety right shall be notified in writing.

(4) Variety denominations which meet the requirements arising from this Act shall be approved by the registrar and entered in the plant variety rights register.

#### Section 32

##### *Change of variety denomination*

(1) A change of a variety denomination approved by the registrar and entered in the plant variety rights register is commenced:

- 1) on the decision of the registrar if after approval of the variety denomination and entry thereof in the plant variety rights register it becomes evident that the variety denomination does not meet the requirements provided for in this Act;
- 2) at the request of the holder of the plant variety right, if the holder adduces a valid reason for changing the variety denomination; (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- 3) at the request of the registrar, holder of the plant variety right or other interested person and on the basis of a court order which has entered into force.

(2) A change of a variety denomination is effected according to the requirements and procedure provided for approval of variety denominations in this Act. A change of a variety denomination enters into force on the date of entry of the change in the plant variety rights register.

#### CHAPTER 6

##### APPLICATION OF PLANT VARIETY RIGHTS

#### Section 33

##### *Grant of plant variety right*

(1) A plant variety right is granted with respect to a variety by a decision of the registrar if the requirements for varieties

provided by this Act and legislation established on the basis thereof, the conditions for application for a plant variety right and the requirements and obligations for applicants for a plant variety right are complied with.

(2) On the date of making a decision to grant a plant variety right, the registrar shall make a corresponding register entry in the plant variety rights register and shall notify the applicant for the plant variety right of the grant of the plant variety right in writing.

#### Section 34

##### *Certificate of plant variety right*

(1) At the request of a holder of a plant variety right entered in the plant variety rights register, the registrar shall issue a plant variety right certificate to the holder which is valid during the term of the plant variety right.

(2) The formal and substantive requirements for plant variety right certificates are established by a regulation of the Minister of Agriculture.

#### Section 35

##### *Refusal to grant plant variety right*

(1) The registrar shall refuse to grant a plant variety right and deny an application for a plant variety right upon non-compliance with any requirement or obligation provided for in this Act or legislation established on the basis thereof.

(2) An entry concerning denial of an application for a plant variety right is made in the plant variety rights register. Provisional protection of the variety is deemed to cease as of the date of such entry.

#### Section 36

##### *Term of plant variety right and provisional protection of variety*

(1) The term of a plant variety right entered in the plant variety rights register is twenty-five years or, in the case of varieties of tree and grapevine species, thirty years, after the date of the grant of the right and of making the entry in the plant variety rights register.

(2) The registrar has the right to extend the term of a plant variety right by up to five years by a decision of the registrar on the basis of a written application submitted by the holder of the plant variety right before expiry of the term of the plant variety right.

(3) Provisional protection of a variety applies to a variety with respect to which an application for a plant variety right has been submitted to the registrar, according to all the principles of plant variety rights provided by this Act, during the period from the date of submission of an application for the

plant variety right to the registrar up to the denial of the application for the plant variety right or the grant of the plant variety right.

### Section 37

#### *Basic rights of holder of plant variety right*

(1) With respect to seeds or propagating material of a protected variety, the holder of the plant variety right has the right to:

- 1) produce or reproduce (multiply) the seeds or propagating material for the purposes of sale;
- 2) condition the seeds or propagating material for the purpose of propagation;
- 3) offer for sale;
- 4) sell or transfer in any other way;
- 5) export
- 6) import;
- 7) stock for any of the purposes specified in clauses 1) to 6) of this subsection.

(2) The holder of a plant variety right has the right to issue licences to other persons for the performance of acts specified in clauses (1) 1) to 7) of this section.

### Section 38

#### *Nature of plant variety right*

(1) Any person who wishes to carry out the acts listed in clauses 37 (1) 1) to 7) of this Act with the seeds or propagating material of a protected variety shall obtain a licence therefor from the holder of the plant variety right.

