

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 347 final

Brussels, 30 August 1990

Proposal for a  
COUNCIL REGULATION (EEC)

on Community plant variety rights

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(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The subject

The proposed Regulation is one of the measures contained in the Commission's White Paper of 1985 for completing the internal market in the field of agriculture.

Its subject is the establishment, at Community level, of a special form of industrial property rights for the development of new plant varieties. It shall ensure a proper reward to plant breeders for their respective achievements, and constitute an incentive for further developments. It is based on a system set up by UPOV (Union pour la Protection des Obtentions Végétales) and implemented at national level by the contracting parties thereto, including the majority of the Member States of the Community.

2. The objectives

The proposed system is considered to be an important instrument to promote the continued breeding of improved plant varieties, as an essential element of technical progress to increase agricultural productivity.

It seeks

- to adapt the current situation determined by various national plant variety protection laws to the circumstances of the single market, and
- to strengthen, in the light of the development of new breeding methods such as biotechnology, the protection available to plant breeders.

Under this system, breeders would be able to acquire, upon a single application and through a single decision, direct and uniform protection throughout the Community for varieties of all botanical taxa and hybrids of taxa.

3. The structure

The proposed rules are subdivided in four main sections:

- the section on substantive law (Articles 5 - 28)
- the section on operational law (Articles 29 - 88)
- the section on impact on other laws (Articles 89 - 103)
- the section on financial and institutional aspects (Articles 104 - 110).

4. The substantive law

It lays down the conditions for the grant of Community plant variety rights (Article 5 - 12), in particular distinctness, uniformity, stability and novelty of the variety concerned and personal entitlement.

It defines the uniform effects of the right granted (Articles 13 - 15) and confirms both the internationally recognized principle of "breeders' exemption" for new varieties developed from protected varieties, and the accepted practice of "agricultural exemption" for farm-saved seed.

It establishes rules on the use of variety denominations (Articles 16, 17) and fixes the period of protection and other criteria for termination (Articles 18 - 20).

It determines the status of the right granted as an object of property of the holder (Articles 21 - 27) and provides for a system of compulsory licencing (Article 28).

5. The operational law

The implementation of the Community plant variety rights system would be entrusted to a "Community Plant Variety Office".

Its status, duties, structure and management are defined following examples in the field of other industrial property rights (Articles 29 - 37).

An Administrative Council, consisting of representatives of Member States and the Commission, is proposed in order to advise the Office and to monitor its activities (Articles 38 - 43).

Community judicial protection is ensured through "Boards of Appeal" and reference to the Court of Justice of the European Communities (Articles 44 - 47, 72).

The proposal also provides for appropriate rules of procedure -  
- before the Office as such, in respect of applications (Articles 48 - 51), of the administrative and technical examination thereof (Articles 52 - 59) and of its decisions (Articles 60 - 62) and follow-up-actions (Articles 63 - 65), and  
- before the Boards of Appeal (Articles 66 - 71).

It finally refers to a number of generally accepted principles of legal proceedings (Articles 73 - 79).

This section is completed by certain provisions relating to the fees to be charged by the Office (Articles 80 - 83), and also to a Register of Community Plant Variety Rights and other means of information (Articles 84 - 88).

6. Impact on other laws

The system lays down certain provisions defining the relationship to national plant variety rights and - based on existing international commitments of Member States - to patents (Articles 89, 90).

It identifies civil law claims derived from the proposed system, in particular in cases of infringements (Articles 91 - 96), and refers to the relevant international and national rules on jurisdiction and procedure in legal actions arising out of such claims (Articles 97 - 102). Some amendments to national penal laws are also necessary (Article 103).

7. Financial and institutional aspects

The proposed budget system is inspired by earlier proposals. Mixed financing through fees and subsidies from the general budget of the Community is at first envisaged with the aim of moving later towards self-financing of the Office's variable costs (Articles 104 - 107).

Finally, rules for the adoption of secondary Community provisions in accordance with established procedures are provided for (Articles 108 - 110).

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## II

(Preparatory Acts)

## COMMISSION

**Proposal for a Council Regulation (EEC) on Community plant variety rights**

COM(90) 347 final

(Submitted by the Commission on 6 September 1990)

(90/C 244/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the continued breeding of improved plant varieties is an essential element of technical progress to increase agricultural productivity;

Whereas measures for promoting such breeding should be supported;

Whereas an important instrument for these purposes is the creation of a Community plant variety right;

Whereas the system of Community plant variety rights must adapt the present situation, under which only national plant variety rights are available, to Community conditions and, in particular, ensure that plant breeders can acquire, through a single decision, direct and uniform protection in the whole of the Community;

Whereas the system must also have regard to developments in plant breeding techniques including biotechnology; whereas in order to stimulate the breeding and

development of new varieties, there should be improved protection compared with the present situation for all plant breeders without, however, unjustifiably impairing access to protection generally or in the case of certain breeding techniques;

Whereas varieties of all botanical taxa and hybrids of taxa should be protectable;

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

Whereas it is important to provide for a definition of a plant variety, in order to ensure the proper functioning of the system; whereas the term 'variety' shall be considered to mean an entity as traditionally and commonly understood by plant breeders, plant users and related institutions; whereas consequently that entity must be broader than that which satisfies the conditions governing the grant of Community plant variety rights in full, without, however, equalling a botanical taxon, and it must meet all the specifications set up in the relevant definition and does therefore in particular not extend to single cells or parts thereof nor to cell lines;

Whereas this definition is not intended to alter definitions which may have been established in the field of other industrial property rights, especially the patent field, nor to interfere with or exclude from application laws governing the protectability of products, including plants and plant material, or processes under such other industrial property rights;

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

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

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

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

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

Whereas in certain cases, particularly if the new variety, although distinct, is, from a commercial point of view, an imitation of the source variety, a certain form of dependency should be created;

Whereas the exercise of Community plant variety rights must be subjected to restrictions laid down in provisions adopted in the public interest; whereas these include assuring agricultural production;

Whereas the Commission must ensure that the conditions therefor are laid down at Community level either by Community law or possibly through binding agreements or otherwise; whereas compulsory licensing should also be provided for under certain circumstances;

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

Whereas the Community plant variety right should in principle have a life of 30 years and in the case of certain woody genera with longer development times, 50 years; whereas other grounds for termination must be worked out;

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

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

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

Whereas the implementation of the Community plant variety rights system should be entrusted, following the example of concepts established in other industrial property rights, to a central office, the 'Community Plant Variety Office';

Whereas the duties and powers of the Office, including its Boards of Appeal, relating to the grant, termination or verification of Community plant variety rights and publications are as far as possible to be modelled on rules developed for similar systems, as are also the Office's structure and rules of procedure, the collaboration with the Commission and Member States particularly through an Administrative Council, the involvement of Examination Offices in technical examination and moreover the necessary budgetary measures; whereas there should be mixed financing with the aim later of self-financing of at least the Office's total variable costs, but not necessarily its fixed costs such as staffing and accommodation; whereas Community jurisdiction should be ensured;

Whereas the Office should be advised and supervised by the aforementioned Administrative Council, composed of representatives of Member States and the Commission;

Whereas this Regulation takes into account existing international systems as established by the International Convention for the Protection of New Varieties of Plants (UPOV Convention) or the Convention on

the Grant of European Patents (European Patent Convention);

Whereas this Regulation should be amended as necessary in the light of future developments in the afore-

mentioned systems, or of the negotiations in the GATT on trade-related intellectual property rights,

HAS ADOPTED THIS REGULATION:

## PART ONE GENERAL PROVISIONS

### *Article 1*

#### Community plant variety rights

For plant varieties as a result of breeding or discovery, a system of Community plant variety rights is hereby established as the sole and exclusive form of Community industrial property rights.

### *Article 2*

#### Uniform effect of Community plant variety rights

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

### *Article 3*

#### National property rights for plant varieties

This Regulation shall be without prejudice to the right of the Member States to grant national property rights for plant varieties, provided that this is not excluded by Article 89 (1).

