

Act on amendment of act on Plant Variety Protection

WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby make known:

The Danish Parliament has adopted and We by Our consent have confirmed the following act:

Article 1

In Act no. 866 of December the 23rd 1987 on Plant Variety Protection, as amended by act no. 1107 of December the 21st 1994, is the following amendments established:

1. *Art. 1, (1)*, is thus drawn up:

“Varieties of all species and genera of plant may be protected as plant novelties if at the time of granting of protection they are

- 1) independent, by which is meant that they are distinguishable by one or more characteristics, or by a combination of characteristics, from any other variety known at the time when protection is applied for,
- 2) sufficiently uniform,
- 3) stable in their specific characteristics (main characteristics) when propagated in accordance with the method specified by the breeder and
- 4) new, by which is meant that the propagating material or harvested material of the variety has not prior to the application been offered for sale, sold or in any other manner transferred with the consent of the owner of the variety and with a view to commercial utilisation,
 - a) in this country for more than one year, or
 - b) in a foreign country for more than four years or, in the case of grape vines, trees and their root-stocks, for more than six years.”

2. *Art. 1, (2)*, is repealed, and instead is inserted:

“(2) Notwithstanding paragraph 1, no. 4, a variety is considered a novelty,

- 1) even though material of the variety has been sold or transferred
 - a) to an official institution for legal purposes,
 - b) to others in accordance with a contract or other legally binding arrangement with a view solely to propagation or treatment and storage for the purpose of propagation, provided that the recipient did not hold a right of disposal over the material of the variety, or
 - c) by one company to another company, if one of the companies is owned by the other, or if both companies are owned by a third company, provided that none of the companies are co-operative societies, and
- 2) even though propagation material or harvested material of the variety produced from plants that have been cultivated for the purpose of experiments or breeding has been offered for sale, sold or transferred to others provided that this has happened without reference to the variety.
- (3) Paragraph (2) does not apply to varieties used for the production of a hybrid variety if repeated use of the variety is necessary for the production, and if material of the hybrid variety has been sold or transferred to others.”

3. *Art. 2* is thus drawn up:

“**Art. 2.** The Ministry of Agriculture and Fisheries may, as an exception, approve the protection of a variety that does not satisfy the conditions laid down in Article 1 (1), No. 4, if it is considered to be of economic interest to agriculture.”

4. In Art. 3 (2) 2nd sentence, “The European Economic Community” is amended to” The European Union”.

5. Art.9 is thus drawn up:

“Art. 9.

(1) Before a variety for which an application has been filed can obtain protection, cf., however, Article 21, the Board for Plant Novelties shall establish whether the variety can be considered to fulfil the conditions herefore, including whether it has the special characteristics mentioned in the application. To this end the Board shall arrange for an examination of the variety to the necessary extent.

(2) The applicant may be required to pay a fee to cover the costs incurred by the Board in connection with examining the variety.”

6. Art. 10 (1) is thus drawn up:

“If the variety is considered to satisfy the conditions for protection, the Board for Plant Novelties shall enter the variety in the Register of Plant Novelties under a variety denomination, which has been approved in accordance with provisions laid down by the Minister of Agriculture and Fisheries.”

7. In art. 10 is inserted after (1) as a new paragraph:

“(2) The Board for Plant Novelties may refuse registration of a variety if the holder of the variety does not within a fixed time-limit comply with the Board’s request to propose a name for the variety or fails to propose a new name, where the Board has found that the name proposed does not satisfy the conditions for approval.”

Paragraph (2) hereafter becomes paragraph (3).

8. In art. 12 is inserted as paragraph (3):

“(3) Irrespective of paragraph (1) of this section the Minister of Agriculture and Fisheries may lay down provisions to the effect that the validity of the certificate of protection for varieties of further specified species and genera can be extended for a period of up to 30 years.”

9. Art. 14, (2), is thus drawn up:

“(2) The Board for Plant Novelties may further delete a plant novelty from the Register of Plant Novelties if the holder of the variety does not within the time-limit fixed by the Board comply with the Board’s request

1) to make available to the Board the material needed for the post-control or

2) to propose a new name for the variety in cases where the Board has subsequently found that the approved name does not satisfy the provisions laid down by the Minister of Agriculture and Fisheries.”

10. In Art. 14, (3), is “the ruling of the Board for Plant Novelties” amended to: “the decision of the Board for Plant Novelties” and “the court of justice” is amended to “the law-courts”

11. Art. 16 is thus drawn up:

“(1) Material of a plant novelty may only

1) be used for commercial production, propagation or treatment and storage with a view to propagation, and

2) be offered for sale, sold, transferred or stored with a view to sale or transfer subject to permission by the holder of the variety and only on the terms and conditions, including payment of an appropriate royalty, specified by the holder.

(2) The Minister of Agriculture and Fisheries may lay down provisions to the effect that any person propagating plant novelties of specified species for professional use on his own holding shall pay a royalty to the holder of the variety.