(2) (Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(3) The seeds, propagating material or plant material of a protected variety offered for commercial purposes by the holder of the plant variety right or on the basis of a licence issued by the holder of the plant variety right may be used for any purpose except for further multiplication or export into a foreign state where the varieties of such genera or species are not protected. Such export restrictions are not applied if the plant material of the protected variety is exported for final consumption purposes. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

### Section 39

#### *Scope of plant variety right*

(1) Clauses 37 (1) 1)-7) of this Act apply also to the production of seeds or propagating material of specific species of a protected variety for the purpose of repeated reproduction (multiplication) for one's own use. The procedure for applica-

tion and the list of species are established by a regulation of the Minister of Agriculture. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(2) Clauses 37 (1) 1)-7) of this Act apply to harvested material which is produced by using the seeds or propagating material of a protected variety except if the holder of the plant variety right did not use the holder's rights with respect to the seeds and propagating material. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(3) Clauses 37 (1) 1)-7) of this Act also apply to varieties: (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

- 1) which are essentially derived from a protected variety if the protected variety is not an essentially derived variety;
- 2) which are not clearly distinguishable from the protected variety according to subsection 5 (1) of this Act;
- 3) where the protected variety is used repeatedly for production of the seeds or propagating material of the variety.

### Section 40

#### *Use of protected variety without licence*

A protected variety may be used without a licence issued by the holder of the plant variety right:

- 1) in scientific research and in official trials conducted for the purposes of comparison;
- 2) as parental material for the purpose of breeding new varieties;
- 3) privately, and for non-profit purposes.

### Section 41

#### *Transfer of rights*

(1) The holder of a plant variety right may transfer the proprietary rights attached to the variety to another person who shall be deemed to be the legal successor of the holder of the plant variety right with respect to the rights transferred. The rights of a holder of a plant variety right who is a natural person transfer to his or her successor,

(2) Third persons do not have the right to contest the right to apply for a plant variety right, the right to an application already submitted, provisional protection of a variety, the transfer of the rights of a holder of a plant variety right or a change in a share before the corresponding entry is made in the plant variety rights register.

## Section 42

*Registration of new holder*

- (1) Legal successors and successors shall register transfers of rights and changes in shares in the plant variety rights register. The documents submitted to the registrar which prove a transfer of rights or a change in shares shall be notarised.
- (2) The registrar shall make a decision concerning amendment of information entered in the plant variety rights register on the basis of an application and documents submitted, and enter the new information in the plant variety rights register within one month after submission of such documents.
- (3) Any act connected with the transfer of the right to apply for a plant variety right, transfer of the rights of a holder of a plant variety right or a change in shares is not binding on third persons or subject to performance before amendment of the entry in the plant variety rights register.

## CHAPTER 7

## LICENCES

## Section 43

*Issue of licence on basis of licence agreement and validity of licence*

- (1) A holder of a plant variety right, that is, a licensor, has the right to grant the right of exploitation of a protected variety belonging to the holder to another person, that is, a licensee, on the basis of a licence agreement entered into by the parties for a specified term or unspecified term and for a licence fee or without charge.
- (2) If a protected variety has several licensors, a licence may be issued only with the written consent of all licensors. Licence fees paid on the basis of a licence agreement shall be divided among the licensors according to their shares as registered in the plant variety rights register unless otherwise agreed by the licensors.
- (3) The term of a licence issued by a licensor arises from the licence agreement. If a licence agreement is for an unspecified term, the licence is deemed to be issued for the term of the plant variety right.

## Section 44

*Rights of licensor in issue of licence*

- (1) A licensor has the right to grant the right:
  - 1) to exploit a protected variety on the basis of an exclusive licence only to one licensee;
  - 2) to exploit a protected variety on the basis of non-exclusive licences to several licensees, or

- 3) to transfer the right to exploit a protected variety on the basis of sublicences to one or several licensees.

- (2) A licensor has the right to issue several different licences to the same person.

- (3) The issue of any type of licence does not deprive the licensor of the basic rights belonging to the licensor on the basis of subsection 37 (1) of this Act.

## Section 45

*Requirements for licence agreements*

- (1) A licence agreement shall be entered into in writing.
- (2) A licence agreement shall set out the following:
  - 1) information on the parties to the agreement;
  - 2) the denomination and description of the variety to be exploited;
  - 3) the extent, purpose and method of exploitation of the variety;
  - 4) the territory of exploitation of the variety;
  - 5) the starting date and expiry date of the licence;
  - 6) the type of licence and a description of the rights being transferred;
  - 7) possible restrictions to third persons in the exploitation of the variety;
  - 8) the licence fee to be paid by the licensee, and the term and procedure for payment thereof;
  - 9) liability of parties upon failure to perform or unsatisfactory performance of a contractual obligation;
  - 10) other terms agreed to by the parties.

