

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 104 final

Brussels, 29 March 1993

Amended proposal for a
COUNCIL REGULATION (EEC)
on Community plant variety rights

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

EXPLANATORY MEMORANDUM

At its session of 28.10.1992, the European Parliament delivered its opinion on the Commission proposal contained in document COM(90)347-final, concerning a proposal for a Council Regulation on Community plant variety rights.

The present amended proposal takes into account amendments suggested by the European Parliament on which the Commission has taken a favourable position.

Amended proposal for a
COUNCIL REGULATION (EEC)
on Community plant variety rights

In response to the opinion delivered by the European Parliament⁽¹⁾ on the proposal for a Council Regulation sent by the Commission to the Council on 6 September 1990 on Community plant variety rights, and in accordance with the third paragraph of Article 149 of the Treaty establishing the European Economic Community, the Commission has decided to amend the aforementioned proposal as follows:

ORIGINAL PROPOSAL

Article 5

Object of Community plant variety right

1. Varieties of all botanical taxa and hybrids of taxa may form the object of Community plant variety rights.
2. For the purpose of this Regulation, "variety" shall be taken to mean any group of plants as well as parts of those plants as far as they comprise more than a cell or cell line and are usable for the production of plants, both referred to hereinafter as "individuals", provided that:
 - (a) it may be defined as an entity on the basis of the expression of the characteristics of its individuals or of a particular distribution of such expressions in its individuals,
 - (b) the expressions of the characteristics of its individuals are hereditary, or reproduceable in using repeatedly individuals of its components, and
 - (c) the combination of expressions of the characteristics of its individuals is not distinctive for all individuals of a botanical taxon.

In cases where the commercial use of a variety does not imply the production of entire plants, "plants" within the meaning of the above definition shall be taken to mean those parts of plants which have to be produced for the purpose of using the variety.

AMENDED PROPOSAL

Article 5

Object of Community plant variety right

1. Unchanged
2. For the purpose of this Regulation "variety" shall mean a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be:
 - defined by the expression of the characteristics resulting from a given genotype or combination of genotype,
 - distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
 - considered as a unit with regard to its suitability for being propagated unchanged.

⁽¹⁾ OJ No C

ORIGINAL PROPOSAL

Article 11

Entitlement to Community plant variety rights

1. The original breeder or discoverer of the variety or his successor in title shall be entitled to the Community plant variety right.
2. If two or more persons have bred or discovered the variety jointly, entitlement shall be vested jointly in them or their respective successors in title.
3. Where a variety is derived essentially from individuals of only one other variety (source variety) for which a Community plant variety right has been granted under this Regulation, entitlement to the right referred to in paragraph 1 shall likewise be vested jointly in the holder of the plant variety right in respect of the source variety and the original breeder or discoverer of the derived variety, or his successor, if:
 - (a) the derived variety is the result of a mutation, or
 - (b) the derived variety exhibits predominantly the same expressions of most of the important characteristics as the source variety, and no evidence is available of an impact on economically relevant characteristics as compared to the source variety.
4. Where not a Community plant variety right but a national industrial property right has been granted in one of the States referred to in Article 12(1) to another party for the source variety, the provisions of paragraph 3 shall apply *mutatis mutandis*, providing the law of the State concerned contains a provision comparable to paragraph 3.
5. If the breeder or discoverer is an employee, the entitlement to the Community plant variety right shall be determined in accordance with the national law applicable to the employment relationship in the context of which the variety was bred or discovered.

AMENDED PROPOSAL

Article 11

Entitlement to Community plant variety rights

1. The breeder or discoverer of the variety or his successor in title shall be entitled to the Community plant variety right.
2. Unchanged.
- Deleted
- Deleted
3. If the breeder or discoverer is an employee, the entitlement to the Community plant variety right shall be determined in accordance with the national law applicable to the employment relationship in the context of which the variety was bred or discovered.

