

OTHERS

COMMUNITY PLANT VARIETY RIGHTS

A system of Community Plant Variety Rights was established through EC Regulation No. 2100/94 of 21 July 1994, in force as from 24 April 1995.

1/ OBJECT OF COMMUNITY PLANT VARIETY RIGHTS

Varieties of all botanical genera and species, including in particular their hybrids, may be the object of Community plant variety rights.

2/ PROTECTABLE VARIETIES

Community plant variety rights are granted for varieties that are: distinct, uniform, stable and new.

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 on the date of application for Community plant variety rights.

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 any others used for the variety description.

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

A variety is deemed to be new if, at the date of application, the variety constituents or harvested material of the variety have not been sold or otherwise disposed of to others, by the breeder or with his consent for purposes of exploitation of the variety:

a) within the territory of the Community, for more than one year as from the filing date of the application;

b) outside the territory of the Community, for more than four years or, in the case of fruit trees or vines, for more than six years as from the filing date of the application.

Community plant breeder's rights confer to their holder the right to perform the acts defined in Article 13 of EC Regulation No. 2100/94, in particular the production or reproduction, conditioning for the purpose of propagation, offering for sale, selling, exporting from the Community, importing to the Community, etc., the variety for which Community protection has been granted, as well as essentially derived varieties.

3/ WHO MAY FILE AN APPLICATION?

Any person(s) having the nationality of one of the member states of the Community or of one of the member states of the UPOV Convention or residing or having their head office or an establishment in one of such states may file an application for Community plant variety rights.

Moreover, any national of any other State may also benefit from Community plant variety rights insofar as the Commission, after obtaining the opinion of the Administrative Council, has so decided.

4/ WHERE THE APPLICATION SHOULD BE FILED

The Community Plant Variety Office is located in Angers in France.

Applications for Community plant variety rights may be filed at the choice of the Applicant:

- a) directly at the Community Plant Variety Office; or
- b) at one of the sub-offices or national agencies subject to the Applicant forwarding information regarding this filing to the Community Office within two weeks of filing. In that case, the file is thereafter transferred to the Community Office by the sub-office or national agency who may charge the Applicant a special fee respectively.

Persons who are not domiciled or do not have their head office or another establishment within the territory of the Community have to designate a procedural representative who is domiciled or has its head office or other establishment therein.

5/ OFFICIAL PROCEEDINGS

- a) filing

The application for Community protection must comprise:

- a request for granting of Community plant variety rights;
- identification of the botanical taxon;
- information identifying the applicant or, where appropriate, the joint applicants;

- name(s) of the breeder(s);
- a provisional designation for the variety;
- a technical description of the variety;
- the geographic origin of the variety;
- the credentials of any procedural representative;
- details of any previous commercialisation of the variety;
- details of any other application made in respect of the variety.

If the Applicant is not the breeder, any documentary evidence as to how the entitlement to Community plant variety rights came into his possession should be provided. Also, a variety denomination should be proposed.

b) technical examination

The plant variety for which Community plant variety rights are requested is submitted to technical examination carried out by a competent Examination Office or another appropriate agency.

The Examination Office sends to the Community Office an examination report and, if need be, a description of the variety. This examination report is notified to the Applicant who can comment thereon.

If the examination report does not enable a decision to be made, then a complementary examination is carried out.

If the results of the examination allow, the Office will grant Community plant variety rights.

The Examination Office may request from any Plant Variety Office operating in a member state any existing examination reports concerning a given variety in order to evaluate the distinctness, homogeneity and stability of the said variety.

Any person may lodge with the Office a written objection to granting of Community plant variety rights.

Various cases of refusal of the application are foreseen, in particular if the Applicant has not proposed an appropriate variety denomination and if the conditions set forth herein-above are not fulfilled by the plant variety concerned.

c) denomination of the variety

Where Community plant variety rights are granted, the Office approves, for the variety concerned, the variety denomination proposed by the Applicant if it is considered that the said denomination is suitable. A denomination is not suitable if, in particular, it is likely to cause confusion with respect to its characteristics, the value or identity of the

variety or the identity of the breeder. It must not be contrary to accepted standards and public order.

d) appeal actions

A certain number of Office decisions are open to appeal, the Appeal Court decisions being themselves open to appeal before the European Community Court of Justice.

6/ RIGHT OF PRIORITY

If the Applicant for Community plant variety rights has already applied for protection of the variety in a member state or a member of the UPOV Convention, he may claim for his application for Community plant variety rights the priority of this prior application within 12 months of the filing of the prior application, provided that the prior application still exists on the date of filing the Community application. The priority of a prior application filed in another state may also be claimed if the state is as defined above (see item 3).

Similarly, the filing of a first application for Community plant variety rights gives rise to the right of priority.

7/ TERRITORY

Community plant variety rights have a uniform effect over the Community territory and can only be granted, transferred or cease within this territory on a uniform basis.

8/ DURATION

The duration of Community plant variety rights is 25 years or, in the case of varieties of trees and vines, 30 years as from granting. A maximum extension of 5 years may be granted under certain conditions.

9/ CANCELLATION OF RIGHTS

Any holder of Community plant variety rights who:

- 1) has not supplied to the Community Office or Examination Offices all necessary information to assess the continuing and unaltered existence of the variety;
- 2) has not proposed another appropriate variety denomination; or
- 3) has not settled the annual renewal fee within the prescribed delay to maintain

protection, may, after receipt of notice, be deprived of their rights.

10/ DEROGATION FROM COMMUNITY PLANT VARIETY RIGHTS

In order to safeguard agricultural production, farmers are authorised to use, for propagation purposes in fields on their own holding, the product of the harvest obtained by cultivating, on their own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by Community plant variety rights. The plant varieties concerned are those listed in Article 14 of EC Regulation No. 2100/94 of 24 July 1994.

11/ RULES GOVERNING THE TRANSFER OF RIGHTS

Community plant variety rights may be transferred to one or more successor in title. The transfer by assignment may be made only to successors who are entitled to file an application for Community plant variety rights (see above item 3).

These requirements do not form part of licence agreements, which may be exclusive or nonexclusive.

12/ LITIGATION ACTIONS

The holder of Community plant variety rights may lodge an action to enjoin an infringement or to pay reasonable compensation or both, not only against those who accomplished any of the acts set out in Article 13(2) of EC Regulation 2100/94, but also against those who have used a variety denomination or designation that may be confused with that of the holder, or omitted to correctly use a variety denomination.

13/ PROHIBITION OF CUMULATIVE PROTECTION

A variety that is the subject of Community plant variety rights cannot be the subject of national plant variety protection, nor of a patent.

A holder who obtains granting of national protection or of a patent, before granting of Community plant variety rights for the same variety, cannot invoke the rights conferred by such protection for the variety as long as the Community plant variety rights are in force.