## Section 46

*Registration and disclosure of licence agreements*

- (1) A licensor shall submit a licence agreement to the registrar for registration in the plant variety rights register. The registrar shall register valid licence agreements in the plant variety rights register within ten days after submission thereof (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- (2) Parties have the right to request publication of a licence agreement by the registrar. A licence agreement is published in the official publication of the registrar if so requested by at least one of the parties to the licence agreement.

## Section 47

*Compulsory licences*

(1) A compulsory licence is a non-exclusive licence which may be issued by a directive of the Minister of Agriculture in the cases provided for in Section 48 of this Act to one or several persons who apply for a licence to exploit a protected variety.

(2) Legislation on the basis of which a compulsory licence is issued shall include the information provided for in clauses 45 (2) 1) to 8) of this Act.

(3) The licensor retains the right to issue licences during the term of a compulsory licence. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## Section 48

*Need for compulsory licence*

A compulsory licence is issued if:

- 1) exploitation of a protected variety is necessary in the public interest, and
- 2) the licensor has not exploited the variety or issued a licence to other persons for exploitation of the protected variety during three years after the grant of the plant variety right. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## Section 49

*Other conditions for compulsory licences*

(1) A licence fee is prescribed upon the grant of a compulsory licence which is payable by the licensee to the holder of the plant variety right. The licence fee shall be based on the average licence fee applied for corresponding species. In the case of a compulsory licence for exploitation of an essentially derived variety, payment of a fee to the holder of the initial variety right shall also be prescribed.

(2) A licensor is required to sell seed or propagating material to a licensee in a quantity necessary for reproduction (multiplication) of the variety for the usual price of a similar variety. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(3) A compulsory licence is issued for a term of two to four years. If one of the situations provided for in Section 48 of this Act continues to exist at the end of the term of a compulsory licence, the Minister of Agriculture has the right to extend the term of the compulsory licence by up to four years.

## Section 50

*Revocation of compulsory licence*

A compulsory licence is revoked by the Minister of Agriculture on the proposal of the registrar or the licensor if:

(19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

- 1) the licensee violates the terms of the compulsory licence;
- 2) the need for the licence ceases to exist.

## Section 51

*Registration and contestation of compulsory licences*

(1) The issue, extension, expiry and revocation of compulsory licences are registered in the plant variety rights register.

(2) A licensor has the right to contest the issue of a compulsory licence or the terms thereof in court. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

## CHAPTER 8

## VALIDITY OF PLANT VARIETY RIGHT

## Section 52

*Cancellation of plant variety right*

(1) The registrar shall suspend a plant variety right by a decision of the registrar if the holder of the plant variety right:

- 1) fails to fulfil the obligation to maintain the variety;
- 2) fails to submit, during the specified term, information or documents concerning maintenance of the variety, or seeds or propagating material of the variety for the exercise of supervision;
- 3) fails to guarantee the uniformity and stability of the variety;
- 4) fails to propose a new denomination during the specified term.

(2) The registrar has the right to suspend a plant variety right if the holder of the plant variety right is previously notified thereof in writing and a term for elimination of deficiencies is specified. If the holder of the plant variety right fails to eliminate the deficiencies during the specified term, the registrar shall make an entry in the plant variety rights register concerning cancellation of the plant variety right on the basis of a decision of the registrar. The plant variety right is suspended as of the date of making the corresponding entry in the plant variety rights register, and the holder of the plant variety right shall be notified thereof in writing.

(3) The holder of a plant variety right who fails to perform all the acts necessary for elimination of deficiencies during the term specified by the registrar with good reason has the right to apply to the registrar for extension of the term. An application for extension of a specified term shall be submitted in writing before expiry of the specified term.



(4) The registrar makes decisions to satisfy or deny applications submitted on the basis on subsection (3) of this section. Upon satisfaction of an application, the holder of the plant variety right shall be notified in writing of the new term which shall commence on the date of receipt of the corresponding notice and shall be at least as long as the previous term.

