

LEGISLATION

FINLAND³

PLANT BREEDER'S RIGHT ACT (1279/2009)

CHAPTER 1: GENERAL PROVISIONS

Section 1 Scope of application

This Act applies to the protection of the plant variety right (*plant breeder's right*). A plant breeder's right may be granted to varieties of all botanical genera and species.

Section 2 European Community legislation

(1) Provisions on the plant variety rights of the European Community are laid down in Council Regulation (EC) No 2100/84 on Community plant variety rights.

(2) The same protection as laid down by this Act applies to a Community plant variety right holder, unless otherwise specified in the Act.

Section 3 Definitions

(1) In this Act:

- 1) *essentially derived variety* means a variety produced by utilising a protected variety in an essential way;
- 2) *plant breeder's right* means the exclusive right of a breeder to the professional exploitation of the variety as laid down in this Act; a plant breeder's right also applies to:
 - a) varieties which are not clearly distinct from a protected variety,
 - b) essentially derived variety if the variety itself is not an essentially derived variety, and
 - c) varieties whose production requires repeated use of a protected variety;
- 3) *plant breeder's right holder* means the breeder of the variety or the successor to this title; the plant breeder's right holder is the person who has last been entered to the register of plant breeder's rights referred to in section 22 as the plant breeder's right holder, unless otherwise shown;
- 4) *variety* means a plant grouping within a botanical taxon of the lowest known rank which can be:
 - a) defined by the expression of characteristics of a given genotype or combination of genotypes,
 - b) distinguished from any other plant grouping by at least one characteristic, and
 - c) considered as a unit on the grounds of its suitability for being propagated unchanged;
- 5) *hybrid* means the progeny of parents with different genotypes;

³ The Plant Breeder's Act (1279/2009) entered into force on January 1, 2010.

- 6) *propagating material* means all plant parts which can be used for propagating plants;
- 7) *material of a variety* means:
 - a) propagating material of a variety;
 - b) crop, whole plants and parts of plants harvested from the plantation of the variety; and
 - c) all produce directly manufactured from the harvested crop.
- 8) *marketing* means sale or other conveyance against compensation, storage for sales purposes, offering for sale, conveyance without reimbursement for commercial utilisation as well as placing on the market against charge or free of charge within the European Union for distribution or use within the Union territory.

CHAPTER 2: PLANT BREEDER'S RIGHT

Section 4 Content of plant breeder's right

(1) A plant breeder's right holder has the exclusive right to exploit the propagating material of the variety in professional production and marketing

(2) The following acts concerning propagating material require the authorisation of the plant breeder's right holder conditions subject to conditions determined by the holder:

- 1) propagating;
- 2) conditioning for the purpose of propagation;
- 3) marketing, export and import; and
- 4) storage for use for purposes referred to in 1-3

(3) Acts referred to in subsection 2 above may not be performed to crop obtained through unauthorised exploitation of the propagating material of a protected variety without the authorisation of the plant breeder's right holder if the plant breeder's right holder has not had a reasonable opportunity to exercise his or her right to the material concerned.

Section 5 Exceptions to plant breeder's right

(1) Plant breeder's right does not restrict the use of a variety:

- 1) privately for other than commercial purposes;
- 2) for experimental and research purposes; or
- 3) for breeding new varieties.
- 4) subject to the conditions laid down in section 6, for the production of sowing seed for the farm's own use.

Section 6 Right to cultivate a protected variety and obligation to pay remuneration for it

(1) Subject to payment of remuneration a farmer has the right to use or produce propagating material of protected varieties for propagation purposes on his or her own holding. This applies to the cultivation of varieties of the following plant species, except for hybrids: oats, barley, rye, wheat, triticale, turnip rape, swede rape, flax, pea, field bean, potato and buckwheat.

(2) The remuneration must be substantially lower than the royalty payable in the marketing of the propagating material of the variety. A contract may be concluded

between the plant breeder's right holder and the farmer or between organisations representing them on a reasonable amount of remuneration payable to the plant breeder's right holder. Where such contract has been concluded or does not apply, the farmer has the obligation to pay to the plant breeder's right holder a remuneration of 50 per cent of the sum payable for the marketing of the propagating material of the variety.