ORIGINAL PROPOSAL

6. Where entitlement to a Community plant variety right is vested jointly in two or more persons pursuant to paragraphs 2 to 5, one or more of them may empower the others by written declaration to such effect to claim entitlement thereto.
7. For the purposes of proceedings before the Office, the first applicant shall be deemed to be entitled to claim the entitlement to the Community plant variety right. This shall not apply if the Office is aware, by the time the decision on the application for grant of the Community plant variety right is taken, or it is shown by a final judgment delivered with regard to a claim for entitlement pursuant to Article 95(4), that entitlement is not or is not solely vested in the first applicant. Where, in the event referred to in the second sentence, the identity of the sole or other person entitled has been determined, the latter may enter the proceedings as applicant.

Article 13

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

1. A Community plant variety right shall have the effect that the holder or holders of the Community plant variety right, hereinafter referred to as "the holder", shall be entitled to effect the acts set out in paragraph 2 in respect of the variety.
2. All other persons shall be prohibited, without prejudice to the provisions of Articles 14 and 15, save with the consent of the holder, from reproducing or propagating the variety or from offering, disposing of to others, using or importing into the Community, exporting from the Community or possessing for any of the abovementioned purposes individuals or other parts of plants or harvested material of the varieties or products obtained directly therefrom, all, i.e. individuals, other parts of plants or harvested material and products directly obtained, referred to hereinafter as "material".

AMENDED PROPOSAL

4. Where entitlement to a Community plant variety right is vested jointly in two or more persons pursuant to paragraphs 2 or 3, one or more of them may empower the others by written declaration to such effect to claim entitlement thereto.

Deleted.

Article 13

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

1. Unchanged
2. All other persons shall be prohibited, without prejudice to the provisions of Articles 14 and 15, save with the consent of the holder, from reproducing or propagating the variety and, to the extent specified in implementing rules pursuant to Article 109, the variety which is essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety, or from offering, disposing of to others, using or importing into the Community, exporting from the Community or possessing for any of the abovementioned purposes individuals or other parts of plants or harvested material of the varieties as referred to above or products obtained directly therefrom, all, i.e. individuals, other parts of plants or harvested material and products directly obtained, referred to hereinafter as "material".

ORIGINAL PROPOSAL

3. If in the case of Article 11(3) no Community plant variety right has been granted for the derived variety, all other persons shall be prohibited, save with the consent of the holder of the source variety, from effecting acts of the type set out in paragraph 2 in respect of the derived variety.

4. The exercise of the rights conferred by Community plant variety rights may not violate any provisions adopted on the grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of the environment; or the safeguarding of competition, trade and agricultural production.

For the purpose of safeguarding agricultural production in the case of plant species governed by Community rules on the marketing of seeds or other propagating material, authorization may be given at Community level and in accordance with the procedure laid down in the implementing rules pursuant to Article 109, to permit growers of propagating material of a variety for which a Community plant variety right has been granted to plant on their own holding harvested material obtained therefrom. Such authorization may be given only under conditions which shall be set up in an appropriate manner at Community level, upon initiative of the Commission.

AMENDED PROPOSAL

Deleted

3. The exercise of the rights conferred by Community plant variety rights may not violate any provisions adopted on the grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of the environment; or the safeguarding of competition, trade and agricultural production.

ORIGINAL PROPOSAL

AMENDED PROPOSAL

Article 13a (new)

Derogation from Plant variety rights

1. By way of derogation from Article 13, and for the purpose of safeguarding agricultural production, farmers may without prejudice to the provisions of paragraph 2, use on their own holding for the purposes of reproduction or propagation - either by themselves or with the help of others - harvested material obtained through cultivation on their own holding of propagating material of a variety coming under the Community variety protection.
2. Any genus and species excluded by special exemption from the provisions of paragraph 1 of this Article, together with any other additional requirement or limitation imposed by such exclusion, shall be the subject of implementing rules pursuant to Article 109.

Where these requirements include the payment of a remuneration for the use referred to in paragraph 1, this remuneration must be sensibly lower than the amount charged for the licensed production of propagating material of the same variety.

3. The Member States shall include in their legislation measures penalizing the flight or illegal handling of propagating material of the variety for which a Community plant variety right has been obtained, except for the cases and practices set out in this Article.