### *Article 4*

#### Community Office

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

## PART TWO SUBSTANTIVE LAW

### *CHAPTER 1*

#### CONDITIONS GOVERNING THE GRANT OF COMMUNITY PLANT VARIETY RIGHTS

### *Article 5*

#### Object of Community plant variety rights

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.

### *Article 6*

#### Protectable varieties

Community plant variety rights shall be granted in respect of varieties that are:

(a) distinct;

(b) homogeneous;

- (c) stable; and
- (d) new; and
- (e) for which a variety denomination exists which is suitable pursuant to Article 62.

#### *Article 7*

##### **Distinctness**

1. A variety shall be deemed to be distinct if its individuals either in the aggregate or on the basis of a particular distribution are clearly distinguishable by the expression of at least one important characteristic from the individuals of any other variety whose existence is a matter of common knowledge on the date of application determined pursuant to Article 50.
2. The existence of another variety shall be deemed to be a matter of common knowledge, in particular, if on the date of application determined pursuant to Article 50:
  - (a) it was entered in an official register of plant varieties;
  - (b) an application for its inclusion in an official register of plant varieties was filed, provided the application has been granted in the meantime; or
  - (c) one or more of the acts set out in Article 13 (2) were notoriously effected for commercial purposes with individuals thereof.

#### *Article 8*

##### **Homogeneity**

A variety shall be deemed to be homogeneous if its individuals, either in the aggregate or on the basis of a particular distribution, are sufficiently uniform in the expression of each important characteristic, apart from a small number of deviations, having regard to the particular features of reproduction or propagation.

#### *Article 9*

##### **Stability**

1. A variety shall be deemed to be stable if its individuals, either in the aggregate or on the basis of a particular distribution, correspond in each important characteristic after each propagation or each cycle of propagation to the expression that is distinctive of the variety in question.
2. For the purposes of granting Community plant variety rights, it shall be assumed that the requirements of paragraph 1 are satisfied where it emerges from the technical examination pursuant to Articles 54 and 55 that there is no indication that the variety will not be stable.

#### *Article 10*

##### **Novelty**

1. A variety shall be deemed to be new if, at the date of application determined pursuant to Article 50, individuals thereof have not been disposed of to others for commercial purposes or have been disposed of to others for commercial purposes only within the following periods of time:

- (a) one year, within the territory of the Community;
- (b) four years or, in the case of vine and tree species, six years, outside the territory of the Community.

2. The disposal of individuals by the applicant or his predecessor in title on the basis of a contractual or other legal relationship in which the applicant or his predecessor in title preserve the exclusive right of disposal of these and other individuals of the variety, in particular for purposes solely of reproduction or propagation of this variety, preparation or storage shall not be deemed to constitute disposal to others within the meaning of paragraph 1, provided no further disposal is made.

Likewise, the disposal of individuals by one legal person to another legal person shall not be deemed to constitute disposal to others where one of them is part of the other or where both are part of the same third legal person, and provided no further disposal is made by the recipient.

3. For the purposes of paragraph 1, no account shall be taken of any disposal to others that occurred within one year before the beginning of the period laid down in paragraph 1, and if it was due to, or in consequence of:

- (a) an evident abuse to the prejudice of the applicant or his predecessor in title; or
- (b) the fact that the applicant or his predecessor in title had displayed the variety at an official or officially recognized exhibition within the meaning of the Convention on International Exhibitions.

#### *CHAPTER II*

##### **PERSONS ENTITLED**

#### *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.

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 12

##### Entitlement to file an application for grant of a Community plant variety right

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

- (a) nationals of one of the Member States or nationals of another State party to the UPOV Convention or are domiciled or have their seat or an establishment in such a State;
- (b) nationals of any other State or are domiciled or have their seat in such a State, in so far as the Commission, after obtaining the opinion of the Administrative Council, has so decided; such a decision may be made dependent on the other State affording protection for varieties of the same botanical taxon to nationals of all the Member States which corresponds to the protection afforded pursuant to this Regulation; the Commission shall establish whether this condition is met.

2. An application may also be filed jointly by two or more applicants.

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

### CHAPTER III

#### EFFECTS OF COMMUNITY PLANT VARIETY RIGHTS

##### Article 13

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

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

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 the initiative of the Commission.

#### *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 15*

##### **Exhaustion of Community plant variety rights**

1. The rights conferred by a Community plant variety right shall not extend to acts involving individuals of

the variety that were disposed of to others in any part of the Community by the holder or with his consent. This shall also be applicable in respect of other material that was disposed of to others pursuant to the first sentence or that was obtained from individuals as referred to in the first sentence.

2. Paragraph 1 shall not apply where the individuals have been or are being used as propagating material for the production of further individuals without having been intended for that purpose when they were disposed of.

#### *Article 16*

##### **Use of variety denominations**

1. Anyone who offers or disposes of to others for commercial purposes within the territory of the Community propagating material of a variety in respect of which a Community plant variety right has been granted must state the variety denomination designated for the variety; where it is stated in writing, the variety denomination shall be readily distinguishable and clearly legible. The first sentence shall also apply in respect of other material of the variety, if this is required either pursuant to other provisions in law or if a request is made by an authority, by the purchaser or by any other person having a legitimate interest.

2. Paragraph 1 shall apply even after the termination of the Community plant variety right.

#### *Article 17*

##### **Limitation of the use of variety denominations**

1. The holder may not use any right granted in respect of a designation that is identical with the variety denomination to prohibit the use of that variety denomination.

2. A third party may use a right granted in respect of a designation that is identical with the variety denomination to prohibit the use of that variety denomination only if that right was granted to him before the variety denomination was designated.

3. Where a variety has been granted a Community plant variety right or, in a Member State or another State party to the UPOV Convention, a national property right, neither its denomination nor any designation which might be confused with it can be used for another variety of the same botanical species or a species regarded as related pursuant to the publication made in accordance with Article 62 (6) or for material of such variety.

## CHAPTER IV

DURATION AND TERMINATION OF COMMUNITY  
PLANT VARIETY RIGHTS

## 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.

## Article 19

## Revocation of Community plant variety rights

The Office shall revoke a Community plant variety right with effect *ab initio* if it is ascertained that the conditions laid down in Article 7 or 19 were not complied with when the right was granted.

## Article 20

## Cancellation of Community plant variety rights

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

2. The Office may cancel a Community plant variety right with effect *in futurum* if the holder:

- (a) has not fulfilled an obligation under Article 63 (3);
- (b) in the case referred to in Article 65, neither proposes another variety denomination nor consents to a variety denomination designated by the Office of its own motion;
- (c) fails to pay within a period of grace such overdue fees as may be payable to maintain the Community plant variety right; or

(d) either as the initial holder or as a successor in title as a result of a transfer pursuant to Article 22 other than *mortis causa*, no longer satisfies the conditions laid down in Article 12.

## CHAPTER V

COMMUNITY PLANT VARIETY RIGHTS AS  
OBJECTS OF PROPERTY

## Article 21

## Assimilation with national laws

1. Save where otherwise provided in Articles 22 to 28, a Community plant variety right as an object of property shall be regarded in all respects, and for the entire territory of the Community, as a corresponding industrial property right in the Member State in which,

- (a) according to the entry in the Register of Community Plant Variety Rights, the holder was domiciled or had his seat or an establishment on the relevant date; or
- (b) if the conditions laid down in subparagraph (a) are not fulfilled, the Member State in which the first-mentioned procedural representative of the holder, as indicated in the said Register was domiciled or had his seat or an establishment on the date of registration.

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

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

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

## Article 22

## Transfer

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

2. Transfer of a Community plant variety right by assignment can be made only to successors who com-

ply with the conditions laid down in Article 12. It shall be made in writing and shall require the signature of the parties to the contract, except when it is a result of a judgement. Otherwise it shall be void.

3. Save as otherwise provided in Article 96, a transfer shall have no bearing on the rights acquired by third parties before the date of transfer.

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

#### Article 23

##### Levy of execution

A Community plant variety right may be levied in execution.

#### Article 24

##### Bankruptcy or like proceedings

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

#### Article 25

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

Articles 21 to 24 shall apply to applications for grant of Community plant variety rights.