(3) Farmers who possess an arable area of less than 10 hectares are entitled to use the propagating material of a protected variety in the manner referred to in subsection 1 without paying remuneration. However, in such a case remuneration must be paid for the cultivation of a protected potato variety if the cultivation area of the variety is larger than two hectares or if the area of early potato cultivated under covering is larger than one hectare.

(4) A farmer is obligation to give, upon request, the authority and the plant breeder's right holder the necessary information for establishing the payment obligation.

Section 7 Right to obtain cultivation information concerning a protected variety

(1) For the enforcement of the payment obligation laid down in section 6, the plant breeder's right holder is entitled to access the following necessary information from the information system referred to in the Act of the Information Systems of Rural Business Authorities (284/2008):

- 1) name and contact information of the farmer;
- 2) code of holding;
- 3) arable land area in the possession of the farmer if this is more than two hectares in the case of a protected potato variety, one hectare in the case of early potato cultivated under covering and 10 hectares in the case of other varieties;
- 4) cultivation area of varieties protected by the plant variety right of the European Community if this exceeds the calculated area needed for the production of 92 tonnes of cereal;
- 5) cultivation area of potato varieties protected by the plant variety right of the European Community if this exceeds the calculated area needed for the production of 185 tonnes of potato;
- 6) cultivation areas sown with seed of protected varieties produced on farmer's own holding under this Act by variety.

(2) A plant breeder's right holder may use information conveyed under subsection 1 only for the enforcement of the right to receive payment referred to in section 6. The plant breeder's right holder is not entitled to forward the information to another party.

(3) A condition for the conveyance of information under subsection 1 is that the plant breeder's right holder and farmer or organisations representing them have agreed on the remuneration payable to the plant breeder's right holder under section 6.

Section 8 Destroying cultivation information concerning a protected variety

(1) A plant breeder's right holder must destroy information obtained under section 7 within one year from the end of the calendar year concerned in the enforcement of the payment obligation referred to in section 6 for which the information has been given.

Section 9 Exhaustion of plant breeder's right

(1) Plant breeder's right does not apply to relating to the marketing of a protected variety or material of varieties referred to in points a-c of Article 3(7) in Finland if such acts are not taken with a view to:

- 1) further propagation of the variety; or
- 2) export of material of the variety to a country which does not protect the varieties of the plant genus or species to which the variety belongs, except where the exported material is intended for consumption.

CHAPTER 3: CONDITIONS FOR THE GRANT OF PLANT BREEDER'S RIGHT

Section 10 Conditions concerning the applicant

(1) A plant breeder's right may be applied for by a natural person, legal entity or body which may be equated with legal entities under the legislation concerning these. A plant breeder's right may be applied for by two or several persons jointly.

(2) If a party other than the breeder of the variety applies for the plant breeder's right, it must prove its right to the variety.

Section 11 Conditions concerning the variety

(1) A plant breeder's right is granted if the variety is novel, distinct from other known varieties, uniform as regards plant growth and stable as regards its relevant characteristics.

(2) A variety is not considered novel if propagating or harvested material of the variety has been sold or otherwise disposed of to others with the consent of the plant breeder's right holder for purposes of exploitation of the variety:

- 1) in Finland for more than one year before the filing of the application;
- 2) abroad for more than six years before the filing of the application in the case of a tree or vine; or
- 3) abroad for more than four years in the case of plants other than those mentioned in point 2;

(3) A plant breeder's right may not be granted if the variety is covered by Community protection under Council Regulation (EC) No 2100/84 on Community plant variety rights.

CHAPTER 4: APPROVAL OF PLANT BREEDER'S RIGHT

Section 12 Competent authority

(1) The Finnish Food Safety Authority (Evira) is responsible for the approval, registration and publication of a plant breeder's right and the upkeep of the register of plant breeder's rights.

Section 13 Application

(1) An application for the grant of a plant breeder's right is filed in writing to Evira in the Finnish, Swedish or English language. The application must show:

- 1) name, contact information, personal or business identity code and place of domicile of the applicant of the plant breeder's right and possible agent as well as the name and contact information of the breeder;

- 2) proposal for variety denomination and account of the use of the variety denomination as well as breeder's reference;
- 3) plant genus and species;
- 4) information on the origin of the variety, protection in another state and test results;
- 5) information on whether right of priority is applied for as well as where and when earlier applications have been filed;
- 6) assurance that the variety has not been marketed in a way referred to in section 11(2) prior to the filing of the application; and
- 7) an account of whether the variety has been approved under the Gene Technology Act (377/1995) or Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed.