- (3) Any person who propagates a plant novelty or sells propagating material of the plant novelty shall provide the holder of the variety with the information necessary for calculation and collection of royalty.
- (4) Paragraphs (1) - (3) shall apply correspondingly
- 1) to harvested material obtained from the use of propagation material of a plant novelty, if the holder of the variety
 - a) has not permitted such use of the material and
 - b) has not had the possibility of exercising his rights to the material in accordance,
 - 2) to varieties that
 - a) are essentially derived from a plant novelty if this is not itself essentially a derived variety or
 - b) are not independent in relation to the plant novelty, cf. Article (1) (1), or
 - c) can be produced only by repeated use of the plant novelty.
- (5) The Ministry of Agriculture and Fisheries may decide that on the conditions laid down in paragraph (4) no. 1, a) and b), paragraphs (1) - (3) shall also apply to products produced from propagation material of a plant novelty or any harvested material obtained therefrom.
- (6) The conditions specified by the holder of the variety, cf. paragraph (1) may only concern the use and offer for sale as stated in paragraph (1), nos. 1 and 2, and royalties. The terms and conditions shall be reasonable and identical for all producers.”
12. *Art. 17* is thus drawn up:
“**Art. 17.** Plant novelties may be used freely for research and breeding activities.”
13. *Art. 18* with appurtenant subtitle is repealed.
14. *Art. 19, (1)*, is repealed.
Paragraphs (2)-(4) hereafter becomes paragraphs (1)-(3).
15. In *Art. 19, (2)*, which becomes paragraph (1), is “reasonable” amended to: “in accordance with Article 16 (6)”, and “unreasonable” is amended to “not in accordance with Article 16 (6)”.
16. In *art. 19, (3)*, which becomes paragraph (2), is inserted after “25 years”: “(30 resp.) years, cf. Article 12 (3),”.
17. In *art. 19, (4)*, which becomes paragraph 3, is “Paragraph 3” amended to: “Paragraph 2”.
18. *Art. 20* is thus drawn up:
“**Art. 20.** If the Minister of Agriculture and Fisheries considers it necessary to ensure distribution of a plant novelty or to prevent substantial deterioration of the conditions for a branch of industry, he may after consultation with the Terms Board for Plant Novelties order the holder of the variety to give one or more persons permission for the commercial propagation and sale of propagating material of a plant novelty and to fulfil, or cause others to fulfil, orders for suitable propagating material within a reasonable time-limit. The provisions of Article 16 shall apply correspondingly.”
19. In *art. 21, (1)*, “and for the time of the notice undertakes the obligation, which is mentioned in art. 18” is omitted.
20. *Art. 22* is thus drawn up:
“**Art. 22.** The Minister of Agriculture and Fisheries shall set up a board, the Board for Plant Novelties, to administer the provisions of Chapters 2 and 3 of the Act, and a board, the Terms Board for Plant Novelties, to deal with disputes concerning the terms and conditions of royalties, cf. Chapter 4.
(2) The Minister of Agriculture and Fisheries shall lay down the composition and functions of the in the rules of procedure of the Boards.”
21. *Art. 25* is thus drawn up:
“**Art. 25.** The Ministry of Agriculture and Fisheries may lay down provisions concerning

- 1) fees to cover the costs incidental to dealing with applications, cf. Article 3 (4), and to the prolongation of the validity of the certificate of protection, cf. Article 12 (2), and for total or partial covering of the costs of examination, cf. Article 9 (2),
 - 2) interest in connection with late payment of fees, and
 - 3) fees for letters of reminder.
- (2) Distress may be levied on fees and interest charged pursuant to paragraph (1).”
- 22.** In *art. 26, (1)*, “art. 16, (1) or (2)” is amended to: “art. 16, (1), (3) or (4)”.
- 23.** In *art. 26, (2)*, *no. 2* is thus drawn up:
“2) fails to comply with an order given pursuant to Article 19 (1), 2nd sentence, and Article 20 shall likewise be punished by a fine.”
- 24.** In *art. 26, (3)*, “Art. 16, (3)” is amended to: “art. 16, (2) and (5)”, and as a new 2nd sentence “Any contravention of regulations laid down according to Article 16 (2) and (5), shall be subject to private prosecution.” is inserted.

Article 2

- (1) The Act shall come into force on 1 January, 1996.
- (2) Article 1 (3) as drawn up in Article 1, no.2, of this Act shall apply only to varieties for which an application for protection was filed not later than 31 December, 1995.
- (3) Article 16 (4), no. 2, as drawn up in Article 1, no. 11 of this Act, shall apply only to varieties that prior to 1 January, 1996, have not been transferred to an official body for a legal purpose or, with the consent of the holder of the variety and with a view to commercial utilisation of the variety, have been offered for sale, sold, or otherwise transferred.

Given at Christiansborg Castle on December the 20th 1995

Under Our Royal Hand and Seal

MARGRETHE R.

Henrik Dam Kristensen