#### Article 26

##### Contractual exploitation rights

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

2. The holder may invoke the rights conferred by the Community plant variety right against a person enjoy-

ing the right of exploitation who contravenes any of the limitations attached to his exploitation right pursuant to paragraph 1.

#### Article 27

##### Joint holdership

Articles 21 to 26 shall apply *mutatis mutandis* in the event of joint holdership of a Community plant variety right in proportion to the respective share held, where such shares have been determined.

#### Article 28

##### Compulsory exploitation rights

1. Where the holder refuses to allow another party to effect acts of the kind referred to in Article 13 (2) subject to reasonable conditions, the Office shall grant entitlement (compulsory exploitation right) to the other party upon application to effect such acts, provided it considers, after consulting the Administrative Council, this to be:

- (a) economically acceptable to the holder; and
- (b) required in the public interest, in particular to supply the market with material offering specified features.

2. On application by one or more Member States, by the Commission or by an organization set up at Community level and approved by the Commission for that purpose, a compulsory exploitation right may be granted, in accordance with the requirements set out in paragraph 1 (a) and (b) and with the consent of the Administrative Council, to persons satisfying certain requirements or to anyone in one or more Member States or throughout the Community.

3. The Office shall, when granting the compulsory exploitation right, stipulate the type of acts covered and the conditions pertaining thereto, in particular the level of the payment to be made to the holder. On the expiry of each one year period after the grant of the compulsory exploitation right, any of the parties may request that the decision on the grant of the compulsory exploitation right be cancelled or amended. The sole grounds for such a request shall be that the circumstances determining the decision taken have in the meantime undergone considerable change.

4. National compulsory exploitation rights may not be granted in respect of a Community plant variety right.

## PART THREE

## THE COMMUNITY PLANT VARIETY OFFICE

## CHAPTER I

## GENERAL PROVISIONS

## Article 29

## Legal status, sub-offices

1. The Office shall be a Community agency and shall have legal personality.
2. The seat of the Office shall be located at ....
3. In each of the Member States, the Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. For these purposes, the Office shall be represented by its President.
4. With the consent of the Administrative Council, the Office may entrust national agencies with the exercise of specific administrative functions of the Office or establish its own sub-offices for that purpose in the Member States, subject to their consent.

## Article 30

## Staff

1. The Staff Regulations of officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities, and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Office, but without prejudice to the application of Article 46 to the members of the Board of Appeal.
2. Without prejudice to Article 36, the powers conferred on the appointing authority by the Staff Regulations, and by the Conditions of Employment of Other Servants, shall be exercised by the Office in relation to its own staff.

## Article 31

## Privileges and immunities

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

## Article 32

## Liability

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

## Article 33

## Languages

1. Applications to the Office, the documents required to process such applications and all other papers submitted shall be filed in one of the official languages of the European Communities.
2. The persons participating in the procedure of the Office shall be entitled to conduct written and oral proceedings in any official language of the Community with translation and, in the case of hearings, simultaneous interpretation into the working languages of the Office and those of the persons participating in the procedure in accordance with the implementing rules pursuant to Article 109.

## Article 34

## Decisions of the Office

1. Decisions of the Office pursuant to Articles 19, 20, 60, 61 and 62 and decisions on objections lodged pursuant to Article 58, shall, provided they do not have to be made by the Board of Appeal, be taken by a committee of three employees, two of whom must have prior technical training and one of whom must be a qualified lawyer. However, until the decision is taken, one member of the committee shall normally be

charged with handling the case. The hearing shall be held before the committee itself.

2. The committees may consult experts who are independent of the parties concerned, including those who were responsible for examining the variety. The Administrative Council may determine under what circumstances such experts should be heard at the request of a party concerned.

3. The President shall determine how many committees pursuant to paragraph 1 should be formed using the employees available of the Office, and shall decide on the work allocation.

4. Other decisions of the Office shall be taken by the President or by a member of the Office's staff designated by him.

## CHAPTER II

### ADMINISTRATION OF THE OFFICE

#### Article 35

##### The President

1. The Office shall be managed by the President.
2. The President shall have, in particular, the following functions and powers:
  - (a) he shall be responsible for carrying out the decisions of the Administrative Council;
  - (b) he shall take all appropriate action, including the adoption of internal administrative instructions and the publication of communications, to ensure the proper operation of the Office;
  - (c) he may place before the Administrative Council draft amendments to this Regulation, to the provisions referred to in Articles 108 and 109 or to any other rules relating to Community plant variety rights;
  - (d) he shall draw up the estimates of revenue and expenditure of the Office pursuant to Article 105 (1) and shall execute the Office budget;
  - (e) he shall submit a management report to the Administrative Council each year;
  - (f) he shall exercise the powers conferred by Article 30 (2);
  - (g) he may delegate his functions and powers.
3. One or more Vice-Presidents may be appointed to assist the President. If the President is unable to act, the Vice-President or Vice-Presidents will act in his place under conditions to be determined by the Administrative Council.

#### Article 36

##### Appointment of senior officials

1. The President of the Office shall be appointed by the Commission from a list of at most three candidates which shall be prepared by the Administrative Council. Power to dismiss the President shall lie with the Commission, acting on a proposal from the Administrative Council.

2. The President shall be appointed for a term of office of at most five years. This term of office shall be renewable.

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

4. The Commission shall exercise disciplinary authority over the President and Vice-presidents.

#### Article 37

##### Control of legality

1. The Commission shall be responsible for legal supervision of those acts of the President that are not subject to legal control by another body under Community law.

2. The Commission shall require the alteration or cancellation of acts of the President that violate the law.

3. Any Member State, any member of the Administrative Council or any third party who is directly and personally concerned, may refer to the Commission any act of the President pursuant to paragraph 1, whether express or implied, for the legality of that act to be examined. The matter must be brought before the Commission within 15 days of the date on which the party concerned came to know of the contested act. The Commission shall take a decision within a period of one month. Where no decision is taken within this time limit, this shall be deemed to constitute rejection.

## CHAPTER III

### THE ADMINISTRATIVE COUNCIL

#### Article 38

##### Creation and powers

1. An Administrative Council to the Office is hereby established. In addition to the powers assigned to the Administrative Council under this Regulation and under the provisions referred to in Articles 108 and 109, it shall exercise the powers set out in paragraphs 2 to 6.

2. The Administrative Council shall advise the President on matters within the competence of the Office and shall monitor its activities.

3. The Administrative Council may forward to the Commission with or without amendments the drafts submitted to it pursuant to Article 35 (2) (c), or its own draft amendments to this Regulation, to the provisions referred to in Article 108 and 109 or to any other rules relating to Community plant variety rights.

4. Where it considers it to be necessary, the Administrative Council may deliver opinions and seek information.

5. The Administrative Council may establish rules on the working methods of the Office.

6. The Administrative Council shall adopt its own rules of procedure.

#### Article 39

##### Composition of the Administrative Council

1. The Administrative Council shall be composed of one representative of each Member State and one representative of the Commission. An alternate shall be appointed for each representative.

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

#### Article 40

##### Chairmanship

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

2. The duration of the terms of office of the Chairman and the Deputy Chairman shall be three years. The terms of office shall be renewable.

#### Article 41

##### Meetings

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

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

3. The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on

the initiative of its Chairman or at the request of the Commission or of one-third of the Member States.

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

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

#### Article 42

##### Place of meetings

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

#### Article 43

##### Voting

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

2. The majority of three-quarters of the votes cast shall be required for the decisions which the Administrative Council is empowered to take under Articles 12 (1) (b), 36 (1) and (3), 38 (5), 46 (1) and 54 (2).

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

#### CHAPTER IV

##### THE BOARDS OF APPEAL

#### Article 44

##### Establishment and powers

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

2. The Boards of Appeal shall be responsible for deciding on appeals against the decisions referred to in Article 66.

#### Article 45

##### Composition of the Boards of Appeal

The composition of the Boards of Appeal when deciding shall be as follows:

(a) in the case of decisions of the Office taken solely on the basis of the examination pursuant to Articles 52

and 53, and decisions regarding entry of information in and removal of information from the Register of Community Plant Variety Rights, two legally-qualified members and one member with prior technical training;

- (b) for other decisions, two members with prior technical training and one legally-qualified member.