(2) The date when the application documents are filed to Evira and the application fee is paid is entered as the date of application. As minimum information for assigning the application date the application must show the name and contact information of the applicant, plant genus and species, variety denomination and breeder's reference.

(3) If the applicant has not provided all information referred to in subsection 1, Evira must request the applicant to correct the shortcomings within a set time period. If the applicant does not correct the shortcomings within the set time period, the application is not examined.

(4) An application which has been left unexamined is taken up for examination if this is requested by the applicant within one month from the expiry of the time limit set by Evira and if the applicant takes action to correct the shortcomings and pays the re-examination fee within the same time period.

(5) If the proposed variety denomination may be confused with a brand name, denomination, business name or other indication concerning variety material or similar goods to which the applicant has a right of priority, an extract from the register from the National Board of Patents and Registration must be attached to the application, showing that the brand name, denomination, business name or other indication has been removed from the relevant register. If such an indication has not been registered, the applicant must attach to the application an account that the applicant has relinquished or is willing to relinquish the right to use this indication.

(6) Further provisions on the information to be presented in an application under subsection 1 may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 14 Provisional protection

(1) Provisional protection starts as from the date of application and continues until plant breeder's right has been granted. Provisional protection ceases to exist if plant breeder's right is not granted.

Section 15 Right of priority

(1) The right of priority of plant breeder's right applications is determined on the basis of the date of application. If several applications have the same date of application, their mutual priority is determined on the basis of the time of receipt of the application. If the priority cannot be established on the basis of the time of receipt of the application, the applications have the same right of priority.

(2) If the applicant has previously applied for plant breeder's right in a territory which is in the jurisdiction of a member of the International Union for the Protection of New Varieties of Plants or the World Trade Organization, an application filed within 12 months of the filing of the previous application must be considered to have been filed simultaneously in the territory concerned.

(3) A precondition for determining the right of priority under subsection 2 is that the right of priority is specifically claimed upon filing the application and copies of the previous application concerning the variety and the related document are delivered to Evira within three months from the filing of the application. The copies must be certified by the authority which received the first application concerning the variety in question.

(4) The applicant must deliver the information, documents and materials necessary for examining the application to Evira within two years from the expiry of the period of validity of the right of priority under subsection 2. If the first application has been rejected, the applicant must be granted enough time to deliver the information, documents and materials necessary for examining the application to Evira.

(5) Further information on making the request concerning the right of priority may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 16 Publication of an application

(1) Evira must reserve the general public the opportunity to make claims concerning the application by publishing the identification information of the application.

(2) Claims concerning the application must be filed to Evira in writing within a set time period of three months from the publication of the application.

(3) Further information on the publication of an application and the identification information to be published may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 17 Claim for a better right

(1) If a third party claims that it has a better right to a variety than the applicant, it must file a written claim on this to Evira. If the matter is unclear, Evira must by a preliminary ruling advise the party concerned to institute proceedings at a court of law within a set time period. If court proceedings are not instituted within the set time period, the claim is ignored, which must be mentioned in the preliminary ruling.

(2) If a dispute over a better right to a variety is pending at a court of law, the examination of the application must be suspended until the matter is finally resolved.

Section 18 Transfer of an application

(1) If a third party proves to Evira that it has a better right to a variety than the applicant, Evira must, upon the third party's claim, transfer the application to the third party. The transferee must at the same time pay the application fee.

(2) The application may not be left unexamined, approved, rejected or cancelled until the transfer claim has been finally resolved.

Section 19 Examination of a variety

- (1) Evira organises the examination of the variety upon request by the applicant and according to international methods to find out whether the variety is distinct, uniform and stable, unless the examination is to be considered unnecessary for special reasons.
- (2) The applicant must deliver the necessary material of the variety and other necessary information to Evira or the party which conducts the examination.

Section 20 Decision on plant breeder's right

- (1) Evira investigates, after the expiry of the time period reserved for filing claims, whether the variety fulfils the requirements set in section 11, as well as makes the decision on the approval of the plant breeder's right. Decisions concerning the application and cancellations are published and decisions concerning approved applications are entered to the register of plant breeder's rights referred to in section 22.