#### Section 53

##### *Premature termination of plant variety right*

- (1) A plant variety right is terminated prematurely:
- 1) on the basis of a written application submitted to the registrar by the holder of the plant variety right;
  - 2) on the decision of the registrar if the holder of the plant variety right fails to pay the state fee to keep the plant variety right in force or fails to submit the documents certifying payment of the state fee during the term provided for in Section 9 of this Act.
- (2) The date of termination of the plant variety right shall be indicated by the holder of the plant variety right in an application specified in clause (1) 1) of this section; in the absence of a date of termination, the plant variety right is deemed to expire on the date of receipt of the application.

#### Section 54

##### *Nullity of plant variety right*

- (1) The registrar shall make a decision to declare a plant variety right null and void on the registrar's own initiative or on the basis of an application of an interested person if after the grant of the plant variety right it becomes evident and is proved that:
- 1) the variety did not meet the conditions for novelty and distinctness at the time priority was determined for the plant variety right;
  - 2) the variety was granted protection on the basis of documents and the results of a technical examination conducted by an appropriate agency of a foreign state submitted by the applicant for the plant variety right and did not meet the conditions for uniformity and stability;
  - 3) the plant variety right certificate was issued to a person who was not entitled to apply for the plant variety right.
- (2) The registrar shall make an entry concerning the nullity of a plant variety right in the plant variety rights register, of which the holder of the plant variety right shall be notified in writing. Upon declaring a plant variety right null and void, it is deemed to be null and void from inception.

#### Section 55

(Repealed - 19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

### CHAPTER 9

#### SUPERVISION, MAINTENANCE OF VARIETY AND RESOLUTION OF DISPUTES

#### Section 56

##### *Supervision*

The registrar, through its officials (hereinafter supervisory officials), exercises state supervision over compliance with the requirements and fulfillment of obligations arising from this Act and legislation established on the basis thereof.

#### Section 57

##### *Maintenance of variety*

- (1) The holder of a plant variety right is required to guarantee maintenance of the protected variety or its constituents for the whole term of the plant variety right.
- (2) The registrar shall maintain official samples or samples of protected varieties. At the request of and during the term specified by the registrar, the holder of a plant variety right is required to provide the registrar with samples or constituents of the protected variety for the purposes of:
- 1) renewing the official sample of the variety; or
  - 2) conducting examinations related to protection of the variety.

#### Section 58

##### *Supervision over maintenance of protected varieties*

- (1) The registrar exercises supervision over maintenance of a protected variety during the period of protection of the variety. Supervision over a protected variety means verification of the variety identity and identity of its constituents on the basis of information and documents submitted by the holder of the plant variety right pertaining to maintenance of the variety, and on the basis of laboratory or post-control trials, or other field trials conducted with the seed or propagating material of the protected variety.
- (2) At the request of and during the term specified by the registrar, the holder of a plant variety right is required to submit to the registrar information and documents pertaining to maintenance of the protected variety, and seed or propagating material of the protected variety.

(3) If it is established on the basis of the outcome of supervision that the characteristics of plants grown from the seed or propagating material submitted by the holder of a protected variety do not compare to the characteristics described in the official variety description or to the characteristics of plants grown from the official sample of the variety, the variety is deemed to not have been maintained.

#### Section 59

##### *Resolution of disputes*

(1) Disputes arising upon the implementation of this Act and legislation established on the basis thereof are resolved in court. In order to achieve an extra-judicial resolution to a dispute arising from a decision of the registrar, any interested person has the right to file an appeal with the Appeal Board established by a directive of the Minister of Agriculture. The registrar does not have the right of recourse to a court or to file an appeal for review of the conformity of a decision of the registrar with the law.

(2) The Appeal Board shall meet as required. The Appeal Board has the right to declare the decisions of the registrar lawful or unlawful. If a decision of the registrar is declared unlawful, the registrar is required to make a new decision.

(3) Any interested person has the right of recourse to a court in order to appeal a decision of the registrar, regardless of the decision of the Appeal Board.