An alternate shall be appointed for each member.

#### *Article 46*

#### **Independence of the members of the Boards of Appeal**

1. The Chairmen of the Boards of Appeal and the other members thereof shall be appointed by the Commission for a term of office of five years on a proposal from the Administrative Council. They may not be removed from office during that term, unless there are serious grounds for such removal by decision of the Court of Justice of the European Communities, having been seized by the Commission after obtaining the opinion of the Administrative Council. The term of office shall be renewable. The function of the members of the Boards of Appeal may be a part-time function.

2. The members of the Boards of Appeal shall be independent. In making their decisions they shall not be bound by any instructions whatsoever.

3. The members of the Boards of Appeal may not perform any other duties in the Office. The right to perform any other activity shall be determined in accordance with the provisions referred to in Article 30 (1).

#### *Article 47*

#### **Exclusion and objection**

1. Members of the Boards of Appeal may not take part in determining any matter in which they have a personal interest, or in which they have previously been involved as representatives of any of the parties, or if they participated in making the decision under appeal.

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

3. Members of the Boards of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objecting, the party has submitted applications or opinions in proceedings.

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

## **PART FOUR**

### **PROCEEDINGS BEFORE THE OFFICE**

#### *CHAPTER I*

#### **APPLICATIONS**

#### *Article 48*

#### **Filing of applications**

1. Applicants shall have the choice of submitting their application for grant of a Community plant variety right:

- (a) either at the Office directly; or  
(b) at one of the national agencies or sub-offices entrusted or set up pursuant to Article 29 (4).

2. Where the application is submitted to one of the national agencies referred to in paragraph 1 (b), the latter shall take all necessary steps to ensure that the application is forwarded to the Office within two weeks

of submission. National agencies may charge the applicant a fee which should not exceed the administrative costs incurred in accepting and forwarding the application.

3. Applications that have not reached the Office within one month of submission to the national agency shall be deemed to have been withdrawn.

#### *Article 49*

#### **Conditions governing applications**

1. Applications for grant of a Community plant variety right must contain at least the following:

- (a) particulars identifying the applicant;  
(b) the name of the original breeder or discoverer of the variety and an assurance that, to the best of the applicant's knowledge, no further persons have

been involved in the breeding or discovery of the variety; if the applicant is not, or not alone, the original breeder or discoverer, he shall indicate, and, on request of the Office, provide for the relevant documentary evidence, how the entitlement for grant of the Community plant variety right came into his possession; if the variety is derived essentially from individuals of only one other variety, the source variety shall also be indicated, without prejudice to the information pursuant to paragraph 2 (a);

- (c) a provisional designation for the variety;
- (d) any other information required by the Office for the purpose of examining the application.

2. The following shall be supplied with the application:

- (a) a technical description of the variety;
- (b) a proposal for a variety denomination;
- (c) the credentials of any procedural representative.

However, the proposal for a variety denomination may be submitted at a later date, within a time limit specified by the Office.

#### *Article 50*

##### **Date of application**

The date of an application for grant of a Community plant variety right shall be the date on which the application was received by the Office pursuant to Article 48 (1) (a) or by the national agency or sub-office of the Office pursuant to Article 48 (1) (b), provided it contains at least the particulars enabling the identity of the applicant to be determined and a technical description of the variety is attached.

#### *Article 51*

##### **Priorities**

1. The priorities of applications shall be determined by dates of application or, in the case of applications received on the same date, according to the order in which they were received pursuant to Article 50, where this can be established.

2. If the applicant or his predecessor in title has already applied for a property right in respect of the variety in a Member State or in another State party to the UPOV Convention, and the date of application is within 24 months of the filing of the earlier application, the applicant shall enjoy a right of priority for the earlier application as regards the application for grant of the Community plant variety right, provided the earlier application still exists on the date of application.

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

4. Paragraphs 2 and 3 shall also apply in respect of earlier applications that were filed in another State, provided the conditions set out in Article 12 (1) (b) are met on the date of application.

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

## *CHAPTER II*

### **EXAMINATION**

#### *Article 52*

##### **Formal examination**

1. The Office shall examine whether:
  - (a) the application has effectively been filed pursuant to Article 48;
  - (b) the application satisfies the conditions laid down in Article 49;
  - (c) documents relating to a claim for priority have been submitted within the time limit laid down in Article 51 (5); and
  - (d) the fees due pursuant to Article 80 have been paid within a specified time limit.

2. If the application complies with the conditions for attribution of a date of application pursuant to Article 50, but does not comply with the conditions set out in Article 49, the Office shall give the applicant an opportunity to correct any deficiencies that may have been identified.

3. If the application does not comply with the conditions for attribution of a date of application pursuant to Article 50 or is considered not to have been filed pursuant to Article 80 (2), the Office shall inform the applicant thereof directly, or, where this is not possible, by means of a publication as set out in Article 86.

#### *Article 53*

##### **Substantive examination**

The Office shall verify whether the variety may be the object of a Community plant variety right pursuant to

Article 5, whether the variety is new within the meaning of Article 10 and whether the applicant is entitled to file an application pursuant to Article 12. The Office shall verify the entitlement of the applicant to Community plant variety rights pursuant to Article 11 only if there are particular reasons for doubting such entitlement. The Office shall also verify whether the proposed variety denomination is suitable pursuant to Article 62. For such purposes, it may avail itself of the services of other bodies.

#### *Article 54*

##### **Technical examination**

1. Where the Office has not discovered any impediment to the grant of a Community plant variety right on the basis of the examination pursuant to Article 52 and 53, it shall arrange for the technical examination relating to compliance with the conditions laid down in Articles 7, 8 and 9 to be carried out by the competent office or offices in at least one of the Member States entrusted with responsibility for the examination of varieties of the species concerned by the Administrative Council (Examination Offices).

2. Where no Examination Office within the meaning of paragraph 1 is available, the Office may, with the consent of the Administrative Council, entrust other appropriate agencies with responsibility therefor or establish its own sub-offices for the purposes of the examination. For the purpose of the provisions of this chapter, such agencies or sub-offices shall be considered as Examination Offices.

3. The Office shall forward to the Examination Offices the numbers of copies of the application required by the implementing rules.

4. The Office shall determine, through general rules or through requests in individual cases, when, where and in what quantities and qualities the material for the technical examination is to be submitted.

5. Where the applicant makes a claim for priority pursuant to Article 51 (2) or (4), he must submit the necessary material and any further documents required within two years of the date of application pursuant to Article 50. If the earlier application is withdrawn or refused before the expiry of two years, the Office may require the applicant to submit the material or any further documents required within a specified time limit.

#### *Article 55*

##### **The conduct of technical examinations**

1. Unless a different manner of technical examination to check fulfilment of the conditions laid down in Articles 7, 8 and 9 has been arranged, the Examination Offices shall, for the purposes of the technical examination, grow the variety or undertake any other investigations required.

2. If the Administrative Council has issued test guidelines or the Office has given instructions for the conduct of the technical examinations, the Examination Offices shall base the examinations thereon.

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

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

5. In the case referred to in Article 54 (5), each Examination Office shall begin the technical examination, unless the Office has otherwise provided, no later than on the date on which an examination would also have begun on the basis of an application for grant of a national property right, provided the necessary material and any further documents required were submitted at the corresponding date.

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

7. The growing pursuant to paragraph 1 shall last until the decision on the grant of the Community plant variety right becomes final.

#### *Article 56*

##### **Examination reports**

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

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

3. Where the Office does not consider the examination report to constitute a sufficient basis for decision, it may provide for complementary examination, unless the applicant, who shall be consulted, objects thereto.

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

*Article 57***Costs of technical examinations**

The Office shall pay the Examination Office a fee in accordance with the implementing rules.

