

LEGISLATION

CROATIA

Act on Amendments to the Plant Variety Protection Act of May 30, 2008¹

(adoption date: May 30, 2008; entry into force: June 12, 2008)

THE CROATIAN PARLIAMENT

2229

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby pass the

DECISION

PROMULGATING THE ACT ON AMENDMENTS TO THE PLANT VARIETY PROTECTION ACT

I hereby promulgate the Act on Amendments to the Plant Variety Protection Act, adopted by the Croatian Parliament at its session on 30 May 2008.

Class: 011-01/08-01/63

Reg. No.: 71-05-03/1-08-2

Zagreb, 4 June 2008

The President
of the Republic of Croatia
Stjepan Mesić, m. p.

THE ACT ON AMENDMENTS TO THE PLANT VARIETY PROTECTION ACT

Article 1

In the Plant Variety Protection Act (Official Gazette 131/97 and 62/00), in Article 1, the words: **„concerning the granting, the contents, the duration and the manner of transfer and assignment of the use“** are inserted after the word: **„procedures“**.

Article 2

Article 2 is amended to read:

„For the purposes of this Act, the following terms have the following meanings:

1. Plant variety (hereinafter referred to as: variety) means a plant grouping within a single botanical taxon of the lowest known rank, which is defined by the expression of the characteristics that results from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics, and considered as a unit remains unchanged after being propagated.
2. A plant grouping consists of entire plants or parts of plants as far as such parts are capable of producing entire plants, (hereinafter referred to as : variety constituents).
3. The plant variety breeder (hereinafter referred to as: breeder) means:
 - the person who bred, or discovered and developed the variety,

¹ Provisional translation provided by the Croatian Authorities.

- the person who is the employer of the person who bred or discovered and developed the variety or the person who is authorised in the case where the legislation prescribing the relations between contracted parties enables it so, or,
 - the legal successor or the person referred to in the first and second sub-item of this item, depending on the case.
4. The plant breeders' right is the right of the breeder determined by this Act.
5. The authorised person means any natural or legal person who has the right to file an application for the grant of plant breeders' rights.
6. The applicant means any natural or legal person who filed an application.
7. The holder of the plant breeders' rights is the breeder to whom the plant breeders' rights were granted.
8. Protected variety is the variety for which a decision on the variety protection was issued on the basis of the official variety description, on the basis of the official sample and which, in compliance with this Act, was designated by a denomination.
9. Protected variety material (hereinafter referred to as : material) means:
- material for multiplication of any variety,
 - harvested material including whole plants or parts thereof;
 - any product obtained directly from the harvested material.
10. Essentially derived variety means a variety derived from another variety provided that:
- it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety,
 - it is clearly distinguishable from the initial variety, and
 - except for the differences which result from the act of derivation, it conforms essentially to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety."

Article 3

In Article 3, paragraph 1, the Croatian words translated as "granted to the breeder" are replaced by other Croatian words, with no relevance to the English translation.

In paragraph 2, the words: „can be granted to more breeders" are replaced by the words: „shall be granted to breeders".

In paragraph 3, the Croatian words translated as "granted to the breeder" and the word "grant" are replaced by other Croatian words, with no relevance to the English translation.

Article 4

In Article 4, paragraph 1, the words: „is granted to: a) natural person – national or resident" are replaced by the words: „shall be granted to natural person - the citizen", and the words: „legal person" are replaced by the words: „to legal person".

Article 5

In Article 5, paragraph 1, the word: "will be carried out" is replaced by the words: "shall be performed by the ministry competent for agriculture (hereinafter referred to as: Ministry) and".

In paragraph 2, the word: "plant" is added after the word: "protection", the Croatian word translated as "grant" is replaced by another Croatian word, with no relevance to the English translation, and the words: "within the Ministry for Agriculture and Forestry (hereinafter referred to as: Ministry) will be established" are replaced by the words: "within the Ministry shall be established".

In paragraph 3, the words: "Agriculture and Forestry" are replaced by the words: "competent for agriculture".

Article 6

In Article 6, paragraph 1 is amended to read:

"(1) In executing the plant variety protection activities, the Institute shall keep a Register of Applications for Granting the Breeders' Rights, and the Ministry shall keep:

- 1. The Plant Breeders' Rights Registry,**
- 2. Transferred Plant Breeders' Rights Registry,**
- 3. Assigned Breeders' Rights Registry,**
- 4. Registry of Designated Representatives (Agents)."**

Article 7

In the heading above Article 7, the word "plant" is inserted after the word: "protection".

In Article 7, a new paragraph 1 is added which reads:

"(1) The varieties of all plant genera and species, including also, among other, the hybrids between genera and species can be the subject matter of the breeders' rights."

In the former paragraph 1, which becomes paragraph 2, the word: "award" is replaced by the word: "granting".

In the former paragraph 2, which becomes paragraph 3, the words: "shall be granted if the variety:" are replaced by the words: "shall be granted for a variety which is:", and the Croatian word translated as "distinct" is replaced by another Croatian word, with no relevance to the English translation.