### CHAPTER 10

#### LIABILITY

#### Section 60

##### *Bases for liability*

(1) Natural persons are liable for violation of this Act and legislation established on the basis thereof pursuant to the procedure provided for in the Code of Administrative Offences (RT 1992, 29, 396; RT 11997, 60-68, 1109; 73, 120 1; 8 1, 1361 and 1362; 86, 1459 and 1461; 87, 1466 and 1467; 93, 1561, 1563, 1564 and 1565; 1998, 2, 42; 17, 265; 23, 32 1) and the Criminal Code (RT 1992, 20, 288; RT I 1997, 21/22, 353; 28, 423; 30, 472; 34, 535; 51, 824; 52, 833 and 834; 81, 1361; 86, 1461; 87, 1466, 1467 and 1468; 1998, 2, 42; 4, 62; 17, 265).

(2) Legal persons are liable pursuant to this Act.

#### Section 61

##### *Persons with right to impose punishments and proceedings concerning administrative offences by legal persons*

(1) The Director General of the Plant Production Inspectorate, his or her deputy and state inspectors have the right to

prepare reports on administrative offences by legal persons and to impose administrative punishments pursuant to the Code of Administrative Offences.

(2) The officials specified in subsection (1) of this section have the right to impose fines of up to 25 000 kroons. Administrative court judges may impose fines in the amounts prescribed in Section 62 of this Act.

(3) Proceedings concerning administrative offences by legal persons are conducted pursuant to the procedure provided for in the Code of Administrative Offences unless otherwise provided by this Act.

#### Section 62

##### *Fines imposed on legal persons*

If a legal person:

- 1) submits false information in an application for a plant variety right, a fine of up to 25 000 kroons is imposed;
- 2) violates the obligations regarding the use of variety denominations or unsatisfactorily performs such obligations, a fine of up to 25 000 kroons is imposed;
- 3) fails to fulfil the terms of a compulsory licence or unsatisfactorily performs such terms, a fine of up to 50 000 kroons is imposed;
- 4) violates the obligation to provide samples or constituents or to submit information, documents, seed or propagating material, or unsatisfactorily performs such obligations, a fine of up to 35 000 kroons is imposed;
- 5) conducts a technical examination in violation of the examination guidelines, a fine of up to 75 000 kroons is imposed;
- 6) exploits a protected variety without a licence, a fine of up to 100 000 kroons is imposed.

### CHAPTER 11

#### IMPLEMENTATION OF ACT

#### Section 63

##### *International co-operation*

(1) The registrar has the right to co-operate within the limits of its competence with state authorities of foreign states in the following areas:

- 1) exchange of information and documents pertaining to the protection of varieties;
- 2) testing of varieties;

- 3) verification of the identity of varieties and of maintenance of varieties.

(2) In connection with an application for a plant variety right or protection of a variety, the registrar shall if necessary provide information on varieties protected in Estonia to the state authorities of foreign states at their request.

#### Section 64

##### *Protection of known varieties*

(1) Notwithstanding the provisions of Section 3 and 4 of this Act, the registrar has the right to grant a plant variety right with respect to a known variety on the condition that the application for the plant variety right was submitted not later than by 1 November 2000, and: (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

- 1) the variety has been entered in the Variety List, the list of recommended varieties pursuant to Section 7 of the Seed and Plant Propagating Material Act (RT 11998, 52/53, 771), the common catalogue of the European Union or in a catalogue of a foreign state which co-operates with Estonia in the area of plant variety protection; (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)
- 2) the holder of the plant variety right has submitted an application for a plant variety right in a foreign state which co-operates with Estonia in the area of plant variety protection and the plant variety right has been granted in that state;
- 3) the registrar ascertains that the variety has ceased to be new for the purposes of this Act, or that the variety has become known for any other reason which is not specified in this Act.

(2) If a plant variety right is granted on the basis of this section, the term of plant variety right is calculated as of the date the variety became known in one of the ways specified in clauses (1) 1)-3) of this section. (19.01.2000 entered into force 01.03.2000 - RT 12000, 10, 56)

(3) If a plant variety right is granted pursuant this section, the holder of the plant variety right shall undertake in writing to issue licences with sufficient terms and to give consent to extend such licences if necessary in order to allow for exploitation of the variety.

#### Section 65

##### *Protection of varieties with valid certificates*

(1) Upon the entry into force of this Act, the varieties for which a certificate was issued by the Ministry of Agriculture of the former Union of Soviet Socialist Republics or on the

basis of the Plant Variety Rights Act (RT 11994, 23, 385; 1996, 49, 953) are deemed to be known varieties as of the date of issue of the certificate.