*Article 58***Objections**

1. Any person may lodge a written objection to the grant of a Community plant variety right with the Office.
2. Objectors shall be party to the proceedings for grant of the Community plant variety right in addition to the applicant.
3. Objections may be based only on the contention that:
  - (a) the conditions laid down in Article 7 to 11 are not satisfied;
  - (b) there is an impediment under Article 62 (3) or (4) to a variety denomination.
4. Objections under paragraph 3 may be lodged:
  - (a) at any time prior to the grant of the Community plant variety right, in the case of paragraph 3 (a);
  - (b) within three months of the publication of the variety denomination pursuant to Article 86 (1) (c), in the case of objections under paragraph 3 (b).

*Article 59***Priority of a new application in the case of objections**

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

*CHAPTER III***DECISIONS***Article 60***Refusal**

1. The Office shall refuse applications for grant of a Community plant variety right if and as soon as it establishes that the applicant:
  - (a) has not remedied any deficiencies within the meaning of Article 52 which he was given an opportunity to correct within the time limit notified to him;
  - (b) has not complied with a rule or request pursuant to Article 54 (4) or (5) within the time limit laid down, unless the Office has consented to non-submission;
  - (c) has not paid the due fee for the technical examination within the time limit laid down; or
  - (d) has not proposed a variety denomination which is suitable pursuant to Article 62, or in the case referred to in Article 62 (5) has objected to the variety denomination selected by the Office.
2. The Office shall also refuse applications for grant of a Community plant variety right if:
  - (a) it establishes that the conditions it is required to verify pursuant to Article 53 have not been fulfilled; or
  - (b) it reaches the opinion on the basis of the examination reports pursuant to Article 56, that the conditions laid down in Article 7, 8 and 9 have not been fulfilled.

*Article 61***Grant**

If the Office is of the opinion that the findings of the examination are sufficient to decide on the application and there are no impediments pursuant to Article 60, it shall grant the Community plant variety right. The decision must include an official description of the variety.

*Article 62***Variety denomination**

1. Where a Community plant variety right is granted, the Office shall designate, for the variety in question, the variety denomination proposed by the applicant pursuant to Article 49, if it considers, on the basis of the examination made pursuant to the third sentence of Article 53, that this denomination is suitable.

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

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

- (a) its use in the territory of the Community is precluded by the prior right of a third party;
- (b) it may commonly cause its users difficulties as regards recognition or reproduction;
- (c) it is identical or may be confused with a variety denomination under which another variety of the same or of a closely related species is entered in an official register of plant varieties or under which material of another variety has been marketed in a Member State or in a State party to the UPOV Convention, unless the other variety no longer remains in existence and its denomination has acquired no special significance;
- (d) it is identical or may be confused with other designations which are commonly used for the marketing of goods or which have to be kept free under other legislation;
- (e) it is liable to give offence in one of the Member States or is contrary to public policy; or
- (f) it is liable to mislead or to cause confusion concerning the characteristics, the value or the identity of the variety, or the identity of the breeder or discoverer or any other party to proceedings.

4. There is another impediment where, in the case of varieties which have already been entered

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

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

5. Where the applicant does not propose a suitable denomination the Office shall designate a denomination of its own motion, provided the applicant does not object.

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

#### CHAPTER IV

### THE MAINTENANCE OF COMMUNITY PLANT VARIETY RIGHTS

#### Article 63

##### Technical verification

1. The Office shall verify the continuing existence unaltered of the protected varieties.
2. For this purpose, a technical verification shall be carried out pursuant to Articles 54 and 55.
3. The holder shall be required to provide all the information necessary to assess the continuing existence unaltered of the variety to the Office and to the Examination Offices to which technical verification of the variety has been entrusted. He shall be required, in accordance with the instructions given by the Office, to submit material of the variety and to permit to verify whether appropriate measures have been taken to ensure the continuing existence unaltered of the variety.

#### Article 64

##### Report on the technical verification

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

#### Article 65

##### Amendment of the variety denomination

1. The Office shall amend a variety denomination designated pursuant to Article 62 if it establishes that the denomination does not satisfy, or no longer satisfies, the conditions laid down in Article 62 and in the event of a prior conflicting right of a third party, if the holder agrees to the amendment or the holder or any other person required to use the variety denomination has been prohibited, by a final judgment, for this reason from using the variety denomination.

2. The Office shall give the holder an opportunity to propose another variety denomination and shall otherwise proceed in accordance with Article 62.

3. Objections may be lodged against the new variety denomination in accordance with Article 58 (3) (b).

## CHAPTER V

### APPEALS

#### Article 66

#### Decisions subject to appeal

1. An appeal shall lie from decisions of the Office which have been taken pursuant to Articles 19, 20, 60, 61, 62 and 65 as well as on decisions related to objections pursuant to Article 58, to fees pursuant to Article 80, to the apportionment of costs pursuant to Article 82, to the entering or deletion of information in the Register pursuant to Article 84, to the public inspection pursuant to Article 85 and to publications pursuant to Article 86. It shall have suspensive effect.

2. An appeal against a decision which does not terminate proceedings as regards one of the parties may only be made in conjunction with an appeal against the final decision, unless the decision allows separate appeal.

#### Article 67

#### Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings who is adversely affected by a decision resulting from such proceedings may appeal. The other parties to those proceedings and the Office shall be party to the appeal proceedings.

#### Article 68

#### Time limit and form of appeal

Notice of appeal shall be filed in writing at the Office within two months of the notification of the decision from which the appeal is made and a written statement setting out the grounds of appeal shall be filed within four months after notification of the decision.

#### Article 69

#### Interlocutory revision

1. If the body of the Office which has prepared the decision considers the appeal to be admissible and well-founded, it shall rectify its decision. This shall not

apply where the appellant is opposed by another party to the proceedings.

2. If the appeal is not allowed within one month after receipt of the statement of grounds, it shall forthwith be remitted to the Board of Appeal.

#### Article 70

#### Examination of appeals

1. If the appeal is admissible, the Board of Appeal shall examine whether the appeal is well-founded.

2. When examining the appeal, the Board of Appeal shall as often as necessary invite the parties to file observations on notifications issued by itself or on communications from the other parties within specified time limits.

#### Article 71

#### Decision on appeal

The Board of Appeal shall decide on the appeal on the basis of the examination carried out pursuant to Article 70. The Board of Appeal may exercise any power which lies within the competence of the Office, or it may remit the case to the competent body of the Office for further action. The latter one shall, in so far as the facts are the same, be bound by the *ratio decidendi* of the Board of Appeal.

#### Article 72

#### Further appeal

1. A further appeal to the Court of Justice of the European Communities shall lie from decisions of the Board of Appeal. Such further appeals shall have suspensive effect.

2. The further appeal may be lodged on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation, or of any rule of law relating to their application or misuse of power.

3. The further appeal may be made by any party to the proceedings before the Board of Appeal who is adversely affected by its decision, or by the Commission or the Office.

4. The further appeal shall be lodged with the Court of Justice within two months of notification of the decision of the Board of Appeal.

5. The Office may intervene in the proceedings before the Court of Justice. It may also present observations without intervening in the proceedings.

6. If the Court of Justice remits the case for further action to the Board of Appeal, the Board shall, in so far as the facts are the same, be bound by the *ratio decidendi* of the Court of Justice.

#### CHAPTER VI

#### MISCELLANEOUS CONDITIONS GOVERNING PROCEEDINGS

##### Article 73

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

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

##### Article 74

#### Examination of the facts by the Office of its own motion

In proceedings before it the Office shall make investigations on the facts of its own motion, to the extent that they come under the examination pursuant to Articles 53 and 54. It may disregard facts or items of evidence which have not been submitted in due time by the parties involved.

##### Article 75

#### Oral proceedings

1. If the Office considers oral proceedings to be expedient, they shall be held either on the initiative of the Office itself or at the request of any of the parties to the proceedings.

2. Without prejudice to paragraph 3, oral proceedings before the Office shall not be public.

3. Oral proceedings before the Board of Appeal including delivery of the decision, shall be public in so far as the Board of Appeal before which the proceedings are taking place does not decide otherwise in circumstances where serious and unwarranted disadvantages could arise from admitting the public, particularly for any for the parties to the proceedings.

##### Article 76

#### Taking of evidence

1. In any proceedings before the Office, the means of giving or obtaining evidence shall include the following;

- (a) hearing the parties;
- (b) requests for information;

(c) the production of documents or other evidence;

(d) hearing the witnesses;

(e) opinions by experts;

(f) inspection;

(g) sworn affidavits.