Section 21 Validity of plant breeder's right

- (1) A plant breeder's right is valid as from the date when the Evira has made the approval decision. The right may be maintained in force for 30 years from the beginning of the year following the approval decision by paying an annual fee by the end of January of each calendar year valid.
- (2) The validity of plant breeder's right expires if a Community plant variety right to the protected variety is granted to the applicant.

Section 22 Register of plant breeder's right

- (1) The following information on approved plant breeder's rights is entered to the register of plant breeder's rights kept by Evira:
 - 1) registration number of the plant breeder's right;
 - 2) name and contact information of the plant breeder's right holder and possible agent, business identity code, place of domicile, notification of the change of agent as well as name and contact information of the breeder;
 - 3) plant genus and species which the variety belongs to and identification information of the variety description;
 - 4) approved variety denomination, date of variety denomination proposal and breeder's reference;
 - 5) date of application, number and publication date of the application and approval date of plant breeder's right;
 - 6) granted right of priority and the state in which the previous application concerning the variety has been filed, as well as the date of application when the application has been filed;
 - 7) payment of annual fee;
 - 8) compulsory licence, compulsory cross-licence and licence which has been granted;
 - 9) lien;
 - 10) decisions by Evira which have no legal validity, appeals, executions, seizures and court decisions on the matter;
 - 11) expiry date of the plant breeder's right.

(2) If the entry to the register cannot be resolved immediately, an entry to the register must be made that such an entry has been requested.

(3) Otherwise the provisions laid down in the Act on Information Systems of Rural Business Administration apply to the register of plant breeder's rights and documents included in the register.

(4) Further provisions on the content of entries made in the register under subsection 1 may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 23 Removal of an entry from the register

(1) If it is proven that a licence, lien or compulsory licence has expired, the entry must be removed from the register.

(2) Personal data of a natural person referred to in point 2 of section 22(1) are removed from the register no later than within ten years from the expiry of the validity of the plant breeder's right. The provisions laid down in the Personal Data Act (523/1999) or decisions made under it apply to the removal of information recorded in the register.

(3) Provisions on archiving the information removed from the register are laid down in the Archiving Act (831/1994).

CHAPTER 5: VARIETY DENOMINATION

Section 24 Selection and use of variety denomination

(1) Variety denomination must be such that a variety can be distinguished from other varieties of the same or closely related species.

(2) Variety denomination may not be approved if it can be confused with a brand name, denomination, business name or other indication to which a party other than the applicant has the protection so that this protection of another party is an impediment to the registration of the variety denomination.

(3) The approved variety denomination must be used when marketing the propagating material of a protected variety. The approved variety denomination must also be used after the expiry of the validity of the plant breeder's right or the right has otherwise lapsed.

(4) Further provisions on the selection and use of variety denomination may be issued by Decree of the Ministry of Agriculture and Forestry.

Section 25 Cancellation of variety denomination and new variety denomination

(1) Evira must cancel an approved variety denomination:

- 1) if the variety denomination has been approved in a way that violates this Act and the impediment to the approval continues to exist;
- 2) if the plant breeder's right holder so requests and presents due grounds for this; or
- 3) if someone presents decision of a court of law forbidding the use of the denomination for a certain variety.

(2) Evira must notify the plant breeder's right holder of the claim to cancel the variety denominations and request the holder to submit a new denomination proposal within 30 days of having received notice of such a claim.

(3) Evira must examine the proposal concerning new denomination. When Evira has approved the new denomination, it must be published and registered.

(4) Further provisions on the cancellation and registration of variety denomination may be issued by Decree of the Ministry of Agriculture and Forestry.

CHAPTER 6: LAPSE, ANNULMENT AND FORFEITURE OF PLANT BREEDER'S RIGHT

Section 26 Lapse of plant breeder's right

(1) Evira states by its decision that a plant breeder's right lapses if the plant breeder's right holder notifies Evira in writing that the holder waives the plant breeder's right.

(2) If the annual fee has not been paid as laid down in section 21, Evira must urge the plant breeder's right holder to pay the annual fee within a set time period, subject to the threat that the plant breeder's right lapses. If the plant breeder's right holder has not paid the fee within the set time period, Evira states by its decision that the plant breeder's right has lapsed.

(3) If a plant breeder's right has been seized or there is a lien which has been entered to the register on it or a dispute concerning the transfer of the plant breeder's right is pending, the plant breeder's right may not be cancelled as long as the seizure or lien is effective or the dispute has not been finally resolved.

