

Community plant variety rights; Community Plant Variety Office

1990/1021(CNS) - 27/07/1994 - Final act

1) OBJECTIVE To establish at Community level a special form of industrial property rights for new plant varieties that have been bred or discovered. 2) CONTENTS 1. The plant variety right results from the breeding or discovery of plant variety. 2. The Regulation includes substantive and operational provisions, a section covering impact on other laws, and financial and institutional provisions. 3. The substantive provisions stipulate that the provisions on Community protection shall be available for varieties that are distinct, homogeneous, stable, new and for which a variety denomination exists. 4. The person entitled to Community protection shall be the breeder or discoverer or his successor in title. If the variety was bred by more than one person there shall be joint entitlement by these persons or their successors in title. 5. The rights granted are uniform. Both the internationally recognized principle of "breeder's exemption" for new varieties developed from protected varieties and the generally accepted practice of "agricultural exemption" for farm-saved seed are confirmed. Under this principle once a holder breeds a new plant variety no third party may, without his consent, reproduce or multiply the variety or put it up for sale without payment of a breeder's fee to the holder. Another breeder may use the variety to create a further variety. 6. Rules covering the use of variety denominations and both duration and termination of protection. 7. The Regulation defines: * Community protection of plant variety rights as an object of the holder's property (treatment as a property right under national law, transfer of right to one or more successors in title, contractual exploitation rights, etc.); * rules on the granting of compulsory exploitation rights. 8. The Community scheme will be operated by a Community Plant Variety Office. 9. Status, duties, structure and management of Office. 10. An Administrative Council, consisting of representatives of the Member States and the Commission, will be set up to advise the Office and monitor its activities. Its members will be able to call on the services of advisers and experts. 11. Community legal protection will be provided by Boards of Appeal and by reference to the Court of Justice. 12. Rules of procedure are given: * for applications to the Office, its formal and technical examination of these, its decision and the future follow-up action to be carried out; * for reference to the Board of Appeal. General rules are also laid down covering oral procedure, taking of evidence, etc. 13. Provisions on the fees to be charged by the Office, on a Register of Community Plant Variety Rights and on other means of information (periodical publications, documents open to public inspection, etc.). 14. Relationships to national plant variety rights and to patents are defined. 15. In the matters of jurisdiction and procedure in legal actions relating to civil law claims the Regulation refers to the relevant international and national provisions. It also determines entitlement to make a civil law claim for infringement. 16. Provisions on penalization of infringements of national industrial property rights are to be made applicable to infringement of Community plant variety rights by 1 July 1992 at the latest. 17. The Office's budget is initially to be made up of fee income and a subsidy from the Community's general budget. It is hoped at a later date to achieve self-financing of the Office's variable costs. Source : European Commission - Info92 - 02/96