2. Where the Office decides through a collective body, that body may commission one of its members to examine the evidence adduced.

3. If the Office considers it necessary that a party, witness or expert give evidence orally, it shall either:

(a) issue a summons requiring the relevant person to appear before it; or

(b) request the competent judicial or other authority in the country of domicile of the relevant person to take the evidence as provided for in Article 88 (2).

4. A party, witness or expert who is summoned before the Office may request it to allow his evidence to be heard by the competent judicial or other authority in his country of domicile. On receipt of such a request or in the case that no reaction was given to the summons, the Office may, in accordance with Article 88 (2), request the competent judicial or other authority to hear the evidence of that person.

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

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

##### Article 77

#### Service

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

through the competent variety offices of the Member States.

#### Article 78

##### *Restitutio in integrum*

1. Where, in spite of having taken all due care in the particular circumstances, the applicant or holder or any party to proceedings before the Office has been unable to observe a time limit *vis-à-vis* the Office, his rights shall, upon application, be restored if his failure to respect the time limit has resulted directly, by virtue of this Regulation, in the loss of any right or means of redress.
2. Applications shall be filed in writing within two months after the cause of non-compliance when the time limit has ceased to operate. The act omitted shall be completed within this period. Applications shall be admissible only within the period of one year following the expiry of the time limit which has not been observed.
3. An application shall be accompanied by a statement of the grounds on which it is based and the facts on which it relies.
4. The provisions of this Article shall not apply to the time limits referred to in paragraph 2 nor to the time limits specified in Article 51 (2), (4) and (5).
5. Any person who, in a Member State, has in good faith used or made effective and genuine arrangements to use a variety which is the subject of a published application for grant of a Community plant variety right, or of a Community plant variety right that has been granted, in the course of a period between the loss of rights pursuant to paragraph 1 in respect of the application or of a Community plant variety right that has been granted and the restoration of those rights, may without payment continue such use in the course of his business or for the needs thereof.

#### Article 79

##### Reference to general principles

1. In the absence of procedural provisions in this Regulation or in provisions adopted pursuant to this Regulation, the Office shall refer to the principles of procedural law which are generally recognized in the Member States.
2. Article 47 shall apply *mutatis mutandis* to the staff of the Office in so far as it is involved in decisions of the kind referred to in Article 66, and to the staff of the Examination Offices, in so far as it participates in measures for the preparation of such decisions.

#### CHAPTER VII

##### FEES, SETTLEMENT OF COSTS

#### Article 80

##### Fees

1. The Office shall charge fees for its official acts provided for under this Regulation as well as for each year of the duration of a Community plant variety right, pursuant to the fees regulations adopted in accordance with Article 108.
2. If fees due in respect of the official acts set out in Article 180 (2) or of other official acts referred to in the fees regulations, which are only to be carried out on application, are not paid, the application shall be deemed not to have been filed or the appeal not to have been lodged if the acts necessary for the payment of the fees have not been effected within one month of the date on which the Office served a new request for payment of fees and indicated in so doing these consequences of failure to pay.
3. If certain information provided by the applicant for grant of a Community plant variety right can only be verified by a technical examination which goes beyond the framework established for the technical examination of varieties of the taxon concerned, the fees for the technical examination may be increased, after having heard the person liable to pay the fees, up to the amount of the expenditure actually incurred.
4. In the case of a successful appeal, the appeal fees or, in case of a partial success, the corresponding part of the appeal fees, shall be refunded. However, the refund can be fully or partly refused if the decision is based on facts the raising of which was delayed.

#### Article 81

##### Termination of financial obligations

1. The Office's right to require payment of fees shall lapse after four years from the end of the calendar year in which the fees became due for payment.
2. Rights against the Office for the refunding of fees or of sums overcharged by the Office shall lapse after four years from the end of the calendar year in which the rights arose.
3. A request for payment of a fee shall have effect to interrupt the time limit specified in paragraph 1, and a written and reasoned claim for refund shall have effect

to interrupt the time limit specified in paragraph 2. After interruption the time limit shall begin to run again immediately and shall terminate at the latest six years after the end of the calendar year in which it originally commenced, unless in the meantime judicial proceedings to enforce the right have been instituted; in this case the time limit shall end not earlier than one year after the judgment has acquired the authority of a final decision.

#### Article 82

##### Apportionment of costs

1. Each party to objection proceedings or to proceedings for revocation or cancellation of a Community plant variety right, or to appeal proceedings shall meet the costs he has incurred unless a decision of the Office or the Board of Appeal, for reasons of equity, orders a different apportionment of essential costs, including travel and subsistence and the remuneration of an agent, adviser or lawyer. A decision on the apportionment of costs may also be taken on request when a Community plant variety right application, an objection or an application for revocation or cancellation of the Community plant variety right is withdrawn, or where the holder surrenders it pursuant to Article 18 (2).

2. The Office shall, upon application, determine the amount of costs to be paid where a decision is taken pursuant to paragraph 1 to divide them.

#### Article 83

##### Enforcement of decisions which determine the amount of costs

1. Final decisions of the Office which determine the amount of costs shall be enforceable.

2. Enforcement shall be governed by the rules of civil procedure applicable in the Member State in which it takes place. Subject only to verification that the relevant document is authentic, the enforcement clause or endorsement shall be appended by the national authority appointed for that purpose by the Government of each Member State; the Governments shall inform the Office and the Court of Justice of the European Communities of the identity of each such national authority.

3. When, upon application by the party seeking enforcement, these formalities have been completed, it shall be entitled to proceed to endorsement under national law by bringing the matter directly before the competent body.

4. Enforcement shall not be suspended except by decision of the Court of Justice of the European Com-

munities. Control as to the regularity of enforcement measures shall, however, reside with the national courts.

### CHAPTER VIII

#### REGISTER OF COMMUNITY PLANT VARIETY RIGHTS, INFORMATION OF THE PUBLIC

#### Article 84

##### Establishment of the Register

1. The Office shall keep a Register of Community Plant Variety Rights wherein, after grant of a Community plant variety right, the following particulars shall be entered:

- (a) the species and variety denomination of the variety;
- (b) the official description of the variety or a reference to documents in the Office's possession in which the official description of the variety is contained as integrating part of the Register;
- (c) in the case of varieties for which material with specific components has to be used repeatedly for the production of material, a reference to such components;
- (d) the names and addresses of:
  - the holder,
  - the original breeder or discoverer,
  - the procedural representative;
- (e) the date on which the Community plant variety right begins and ends, together with the reasons for the termination of the right;
- (f) any contractual exclusive exploitation right, if the holder or the licensee in submitting documented evidence so requests, or compulsory exploitation right, including the name and address of the person enjoying the right of exploitation;
- (g) any levy of execution pursuant to Article 23, if a party thereto so requests;
- (h) any other particular as may be specified in the implementing rules pursuant to Article 109.

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

the variety comparable with the descriptions of other varieties of the taxon concerned.

3. Changes in holdership or in the identity of a procedural representative shall be entered in the Register if supporting evidence is provided to the Office.

4. The holder shall be required, in accordance with the instructions given by the Office, to deposit a reference sample of individuals of the variety. This sample shall be referred to for determining the identity of the variety.

#### *Article 85*

##### **Public inspection**

1. The following shall be open to public inspection, in accordance with the conditions set up in the implementing rules pursuant to Article 109:

- (a) the Register of Community plant variety rights;
- (b) documents relating to published applications for grant of a Community plant variety right;
- (c) documents relating to Community plant variety rights already granted;
- (d) the growing of varieties for the purposes of their technical examination;
- (e) the growing of varieties for the purpose of verifying their continuing existence;
- (f) the reference samples deposited pursuant to Article 84 (4).

2. Documents relating to applications for grant of a Community plant variety right which have not yet been published shall be made available for inspection only:

- (a) with the consent of the applicant; or if
- (b) the person seeking inspection can prove that the applicant has stated, directly or indirectly, that after the Community plant variety right has been granted he may invoke the rights under it against that person.