Section 27 Annulment

(1) A court of law must annul plant breeder's right if, when granting the right:

- 1) the preconditions for distinctness or novelty of the variety did not exist;
- 2) the preconditions for uniformity or stability did not exist and the decision of the approval of the plant breeder's right was essentially based on information provided by the applicant;

(2) A court of law must annul plant breeder's right if right has been granted to an applicant who is not entitled to it, unless Evira transfers the plant breeder's right to a party which is entitled to it.

(3) A court of law must request a statement of Evira in matters concerning the annulment of plant breeder's right.

Section 28 Forfeiture

(1) Evira declares a plant breeder's right forfeit if:

- 1) the plant breeder's right holder is unable to produce propagating material for the variety with identifying features corresponding to those of the protected variety;
- 2) the plant breeder's right holder does not provide within the set time period, upon Evira's request, propagating material, documents and other information which are necessary to examine whether the variety is appropriately maintained; or

- 3) the variety denomination has been cancelled after the rights have been granted and the plant breeder's right holder does not propose an acceptable new variety denomination.

Section 29 Registration of expiry of plant breeder's right

- (1) An entry of the expiry of plant breeder's right is made in the register if:
 - 1) plant breeder's right has lapsed as laid down in section 26;
 - 2) plant breeder's right has been annulled by a legally valid decision of a court of law as laid down in section 27;
 - 3) plant breeder's right has been declared forfeit by a decision of Evira as laid down in section 28; or
 - 4) validity of plant breeder's right has expired as laid down in section 21.

CHAPTER 7: LICENCE, COMPULSORY LICENCE AND COMPULSORY CROSS-LICENCE

Section 30 Licence

- (1) If the plant breeder's right holder has granted another party the right to professional exploitation of the protected variety (*licence*), this may not assign the licence to a further party, except if this has been agreed on.
- (2) If the licence is held by a company, it may be assigned further in connection with the transfer of the company, unless otherwise agreed.
- (3) If the plant breeder's right holder notifies of giving up the plant breeder's right and a licence concerning the right has been entered to the register, Evira must notify the licence holder of the matter in order to reserve a reasonable time to supervise its rights before Evira declares by its decision that the plant breeder's right has lapsed.

Section 31 Compulsory licence

- (1) If after the registration propagating material of the variety is not produced for the market on reasonable conditions and sufficiently as regards the general food supply needs, a party wishing to exploit the variety professionally in Finland may obtain a compulsory licence for this, if there is no acceptable reason for the action by the plant breeder's right holder. Compulsory licence includes the right to obtain the necessary amount of the propagating material of the variety from the plant breeder's right holder.
- (2) Compulsory licence may only be granted to a party who is considered to possess the prerequisites to exploit the variety subject to the plant breeder's right in an acceptable manner and on the conditions set in the compulsory licence. Compulsory licence does not prevent the plant breeder's right holder from exploiting the right or from issuing a licence for the variety
- (3) Compulsory licence is granted by a court of law, which determines to what extent the protected variety may be exploited as well as confirms the remuneration and other conditions of the compulsory licence. The court of law may, upon demand by the plant breeder's right holder, cancel a compulsory licence or confirm new conditions for it if this is necessary due to essential changes in the circumstances.

Section 32 Compulsory cross-licence

- (1) If a holder of a patent concerning a biotechnological invention cannot exploit the patent without infringing a prior plant breeder's right concerning the variety, the patent

holder may apply for a compulsory licence from a court of law for non-exclusive use of the variety protected by the right concerned subject to payment of an appropriate royalty. If such a compulsory licence is granted to the patent holder, the plant breeder's right holder will be entitled to a cross-licence on reasonable terms to use the protected invention.

(2) The applicant for a licence referred to in subsection 1 above must demonstrate that they have applied unsuccessfully to the plant breeder's right holder to obtain a contractual licence and that the invention constitutes significant technical progress of considerable economic interest as regards the protected variety.

(3) Provisions on the right of a plant breeder to obtain a compulsory licence for the exploitation of an invention protected by a patent are laid down in the Patent Act (550/1967).

CHAPTER 8: PRIVATE LAW PROTECTION

Section 33 Prevention of infringement

If someone infringes an exclusive right acquired through a plant breeder's right a court of law may forbid the continuation or repetition of the act.