ORIGINAL PROPOSAL

Article 14

Limitation of the effects of
Community plant variety rights

The rights conferred by a Community plant variety right shall not extend to:

- (a) acts relating to products that do not constitute material;
- (b) acts effected privately and for non-commercial purposes;
- (c) acts effected for experimental purposes;
- (d) acts effected for the purpose of discovering or creating new varieties;
- (e) without prejudice to the provisions of Article 13(3), acts effected for the purpose of using the new varieties discovered or created pursuant to subparagraph (d), unless
 - individuals of the protected variety have to be used repeatedly for the production of the new variety for commercial purposes, or
 - the new variety or the material of this variety comes under the protection of a property right which does not contain a comparable provision:
- (f) acts whose prohibition would violate the provisions laid down in Article 13(4).

Article 18

Duration of Community plant variety rights

1. The term of the Community plant variety right shall run until the end of the 30th calendar year, or, in the case of varieties of vine and tree species, until the end of the 50th calendar year, following the year of grant.
2. A Community plant variety right shall lapse before the expiry of the terms laid down in paragraph 1 if the holder surrenders it by sending a written declaration to such effect to the Office, and with effect from the day following the day on which the declaration is received by the Office.

AMENDED PROPOSAL

Article 14

Limitation of the effects of
Community plant variety rights

The rights conferred by a Community plant variety right shall not extend to:

- (a) acts relating to products that do not constitute material;
- (b) acts effected privately and for non-commercial purposes;
- (c) acts effected for experimental purposes;
- (d) acts effected for the purpose of discovering or creating new varieties;
- (e) without prejudice to the provisions related to essentially derived varieties pursuant to Article 13(2), acts effected for the purpose of using the new varieties discovered or created pursuant to subparagraph (d), unless individuals of the protected variety have to be used repeatedly for the production of the new variety for commercial purposes, or
- (f) acts whose prohibition would violate the provisions laid down in Article 13(3) or 13a.

Article 18

Duration of Community plant variety rights

1. The term of the Community plant variety right shall run until the end of the 20th calendar year, or, in the case of varieties of vine and tree species, until the end of the 25th calendar year, following the year of grant.
2. Unchanged

ORIGINAL PROPOSAL

Article 89

Cumulative protection prohibited

1. Varieties that are the subject matter of Community plant variety rights shall not be patented nor be the subject of national plant variety rights. Any rights granted contrary to the first sentence shall be ineffective.
2. Where the holder has been granted another right as referred to in paragraph 1 for the same variety prior to grant of the Community plant variety right, he shall be unable to invoke the rights conferred by such protection in respect of the variety for as long as the Community plant variety right remains effective.

Article 103

Penalties for infringements of
Community plant variety rights

Member States shall ensure that on 1 July 1992 at the latest the same provisions are made applicable to penalize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national industrial property rights.

Article 112

Transitional provisions

The Office shall be established in good time to assume fully the tasks incumbent upon it pursuant to this Regulation as from 1 July 1992.

Article 113

Entry into force

This Regulation shall enter into force on 1 April 1991.

Articles 1, 2, 3, 5 to 28 and 48 to 102 shall apply from 1 July 1992.

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

AMENDED PROPOSAL

Article 89

Cumulative protection prohibited

1. Plant varieties shall not be patented. This prohibition shall be interpreted in accordance with the definition of variety laid down in Article 5(2) of this Regulation. Nor shall varieties that are the subject matter of Community plant variety rights be the subject matter of any other form of national plant variety rights. Any rights granted contrary to this paragraph shall be ineffective.
2. Unchanged

Article 103

Penalties for infringements of
Community plant variety rights

Member States shall ensure that on at the latest the same provisions are made applicable to penalize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national industrial property rights.

Article 112

Transitional provisions

The Office shall be established in good time to assume fully the tasks incumbent upon it pursuant to this Regulation as from

Article 113

Entry into force

This Regulation shall enter into force on

Articles 1, 2, 3, 5 to 28 and 48 to 102 shall apply from

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

COM(93) 104 final

DOCUMENTS

EN

03 02

Catalogue number : CB-CO-93-126-EN-C

ISBN 92-77-53769-8

Office for Official Publications of the European Communities
L-2985 Luxembourg