3. In the case referred to in Article 84 (1) (c), at the request of the applicant, all data relating to components, including their cultivation, shall be withheld from inspection. Such a request for withholding from inspection may not be filed once the decision on the application for grant of a Community plant variety right has been taken.

4. Materials submitted or obtained in connection with examinations under Articles 54 (4), 55 and 63 may not be given to other parties by the competent authorities under this Regulation unless the person entitled gives his consent or such transfer is required in connection

with the cooperation covered by this Regulation for the purposes of the examination or by virtue of legal provisions.

#### *Article 86*

##### **Periodical publications**

1. The Office shall periodically publish the following in a publication which shall be specified by the Administrative Council:

- (a) applications for grant of a Community plant variety right together with a statement of the taxon and the provisional designation of the variety, the date of application and the name and address of the applicant, of the original breeder or discoverer and of any procedural representative;
- (b) any cases of termination of proceedings for grant of a Community plant variety right together with the information set out in subparagraph (a);
- (c) proposals for variety denominations;
- (d) grants of Community plant variety rights together with the information laid down in Article 84 (1) (a), (d) and (e);
- (e) any cases of termination of Community plant variety rights together with the information set out above;
- (f) any cases of creation or termination of contractual exclusive exploitation rights or compulsory exploitation rights, in the case of Article 84 (1) (f);
- (g) amendments to variety denominations pursuant to Article 65;
- (h) changes in holdership or in the identity of a procedural representative pursuant to Article 84 (3);
- (i) any levy of execution pursuant to Article 23, if a party thereto so requests.

2. In addition, the publication shall contain notices and information of a general character issued by the Office, and may contain any other information relevant to this Regulation or its implementation.

#### *Article 87*

##### **Exchange of information and of publications**

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

2. The data referred to in Article 85 (3) shall be excluded from information, unless;

- (a) the information is necessary for the conduct of the examinations pursuant to Articles 54 and 63; or
- (b) the applicant or holder gives his consent.

each other by communicating information or opening files related to the variety, and samples or growing thereof for inspection. Where the Office lays files, samples or growing thereof open to inspection by courts or public prosecutors' offices, the inspection shall not be subject to the restrictions laid down in Article 85.

#### *Article 88*

##### **Administrative and legal cooperation**

1. Unless otherwise provided in this Regulation or in national law, the Office and the courts or authorities of the Member States shall on request give assistance to

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

### PART FIVE

#### **IMPACT ON OTHER LAWS**

#### *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 matter 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 90*

##### **Application of national law**

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

### PART SIX

#### **CIVIL LAW CLAIMS, INFRINGEMENTS, JURISDICTION**

#### *Article 91*

##### **Infringement of Community plant variety rights**

1. Whosoever:

- (a) effects one of the acts set out in Article 13 (2) without being entitled to do so, in respect of a variety

for which a Community plant variety right has been granted; or

- (b) contrary to Article 17 (3) uses the variety denomination of a variety for which a Community plant variety right has been granted or a designation that may be confused with it,

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

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

#### Article 92

##### Acts prior to grant of Community plant variety rights

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

#### Article 93

##### Prescription

Claims pursuant to Articles 91 and 92 shall be barred by prescription after three years from the time at which the holder has knowledge of the act and of the identity of the party liable or, irrespective of such knowledge, after 30 years from the termination of the act concerned.

#### Article 94

##### Supplementary application of national law regarding infringement

1. Where the party liable pursuant to Article 91 has, by virtue of the infringement, made any gain at the expense of the holder or of a person entitled to exploitation rights, the courts competent pursuant to Article 97 or 98 shall apply their national law, including their private international law, as regards restitution.

2. Paragraph 1 shall also apply as regards other claims that may arise in respect of the performance or omission of acts pursuant to Article 92 in the time between publication of the application for grant of a Community plant variety right and the disposal of the request.

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

#### Article 95

##### Claiming entitlement to a Community plant variety right

1. If a Community plant variety right has been granted to a person who is not entitled to it under Article 11, the person entitled to it may, without prejudice to any other remedy which may be open to him under the laws of the Member States, claim to have the right to the Community plant variety right transferred to him.

2. Where a person is entitled to only part of a Community plant variety right, that person may, in accordance with paragraph 1, claim to be made a joint holder.

3. Claims pursuant to paragraphs 1 and 2 may be invoked only within a period of up to five years of publication of the grant of the Community plant variety right. This provision shall not apply if the holder knew, at the time it was granted to or acquired by him, that he was not entitled to such rights or that entitlement thereto was not vested solely in him.

4. The person entitled shall be eligible *mutatis mutandis* to pursue claims pursuant to paragraphs 1 and 2 in respect of an application for grant of a Community plant variety right filed by a person who was not entitled to it or in whom the entitlement was not vested solely.

#### Article 96

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

1. In the event of a complete change in the holdership of a Community plant variety right in consequence of a final judgement delivered pursuant to Article 97 or 98 for the purposes of claiming entitlement under Article 95 (1), any exploitation or other rights shall lapse with the entry of the person entitled in the Register of Community Plant Variety Rights.

2. Where the holder or a person enjoying the right of exploitation has effected one of the acts set out in Article 13 (2) or has made effective and genuine arrangements to do so prior to the commencement of the proceedings pursuant to Article 97 or 98, they may continue or perform such acts provided they request a non-exclusive exploitation right from the new holder entered in the Register of Community Plant Variety Rights. Such requests must be made within the time limit laid down in the implementing rules. The exploitation right shall be granted by the Office for a reasonable period on reasonable conditions.

3. Paragraph 2 shall not apply where the holder or persons enjoying the right of exploitation acted in bad

faith when they effected the acts or began to make the arrangements.

#### *Article 97*

##### **Jurisdiction and procedure in legal actions relating to civil law claims**

1. The Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Lugano on 16 September 1988, hereinafter referred to as 'the Convention', as well as the complementary provisions of this Article and of Articles 98 to 102 of this Regulation shall apply to proceedings relating to actions in respect of the claims referred to in Articles 91 to 96.

2. Proceedings of the type referred to in paragraph 1 shall be brought in the courts:

- (a) of the Member State or another Contracting Party to the Convention in which the defendant is domiciled or has his seat or, in the absence of such, has an establishment; or
- (b) if this condition is not met in any of the Member States or Contracting Parties, of the Member State in which the plaintiff is domiciled or has his seat or, in the absence of such, has an establishment; or
- (c) if this condition is also not met in any of the Member States, of the Member State in which the seat of the Office is located.

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

3. Proceedings relating to actions in respect of claims for infringement may also be brought in the courts for the place where the harmful event occurred. In such cases, the court shall have jurisdiction only in respect of infringements alleged to have been committed in the territory of the Member State to which it belongs.

4. The legal processes and the competent courts shall be those that operate under the laws of the State determined pursuant to paragraph 2 or 3.

#### *Article 98*

##### **Supplementary provisions**

1. Actions for claiming entitlement pursuant to Article 95 shall not be considered to fall under the provisions of Article 5 (3) and (4) of the Convention.

2. Notwithstanding Article 97, Articles 5 (1), 17 and 18 of the Convention shall apply.

3. For the purposes of applying Articles 97 and 98, the domicile or seat of a party shall be determined pursuant to Articles 52 and 53 of the Convention.

#### *Article 99*

##### **Rules of procedure applicable**

Where jurisdiction lies with national courts pursuant to Articles 97 and 98, the rules of procedure of the relevant State governing the same type of action relating to corresponding national industrial property rights shall apply without prejudice to Articles 100 and 101.

#### *Article 100*

##### **Entitlement to bring an action for infringement**

1. Actions for infringement may be brought by the holder. Persons enjoying exploitation rights may bring such actions only if the holder consents thereto.

2. Any person enjoying exploitation rights shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the holder.

#### *Article 101*

##### **Obligation of national courts or other bodies**

A national court or other body hearing an action relating to a Community plant variety right shall treat the Community plant variety right as valid.

#### *Article 102*

##### **Stay of proceedings**

1. Where an action relates to claims pursuant to Article 95 (4) and the decision depends upon the protectability of the variety pursuant to Article 6, this decision may not be given before the Office has decided on the application.

