

## Council Regulation (EC) No 2506/95

of 25 October 1995

amending Regulation (EC) No 2100/94 on Community plant variety rights

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Whereas Regulation (EC) No 2100/94<sup>4</sup> creates a Community regime, co-existing with national regimes, which allows for the grant of industrial property rights valid throughout the Community;

Whereas the implementation and application of the said Community regime are carried out by a Community Office with legal personality, known as the 'Community Plant Variety Office';

Whereas, 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, it is appropriate 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 Regulation (EC) No 2100/94 with those provided for in Council Regulation (EC) No 40/94 of 20 December 1993 on the Community Trade Mark<sup>5</sup>;

Whereas, under Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities<sup>6</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 Regulation (EC) No 2100/94 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 abovementioned Decision,

HAS ADOPTED THIS REGULATION:

### *Article 1*

Council Regulation (EC) No 2100/94 is hereby amended as follows:

1. Article 67 (3) is hereby amended as follows:
  - in the German version, 'direkte Beschwerde' shall be replaced by 'unmittelbare Klage', and 'eingelegt' shall be replaced by 'erhoben',

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<sup>1</sup> OJ No C 117, 12. 5. 1995, p. 10.

<sup>2</sup> OJ No C 269, 16. 10. 1995.

<sup>3</sup> OJ No C 236, 11. 9. 1995.

<sup>4</sup> OJ No L 227, 1. 9. 1994, p. 1.

<sup>5</sup> OJ No L 11, 14. 1. 1994, p. 1. Regulation as amended by Regulation (EC) No 3288/94 (OJ No L 349, 31. 12. 1994, p. 83).

<sup>6</sup> OJ No L 319, 25. 11. 1988, p. 1. (Corrigendum: OJ No L 241, 17. 8. 1989, p. 4). Decision as last amended by Decision 94/149/ECSC, EC (OJ No L 66, 10. 3. 1994, p. 29).



- in the English version, ‘direct appeal’ shall be replaced by ‘direct action’, and ‘lodged’ shall be replaced by ‘brought’.
2. Article 73 shall be replaced by the following:

*‘Article 73*

**Actions against decisions of the Boards 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, 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 Court of Justice shall have 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 whole or in part, 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 shall be replaced by ‘Unmittelbare Klage’ and paragraph 1 shall be replaced by the following:  
‘1. Die Entscheidungen des Amtes nach Artikel 29 und Artikel 100 Absatz 2 sind mit der unmittelbaren Klage beim Gerichtshof anfechtbar.’,
  - in the English version, the title shall be replaced by ‘Direct action’, and in paragraph (1), ‘A direct appeal to the Court of Justice of the European Communities may lie from’ shall be replaced by ‘A direct action may be brought before the Court of Justice against’.

*Article 2*

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.

It shall apply from 27 April 1995.

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

Done at Luxembourg, 25 October 1995.

*For the Council*  
*The President*  
L. ATIENZA