(2) Varieties where twenty five years have not passed from the issue of a certificate specified in subsection (1) of this section or, in the case of varieties of tree and grapevine species, thirty years, are deemed to be registered in the plant variety rights register with respect to applications for the plant variety rights and provisional protection applies thereto until the grant of a plant variety right on the bases of and pursuant to the procedure provided for in this Act or until 31 December 2000.

#### Section 66

##### *Varieties where processing of application for plant variety right is pending*

(1) The processing of applications for plant variety rights which were submitted before the entry into force of this Act and which are pending on the date of entry into force of this Act shall be continued pursuant to the requirements provided for in this Act.

(2) Varieties without a plant variety right certificate which are under state agricultural value and use trials on the date of entry into force of this Act are subject to a grant of protection pursuant to the requirements provided therefor in this Act without applying the requirement for novelty of a variety provided for in this Act.

#### Section 67

##### *Right of ownership with respect to varieties bred out of state funds*

(1) The Republic of Estonia is the owner of varieties which were bred using state funds and granted protection before 1 July 1998.

(2) The state exercises and fulfils the rights and obligations provided for in this Act through the state agencies authorised by the Minister of Agriculture to administer varieties as state assets.

[Sections 68-70 omitted as they amend other legislation].

#### Section 71

##### *Entry into force of Act*

(1) This Act enters into force on 1 July 1998.

(2) The Plant Variety Rights Act (RT 11994, 23, 385; 1996, 49, 953) is repealed.

## EUROPEAN UNION

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)<sup>1</sup>, 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 (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 the 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;

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;

<sup>1</sup> OJ No. L 227, 1.9.1994, p. 1.

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 if sufficient documentary evidence is produced within that time-limit to show that the person who made the payment took necessary steps.
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 paragraph 3 if an acknowledgment of provision of the transfer order, issued by a banking establishment or a post office, is produced.

#### 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 1,000 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 if the application is accompanied by sufficient documentary evidence that the steps necessary to effect payment have been taken; 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.

#### 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 one month after 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 Implementing Rules, 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) as laid down in Annex II.

2. The date for payment of the annual fee shall be the last day of the calendar month following the calendar month in which the Community plant variety right was granted, and in each subsequent year on the corresponding day.

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: ECU 300;
- (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.

## 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 to 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; and
- (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.

2. The President of the Office may decide to make the services mentioned under paragraph 1(b) and (c) 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

The examination fee due to be paid pursuant to Article 8 shall be as follows:

Group A ECU 1,000

Group A is related to the following agricultural crops:  
beet, cereals, cotton, potatoes, rapeseed, soyabean, sunflower.

Group B ECU 800

Group B is related to:

1. agricultural crops (including grasses), other than those referred to in Group A;
2. the following vegetables:  
aubergine (egg plants), courgette, cucumber, endive, french bean, lettuce, marrow, melon, onion, pepper, tomato, vegetable pea, water melon;
3. the following ornamentals:

*Alstroemeria, Anthurium, Azalea, Begonia (elatior), Chrysanthemum, Dianthus, Euphorbia pulcherrima, Fuchsia, Gerbera, Impatiens, Kalanchoë, Linum, Orchidaceae, Pelargonium, Pentas, Petunia, Rosa, Saintpaulia, Spathiphyllum.*

Group C ECU 700

Group C is related to all genera or species, other than those referred Groups A and B.

ANNEX II

The annual fee due to be paid pursuant to Article 9 for each year of duration shall be, on the basis of the groups established in Annex I, as follows:

(in ecu)

Year	Group		
	A	B	C
1	400	400	400
2	600	500	500
3	800	600	600
4	1,000	700	700
5	1,100	800	800
6	1,200	1,000	900
7 and subsequent years	1,300	1,100	1,000

**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**

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<sup>1</sup>, 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 sub-offices established for that purpose; whereas, in that regard, it is indispensable to define the relationship between the Office and its own sub-offices, 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 I**

*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.

**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.

<sup>1</sup> OJ No. L 227, 1.9.1994, p.1.