2. Where an action relates to a Community plant variety right that has been granted and in respect of which proceedings for revocation or cancellation pursuant to Article 19 or 20 have been initiated, the proceedings may be stayed in so far as the decision depends upon the validity of the Community plant variety right.

*Article 103***Penalties for infringement of Community plant variety rights**

Member States shall ensure that on 1 July 1992 at the latest the same provisions are made applicable to pen-

alize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national industrial property rights.

**PART SEVEN****BUDGET, FINANCIAL CONTROL, COMMUNITY IMPLEMENTING PROVISIONS***Article 104***Budget**

1. Estimates of all the Office's revenue and expenditure shall be prepared for each financial year and shall be shown in the Office's budget, and each financial year shall correspond with the calendar year.
2. The revenue and expenditure shown in the budget shall be in balance.
3. Revenue shall comprise, without prejudice to other types of income, total fees payable pursuant to Article 80 under the fees regulations adopted in accordance with Article 108 and, to the extent necessary, a subsidy from the general budget of the European Communities, entered under a specific heading of the Commission Section.

*Article 105***Preparation of the budget**

1. The President shall draw up each year an estimate of the Office's revenue and expenditure for the following year and shall send it to the Commission not later than 31 March each year, together with an establishment plan and an opinion from the Administrative Council.
2. The Commission shall annex the estimate to the preliminary draft budget of the European Communities. The Commission may attach an opinion on the estimate along with an alternative estimate. If a subsidy under Article 104 (3) is necessary, the Commission may propose such amendment of the estimate as it considers requisite.
3. The Office's budget shall be adopted by the budget authority in accordance with the same procedure as the general budget.
4. Where appropriations for unforeseen expenditure are contained in a budget, the use thereof shall be subject to the prior approval of the Administrative Council.

*Article 106***Control**

1. Not later than 31 March each year the President shall send the Commission and the Court of Auditors accounts of the Office's total revenue and expenditure for the preceding financial year. The Court of Auditors shall examine them in accordance with Article 206a of the Treaty.
2. The European Parliament shall give a discharge to the President of the Office in accordance with the procedure laid down in Article 206b of the Treaty.
3. Control of commitment and payment of all expenditure and control of the existence and recovery of all revenue of the Office shall be carried out by the Financial Controller of the Commission.

*Article 107***Financial provisions**

The Financial Regulations applicable to the general budget of the European Communities shall apply to the Office.

*Article 108***Fees regulations**

1. The fees regulations shall determine in particular the circumstances under which fees are due pursuant to Article 80 (1), the amounts of the fees to be paid and the ways in which they are to be paid.
2. Fees shall be provided for at least in respect of the following official acts:
  - (a) the processing of applications for grant of a Community plant variety right, comprising the following measures:
    - the formal examination,
    - the substantive examination,

- the examination of the variety denomination,
  - the decision,
  - any notices;
- (b) the arranging or carrying out of the technical examination;
- (c) the processing of an appeal including the decision.
3. The amounts of the fees shall be fixed in such a manner that, after a transitional period, the Office's revenue covers at least its total variable expenditure.
4. The fees regulations shall be adopted in accordance with the procedure laid down in Article 110, after consultation of the Administrative Council on the draft of the measures to be taken.

#### *Article 109*

##### **Other implementing provisions**

1. Detailed implementing rules shall be adopted for the purpose of applying this Regulation. They shall in particular include provisions defining the relationship between the Office and the Examination Offices, agencies or its own sub-offices referred to in Articles 29 (4) and 54 (1) and (2), and may include provisions on matters referred to in Article 38 (1) second sentence, (2), (5) and (6).
2. The procedure of the Boards of Appeal shall be determined in rules of procedure of the Boards of Appeal.

3. The implementing rules and the rules of procedure of the Boards of Appeal shall be adopted in accordance with the procedure laid down in Article 110, after consultation of the Administrative Council on the draft of the measures to be taken.

#### *Article 110*

##### **Procedure**

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

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

## PART EIGHT

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 111*

##### **Derogations**

1. Notwithstanding Article 10 (1) (a), a variety shall be deemed to be new also in cases where individuals thereof were disposed of to others in the territory of the Community for commercial purposes, within four years, in the case of vine or tree species within six years, before the entry into force of this Regulation, if the date of application is within one year of that date.

2. Notwithstanding Article 51 (2), the applicant for the grant of Community plant variety rights may claim the priority of an earlier application in one of the Member States also in cases, where the earlier application was filed within four years, in the case of vine or tree species within six years, before the entry into force of this Regulation, if the date of application is within

one year of that date. The first sentence shall apply also to cases where the property right has already been granted in the Member State concerned and is still valid.

#### *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.

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FINANCIAL STATEMENT

concerning :

A proposal for a Council Regulation (EEC) on Community plant variety rights (1)

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1. Budget heading : IIIB    Item : 5101    Title : Realisation of the internal market in the field of agriculture

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2. Legal basis : art. 43

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3. Classification : Non-compulsory expenditure

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4. Purpose / description of the measure : In order to permit the introduction of Community-wide plant breeders' rights in the context of the single market, it is necessary to set up a Community variety office.

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5. Method of calculation :

5.1 Form of expenditure : Participation in the administrative costs of the office.

5.2 Community contribution : Subsidy based on real needs.

5.3 Calculation : Total estimated administrative costs of the office amount to 3.5 MECU per year. This includes accommodation and staffing (2,0 MECU, assuming 20 staff members) as well as the variable costs of the office (1,5 MECU, trials costs, reimbursement for activities of national institutions, inspection of trials, meetings, translation, etc.). Trials costs of 0,5 MECU would be charged entirely to plant breeders from the beginning. The remaining variable costs initially to be covered by the Community would be phased out over a 3 year period after the first year of full establishment of the office, i.e. 1994.

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6. Financial implication as regards operating appropriations :

6.1 Schedule of appropriations (m ECU)

<u>Year</u>	
1991	p.m
1992	0.8 (2)
1993	1.5 (2)
1994	3.0 (3)
1995	2.7
1996	2.4
Following years	2.0 max.
TOTAL 91-96	10.4

6.2 Financing during current year : nil

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7. Observations :

- (1) This measure appears in the Commission's White Paper for completing the internal market in the field of agriculture.
- (2) Only half of the staff foreseen will be engaged in the first two years.
- (3) It is estimated that from 1994 until 1997 each year an additional 0,3-0,4 MECU of the variable costs can be covered by the office's revenue from charging fees to plant breeders.

COMPETITIVENESS AND EMPLOYMENT IMPACT STATEMENT

I What is the main reason for introducing the measure?

To establish a Community system for the protection of the breeding or the detection of new plant varieties (industrial property right sui generis, as established by UPOV and implemented by most Member States) with the aim to ensure that breeders may acquire, by the time of the completion of the internal market, protection through a single decision with direct and uniform effect in the whole of the Community.

II Features of the businesses in question. In particular:

a) Are they many SMEs?

Plant breeders are directly concerned; merchants and users of material of protected plant varieties, including farmers, are indirectly concerned; both groups comprise many SMEs.

b) Are they concentrated in regions which are:

i. eligible for regional aid in the Member States?

Not so far as Commission services are aware

ii. eligible under the ERDF?

Not so far as Commission services are aware

III What direct obligations does this measure impose on businesses?

The obligations are those which are already established under the current national plant breeders' rights; merchants and users of material of protected plant varieties would need the consent of the breeder (licence).

IV What indirect obligations are local authorities likely to impose on businesses?

The Commission services can foresee none.

V Are there any special measures in respect of SMEs? Please specify.

No specific measures.

VI What is the likely effect on:

a) the competitiveness of businesses?

This is difficult to assess: one of the reasons to safeguard the genuine "breeders' exemption" is to further the position of competitiveness of SME breeders with others.

b) employment?

Expected to be neutral.

VII Have both sides of industry been consulted? Please indicate their opinions

The representatives of plant breeders as well of users have been consulted through their Community organisations and have expressed themselves in favour of the general concept of the proposed scheme.