Section 34 Suspension order on an intermediary

(1) When processing an action referred to in section 33 a court of law may, upon demand by the plant breeder's right holder, order a party maintaining a transmitter, server or other similar device or offering other service that functions as an intermediary to suspend any use that is claimed to infringe a plant breeder's right (*suspension order*), unless this is considered unreasonable taking account of the rights of the alleged infringer of the plant breeder's right, the intermediary and the plant breeder's right holder.

(2) Before bringing an action referred to in section 33 the court of law may, upon demand of the plant breeder's right holder, issue a suspension order if the preconditions for this under subsection 1 are met and if it is evident that the realisation of the rights of the right holder would otherwise be at serious risk. The court of law must reserve the opportunity to be heard for both the party to which the order is to be issued and the party claimed to have infringed the plant breeder's right. The notification to the party to which the order is to be issued may be delivered by post, telefax or e-mail. Otherwise the provisions of Chapter 8 of the Code of Real Estate apply to the processing of the matter.

(3) A court of law may, upon request issue the suspension order referred to in subsection 1 as a temporary one without hearing the alleged infringer, if this is imperative due to the urgency of the matter. The order is in force until further notice. The alleged infringer must be reserved the opportunity to be heard immediately after the issue of the order. When the alleged infringer has been heard, the court of law must decide without delay whether the order is kept in force or cancelled.

(4) A suspension order issued under this section may not compromise the right of a third party to send and receive messages. Without prejudice to Chapter 7, section 7 of the Code of Judicial Procedure, a suspension order becomes effective when the applicant lodges with the bailiff a security referred to in Chapter 8, section 2 of the Enforcement Code. A suspension order issued under subsection 2 or 3 of this section lapses unless action referred to in section 33 is brought within a month from the issue of the order.

(5) The party which demanded the suspension order must compensate the party for which the order is issued as well as the alleged infringer for any damage caused due to the enforcement of the order and costs arisen from the matter if an action referred to in section 33 is rejected or left unexamined or if the processing of the matter is dismissed

without consideration because the plaintiff has cancelled the action or has failed to appear at the court of law. The same applies when a suspension order is cancelled under subsection 3 or lapses under subsection 4. The provisions of Chapter 7, section 12 of the Code of Judicial Procedure apply to bringing action for the compensation of damages and expenses.

Section 35 Declaratory action

(1) A plant breeder's right holder or a party who is entitled under a licence or compulsory licence to exploit a variety protected under plant breeder's right may initiate declaratory action concerning whether the he or she is entitled to protection from another party under the granted plant breeder's right if the matter is unclear and causes harm to him or her.

(2) Anyone who exploits or intends to exploit a variety protected on the basis of plant breeder's right may, on the same conditions, initiate declaratory action against the plant breeder's right holder concerning whether the plant breeder's right constitute an impediment to the activity concerned.

Section 36 Remuneration and compensation for damages

(1) Anyone who intentionally or through negligence infringes plant breeder's right or the provisions of section 24(3) on using variety denominations is liable to pay a reasonable remuneration for exploiting the variety and compensation for any damage caused by the infringement. If the negligence is minor, compensation for the damages can be adjusted.

(2) If infringement of plant breeder's right or the provisions of section 24(3) on using variety denominations is not intentional or caused by negligence, the infringer is liable to pay a reasonable remuneration for exploiting the variety.

(3) Compensation for damages based on infringement of plant breeder's right or the provisions of section 24(3) on using variety denominations may only be claimed concerning the five-year period preceding the institution of proceedings.

(4) If plant breeder's right has been annulled by a court decision that has gained legal force, liability for remuneration or compensation for damages does not exist.

(5) The provisions of the Tort Liability Act (412/1974) also apply to the compensation for damages.

Section 37 Farmers' liability for damages

A farmer who neglect the obligation laid down in section 6 is liable to pay compensation to the plant breeder's right holder. The amount of the compensation is determined in accordance with Commission Regulation (EC) No 1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community Plant Variety Rights.

Section 38 Returning plant variety material

(1) On the institution of proceedings by a party suffering from infringement of the right, a court of law may, within reasonable limits, order that the plant material of the variety concerned in the infringement be surrendered to the injured party against payment. The above does not apply to parties who have obtained plant material of the variety or a special right thereto in good faith and have not themselves infringed the plant breeder's right.