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 member 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 Basic\* 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 of 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 Appeal

## 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 member.

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 his knowledge in the course of or in connection with the technical examination; he 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 (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 sub-offices 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 Basic Regulation.
2. An application complies with the condition in indent (i) of Article 50(1) of the Basic Regulation only if the date and the 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 in 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;<sup>2</sup>
- (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 applications 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 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 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 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.

2. OJ No. L 117, 8.5.1990, p.15.

## 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 by 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 Basic 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 in-



structions 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 Basic 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.

### 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 Basic 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 Basic 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 Basic 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 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 Basic 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 Basic Regulation.

## Article 34

*Technical verification of the protected variety*

Without prejudice to Article 87(4) of the Basic 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 Basic 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 Basic Regulation. Each proposal of the holder shall be filed in duplicate at the Office.
2. Where the proposal for an amended variety denomina-

tion 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 Basic 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 EXPLOITATION RIGHTS  
TO BE GRANTED BY THE OFFICE

## Section 1

## Compulsory exploitation rights

## Article 37

*Applications for a compulsory exploitation right*

1. The application for a compulsory exploitation right 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 exploitation right;
  - (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 exploitation right shall be granted, including, as the case may be, the specific requirements related to that category of persons.
2. The application referred to in Article 29(1) or (5) shall be accompanied by documents evidencing his unsuccessful request for a contractual exploitation right from the opposing holder.
3. The application referred to in Article 29(2) of the Basic Regulation shall be accompanied by documents evidencing the unsuccessful requests of persons for a contractual exploitation right from the opposing holder. Should the Commission or a Member State be the applicant for a compulsory exploitation right, the Office may waive this condition in the case of *force majeure*.

4. A request for a contractual exploitation right shall be considered unsuccessful within the meaning of paragraphs 2 and 3 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 exploitation right to the person seeking it; or
- (c) the opposing holder has offered a contractual exploitation right 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 exploitation right*

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 exploitation right. 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 exploitation right. 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 contractual exploitation right 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 pro-

ceedings as party thereto. The provisions of paragraph 1 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 exploitation right, 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 exploitation right*

1. The decision to grant a compulsory exploitation right shall contain a statement setting out the public interest involved.
2. 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; or
  - (c) the need to maintain the incentive for continued breeding of improved varieties.
3. The compulsory exploitation right shall be non-exclusive.
4. The compulsory exploitation right may not be assigned, otherwise than together with that part of an enterprise which makes use of the compulsory exploitation right, or, in the circumstances set out in Article 29(5) of the Basic Regulation,

together with the assignment of the rights over an essentially derived variety.

#### Article 42

##### *Conditions pertaining to the person to whom a compulsory exploitation right 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 exploitation right is granted shall dispose of appropriate financial and technical capacities to make use of the compulsory exploitation right.

2. Compliance with the conditions pertaining to the compulsory exploitation right 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 exploitation right 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*

1. Any person intending to make use of a compulsory exploitation right who comes under the category of persons 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 disposes of appropriate financial resources as well as information about the technical capacity for making use of the compulsory exploitation right.

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 exploitation right 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 pursuant to paragraph 2. 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 exploitation right or the financial and technical capacities established pursuant to paragraph 2 have undergone change more than one year after the grant of the compulsory exploitation right 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 Articles 37(1)(a), (b), (c) and (4), 38, 39(3), 40 except letter (f), 41(3) and (4) and 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*

- 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.
- 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.
- 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 that appeal or direct appeal is possible, together with the time limits provided for lodging such appeal or direct appeal. The parties to proceedings may not plead omission of the statement.
- 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*

- 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.
- 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.
- 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*

- 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.
- 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*

- 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, of the national agency, or the sub-office designated pursuant to Article 30(4) of the Basic Regulation.
- With the exception of annexed documents, any documents filed by parties to proceedings must be signed by them or their procedural representative.
- 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.
- 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.
- 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.
- Such documents as must be communicated to other parties to proceedings as well as to the Examination Office con-

cerned, 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 Basic 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 Basic 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 any 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 Basic 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 de-

cision 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 Basic 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 Basic 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 Basic 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 Basic 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 Basic 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 of 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 Basic 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 Basic 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.
2. Extracts from the Registers shall be delivered at the request of any person on receipt of payment of an administrative fee.
3. The President of the Office may provide for public inspection 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

