



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.04.1995  
COM(95) 144 final

95/ 0091(CNS)

Proposal for a

COUNCIL REGULATION (EC)

amending Council Regulation (EC) 2100/94 on Community plant variety rights

(presented by the Commission)

Explanatory memorandum

[REDACTED]

Council Regulation (EC) 2100/94 on Community plant variety rights has established a new Community regime which provides for the grant, at Community level, of plant variety rights, a specific form of industrial property rights system for new plant varieties. These rights will have a direct and uniform effect throughout the Community.

For the purpose of the implementation of this Regulation, a Community Plant Variety Office, hereinafter referred to as "the Office", has been established on 01.09.1994, the date of entry into force of the Regulation.

The Office is responsible for taking the decisions required under the regime.

The Office may in particular take a decision on

- the grant of a Community plant variety right and its termination by declaring it null and void or cancelling it;
- the approval of a variety denomination or the amendment of an approved variety denomination;
- any objection against an application for a Community plant variety right or against a proposal for a variety denomination;
- fees and/or costs due to be paid by parties to proceedings before the Office;
- the entry or deletion of information in the Register for Applications for Community Plant Variety Rights and the Register of Community Plant Variety Rights;
- the public inspection of documents and/or the growing of material of the varieties concerned; and
- the grant of a compulsory exploitation right or an exploitation right pursuant to Article 100(2) of the Regulation, including the amendment or cancellation of such rights.

The decisions listed above are subject to appeal to the Board(s) of Appeal established within the Office. In addition, Community judicial protection is provided for in respect of the decisions of the Boards of Appeal on any appeal against decisions of the Office (Article 73 of the Regulation), or in the case of exploitation rights, in particular compulsory exploitation rights (Article 74 of the Regulation) directly in respect of decisions taken by the Office.

This judicial protection is ensured by the Court of Justice of the European Communities and the Court of First Instance of the European Communities, respectively, which exercise the jurisdiction in the same manner as in other fields of new Community industrial property rights such as the Community Trade Mark.

For that purpose, the Court of First Instance transmitted amendments to its Rules of Procedure of 2.5.1991 (JO No L 136 of 30.05.1991, p. 1), as last amended on 15 September 1994 (OJ No L 249 of 24.09.1994, p. 17) on 22 September 1994 to the Council of the European Union for approval. These amendments provide for special provisions for proceedings relating to intellectual property rights.

The attached Commission proposal for amending Council Regulation No 2100/94 aims at clarifying the provisions relating to the proceedings which may be instituted before the Courts. Such clarification should be attained by aligning the relevant provisions with those already established in comparable fields, in particular by Article 63 of Council Regulation (EC) No 40/94 on the Community Trade Mark (OJ No L 11, 14.01.1994). Such alignment should be achieved prior to 27.04.1995, the date on which the new Community regime shall apply in full.

#### Subsidiarity

- a) What are the objectives of the measure in relation to obligations with which the Community is charged?

The measure pursues the same objective as the basic Regulation, i.e. to ensure compatibility with the requirements of the single market concept; the proposal does not affect the co-existence of national regimes with the Community system.

- b) Does the measure arise from an area where there is exclusive Community competence or where competence is shared with Member States?

Exclusive Community competence in respect of the Community systems of industrial property rights.

- c) What forms of actions are at the disposal of the Community?

Amendment to an already adopted regulation, exclusively.

- d) Is uniform regulation necessary or would a directive imposing general objectives suffice, leaving execution to be carried out at Member State's level?

Uniform regulation is necessary.

The proposal would have no impact on small or medium-sized enterprises and no financial implications for the budget for the European Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 Council Regulation (EC) 2100/94 of 27 July 1994<sup>1</sup> and any regulation amending this Regulation are directly concerned with the production and marketing of agricultural products and in particular material for the propagation of plants of the varieties protected; whereas these measures contribute to technical progress to increase agricultural productivity through the continued breeding of improved plant varieties;

Whereas it is appropriate, considering the need to ensure coherence of the system of appeal procedures to the Community jurisdiction in the different fields of industrial and commercial property, to align the rules on actions which may be brought against decisions of the Community Plant Variety Office or its Boards of Appeal established by the aforementioned Regulation with those provided for in Council Regulation (EC) No 40/94 of 20 December 1993 on the Community Trade Mark<sup>2</sup>;

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<sup>1</sup> OJ No L 227, 01.09.1994

<sup>2</sup> OJ No L 11, 14.01.1994

Whereas under Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities<sup>3</sup>, as last amended by Decision 94/149/ECSC, EC of 7 March 1994<sup>4</sup>, that Court shall exercise at the first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities - with particular regard to appeals lodged under the fourth subparagraph of Article 173 of the EC Treaty - and by the acts adopted in implementation thereof, save as otherwise provided in an act setting up a body governed by Community law; whereas the jurisdiction which this Regulation confers on the Court of Justice to annul or to alter decisions of the Boards of Appeal and in specific cases decisions of the Office shall accordingly be exercised at the first instance by the Court mentioned above in accordance with the above Decision;

HAS ADOPTED THIS REGULATION:

#### Article 1

Council Regulation (EC) 2100/94 is hereby amended as follows:

1. Article 67(3) is hereby amended as follows:

- In the German version, the words "direkte Beschwerde" are replaced by the words "unmittelbare Klage", and the word "eingelegt" is replaced by the word "erhoben".
- In the English version, the words "direct appeal" are replaced by the words "direct action", and the word "lodged" is replaced by the word "brought".

2. Article 73 is replaced by the following:

#### "Actions against decisions of the Board of Appeal

1. Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.
2. The action may be brought on grounds of lack of competence, infringements of an essential procedural requirements, infringement of the Treaty, of this Regulation or of any rule of law relating to their application of misuse of power.

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<sup>3</sup> OJ No L 319, 25.11.1988, p. 1 and corrigendum in OJ No L 241, 17.08.1989, p. 4

<sup>4</sup> OJ No L 66, 10.03.1994, p. 29

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- [REDACTED]
- [REDACTED]
3. The Court of Justice has jurisdiction to annul or to alter the contested decision.
  4. The action shall be open to any party to appeal proceedings which has been unsuccessful in its submissions.
  5. The action shall be brought before the Court of Justice within two months of the date of service of the decision of the Board of Appeal.
  6. The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice."
3. Article 74 is hereby amended as follows:
- In the German version, the title is replaced by "Unmittelbare Klage", and in paragraph (1), the words "Beschwerde direkt" are replaced by the words "unmittelbare Klage" and the word "eingelegt" is replaced by the word "erhoben".
  - In the English version, the title is replaced by "Direct action", and in paragraph (1), the words "A direct appeal to the Court of Justice of the European Communities may lie from" are replaced by the words "A direct action may be brought before the Court of Justice against".

Article 2

This Regulation shall enter into force on 27 April 1995.

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

Done at Brussels,

For the Council,

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