(2) The plant material of the variety referred to in subsection 1 above may be confiscated if the party suffering the infringement has filed a claim demanding surrender of the plant material of the variety in accordance with the Enforcement Code.

Section 39 Infringement of provisional protection

(1) If a party other than the applicant exploits professionally a variety or propagating material of a variety during the time referred to in section 14, the provisions concerning the infringement of plant breeder's right must be applied if the plant breeder's right is granted later on.

(2) Punishments referred to in Chapter 9 of this Act or Chapter 49, section 2 of the Criminal Code cannot be imposed for infringement of plant breeder's right which has taken place during provisional protection.

(3) Compensation for damage which has arisen before the publication of an application referred to in section 16 may only be ordered under section 36(2).

(4) If an action concerning compensation for damages is initiated within one year from the approval of the plant breeder's right, the provision of section 36(3) does not apply.

Section 40 Publication of the judgement

(1) In a dispute concerning the infringement of plant breeder's right a court of law may order, upon demand by the plaintiff, that the defendant must compensate for costs incurred to the plaintiff for taking appropriate action to publish information on a legally valid judgement in which the defendant is found to have infringed plant breeder's right. The order may not be issued if the dissemination of information has been restricted in other legislation. When considering the issue of the order and the content of the order, the court of law must take account of the general significance of the publication, type and extent of the infringement, costs arising from the publication and other similar matters.

(2) A court of law may order the maximum amount of the reasonable publication costs to be compensated for. The plaintiff is not entitled to compensation if information on the judgement is not published within the time limit from the time when the judgement became legally valid set by court of law.

CHAPTER 9: PENAL PROVISIONS

Section 41 Infringement of plant breeder's right

(1) Anyone who intentionally infringes the exclusive right laid down in section 4, sentenced to a fine for *infringement of plant breeder's right*, unless the act is to be punished as violation of incorporeal rights referred to in Chapter 49, section 2 of the Criminal Code.

Section 42 Violation of plant breeder's right

(1) Anyone who intentionally or through gross negligence neglects obligation to give information laid down in section 6(4) or violates the provisions on the use of variety denomination of section 24(3) must be sentenced to a fine for *violation of plant breeder's right*.

Section 43 Misuse of cultivation information concerning a protected variety

(1) Plant breeder's right holder who intentionally or through gross negligence uses information given under section 7 in a way that violate the purpose of use laid down in

section 7(2) or forwards the information in a way that violates the said provision must be sentenced to a fine for misuse of cultivation information concerning a protected variety.

Section 44 Right to institute criminal proceedings

(1) The prosecutor may not bring charges for offence referred to in sections 41-43 unless the complainant reports the offence for prosecution.

CHAPTER 10: MISCELLANEOUS PROVISIONS

Section 45 Appeal

(1) A decision by Evira under this Act may be appealed to the Administrative Court as laid down in the Administrative Judicial Procedure Act (586/1996).

Section 46 Legal venue

(1) The court of competent jurisdiction in matters under this Act is the Helsinki District Court.

Section 47 Request for statement

(1) In matters concerning plant breeder's right a court of law may request a statement from Evira.

Section 48 Charges to be collected

(1) Charges for tasks undertaken by Evira to the State are collected on the grounds laid down in Act on Criteria for Charges Payable to the State (150/1992).

Section 49 Agent of an applicant for and holder of plant breeder's right

(1) If the applicant for or holder of plant breeder's right has no domicile in Finland, the applicant or holder must have an agent residing within the European Economic Area who is entitled to represent the applicant or holder in all matters concerning the plant breeder's right.

Section 41 Entry into force

(1) This Act enters into force on 1 January 2010.

(2) This Act repeals the Act on Plant Variety Rights of 21 August 1992 with subsequent amendments and the Act on the Protection of Plant Variety Rights Granted by the European Community under Private and Public Law in Finland of 5 March 1999 (239/1999).

(3) Provisions and regulations issued under the repealed Act on Plant Variety Rights remain in force until otherwise provided under this Act.

(4) This Act applies to applications for plant breeder's right pending upon entry into force of this Act and plant breeder's rights granted on the basis of these as well as plant breeder's rights granted before the entry into force of the Act.

(5) The period of validity of plant breeder's rights in force upon entry into force of this Act are extended as laid down in this Act as from the approval decision.

(6) Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.

(7) If in other law reference is made to the Act on Plant Variety Rights in force upon entry into force of this Act, this Act applies instead.