*Inspection of documents*

1. A written request for the inspection of documents shall be addressed to the Office.
2. Inspection of documents shall take place on the premises of the Office. However, on request, inspection of documents may take place on the premises of the national agencies or sub-offices designated pursuant to Article 30(4) of the Basic Regulation on the territory of the Member State in which the person making the request is resident or has his seat or establishment.
3. On request, the Office shall permit inspection of the documents by issuing copies thereof to the person requesting them. Such copies may be subject to separate fees. On request, the documents may also be inspected by way of a communication in writing of the information contained therein. However, the Office may require the person concerned to view

the documents personally should it deem this to be appropriate in view of the quantity of information to be supplied.

#### 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 plots 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 Basic 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 Basic 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 Basic 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 Basic 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 inquiry 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.

Article 27 shall apply until 30 June 1998.

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

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

## ANNEX

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)<sup>1</sup>, 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 the 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,

HAS ADOPTED THIS REGULATION:

CHAPTER I

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 fulfillment, 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 fulfillment, 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

<sup>1</sup> OJ No. L 227, 1.9.1994, p. 1.



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 fulfillment 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 fulfillment 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 fulfill 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.

#### 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<sup>2</sup> 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<sup>3</sup> 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.

2 OJ No. L 181, 1.7.1992, p. 2.

3 OJ No. L 98, 24.4.1993, p. 1.

## 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 shall also 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

- 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 organizations 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 fulfillment 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 Article 8(2)(c), 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 fulfillment 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 fulfill 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) fourth 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.

**COUNCIL REGULATION (EC) No 2470/96**  
**(of 17 December 1996)**

**COUNCIL REGULATION 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

End of the document

Document delivered on: 12/09/1999

(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).

**COMMISSION REGULATION (EC) No. 2605/98  
(of 3 December 1998)**

**COMMISSION REGULATION AMENDING REGULATION (EC) No. 1768/95  
IMPLEMENTING RULES OF 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<sup>(1)</sup> (the Basic Regulation), as amended by Regulation (EC) No 2506/95<sup>(2)</sup>, and in particular Article 14<sup>(3)</sup> thereof,

Whereas Article 14 of the Basic Regulation provides for a derogation from Community plant variety rights for the purposes of safeguarding agricultural production (agricultural exemption);

Whereas Commission Regulation (EC) No 1768/95 (3) has established conditions to give effect to this derogation and to safeguard the legitimate interests of the breeder and of the farmer;

Whereas it was not possible at that time to specify the level of the equitable remuneration to be paid for the use made of the aforesaid derogation;

Whereas, however, it was stipulated in that Regulation that the initial level as well as the system for subsequent adaptations should be specified as soon as possible;

Whereas in the meanwhile agreements between breeders' and farmers' organisations have been concluded in several Member States, which concern, inter alia, the level of the remuneration;

Whereas it is appropriate to ensure that the agreements are made operational as Community guidelines in respect of the level of remuneration, for the respective areas and the respective species;

Whereas, in areas or for species, to which such agreements do not apply, the remuneration to be paid shall in principle be 50% of the amounts charged for the licensed production of propagating material, modulated by an appropriate sliding scale, where such scale has been established in respect of the respective national plant variety rights;

Whereas those levels shall be reviewed by 1 January 2003 at the latest;

Whereas it is appropriate to provide for a reasonable incentive for a speedy conclusion of further agreements between breeders' and farmers' organisations for areas or species not yet covered, where they are already under preparation; whereas a level which is inferior to the one specified above and only applicable for a limited period of time may encourage certain organisations to reach finalisation of such agreements as soon as possible;

Whereas the Administrative Council of the Community Plant Variety Office has been consulted;

Whereas the measures 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

The following paragraphs 4, 5, 6 and 7 are added to Article 5 of Regulation (EC) No 1768/95:

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.

(1) OJ L 227, 1. 9. 1994, p. 1.

(2) OJ L 258, 28. 10. 1995, p. 3.

(3) OJ L 173, 25. 7. 1995, p. 14.



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 2

This Regulation shall enter into force on the 20th day following 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, 3 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

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