In the former paragraph 3, which becomes paragraph 4, the word: "award" is replaced by the word: "granting".

The former paragraph 4 is hereby deleted.

Article 8

In Article 8, paragraph 1 is amended to read:

„(1) A variety shall be deemed to be new if, at the date of application for plant breeders' rights, the variety constituents have not been sold or otherwise disposed of to others, with or without the consent of the breeder:

- (a) for one year within the territory of the Republic of Croatia, or;**
- (b) for four years outside the territory of the Republic of Croatia, and for six years in the case of tree species or vines."**

Paragraph 2 is hereby deleted.

In the former paragraph 3, which becomes paragraph 2, the Croatian word translated as „distinct" is replaced by another Croatian word, with no relevance to the English translation.

Former paragraphs 4 and 5 become paragraphs 3 and 4.

Article 9

In Article 9, paragraph 2, item 3, the words: „International Organisation for the Protection of Plant Varieties" are replaced by the words: „International Union for the Protection of New Varieties of Plants".

Article 10

In Article 10, the word: „offers“ is replaced by the word: „places“, the word: „propagating“ is hereby deleted, and the Croatian word translated as „granted“ is replaced by another Croatian word, with no relevance to the English translation.

Article 11

In Article 11, the words: „breeder of the variety is granted with“ are replaced by the words: „shall be granted to the plant variety breeder“.

Article 12

In Article 12, paragraph 1, the word: „breeder“ is replaced by the words: „holder of breeders' rights“, and the word: „propagating“ is hereby deleted.

In item 1, the word: „(multiplication)“ is inserted after the word: „reproduction“.

In item 2, the words: „planting or sowing propagating material“ are replaced by the words: „for multiplication purposes“.

In item 4, the Croatian word translated as „marketing“ is replaced by another Croatian word, with no relevance to the English translation.

In item 6, the words: „and processing“ are replaced by the words: „for any of the purposes specified under items 1 to 5 of this paragraph“.

In paragraph 2, the words „or picked“ are inserted after the word: „harvested“ and the word: „propagating“ is hereby deleted.

In paragraph 3, the words: „or picked“ are inserted after the word: „harvested“ and the word: „harvested“ is hereby deleted.

In paragraph 4, the Croatian word translated as: „granting“ is replaced by another Croatian word, with no relevance to the English translation.

Paragraph 5 is hereby deleted.

Article 13

After Article 12, a subheading and Article 12.a are added which read:

“3. Derogation from breeders' rights***Article 12.a***

The breeders' right shall not extend to acts:

- a) done privately and for non-commercial purposes,
- b) done for experimental purposes,
- c) done for the purpose of breeding, or discovering and developing other varieties,
- d) referred to in Article 12, paragraphs 1, 2 and 3 of this Act in respect of „essentially derived variety“, except where the provisions of Article 13 of this Act apply, or where „essentially derived variety“ or the material of this variety comes under the protection of a property right which does not contain a comparable provision, and
- e) whose prohibition would violate the provisions laid down in Article 40.a of this Act.”

Article 14

Article 13 is amended to read:

“The authorisation referred to in Article 12, paragraphs 1, 2 and 3 of this Act shall also apply in relation to the following varieties:

1. varieties which are essentially derived from the protected variety, where this protected variety is not itself an “essentially derived variety”,

2. varieties which are not clearly distinguishable in accordance with the provisions of Article 8, paragraph 3 of this Act from the protected variety, and

3. varieties whose production requires the repeated use of the protected variety.”

Article 15

After Article 13, a subheading and Article 13.a are added which read:

“4. Exhaustion of breeders’ rights:

Article 13.a

The breeders' rights shall not extend to acts concerning any type of material of the protected variety, or of a variety covered by the provisions of Article 13 of this Act, which has been disposed of to other persons by the holder of breeders' rights or with his consent, or any material derived from the said material, unless such acts:

- a) involve further propagation of the variety in question, or
- b) involve an export of variety constituents, enabling the variety propagation, in a country which does not protect varieties of the plant genus or species to which this variety belongs, **except where the exported materials is for final consumption purposes.”**

Article 16

In the subheading above Article 14, the figure: “3” is replaced by the figure: “5”.

In Article 14, paragraph 2 is amended to read:

“(2) The duration of the breeders’ rights shall run for twenty-five years from the day of granting the breeders’ right, and in the case of varieties of tree species and vine, for thirty years.”

Article 17

Article 15 is amended to read:

“(1) The Minister shall prescribe the expenditures for services and procedures performed by the Institute, the time period and the manner of payment, and the use of these funds.

(2) The expenditure value is expressed in points, and the Minister shall determine the point value.

(3) If the expenditures in the procedure for granting breeders’ rights are not being paid, the application for granting the breeders’ right shall be rejected.”

Article 18

In the heading above Article 17, the Croatian word translated as: „GRANT” is replaced by another Croatian word, with no relevance to the English translation.

In Article 17, paragraph 1, the Croatian word translated as: “granting” is replaced by another Croatian word, with no relevance to the English translation, and the words: “led by the Institute” are replaced by the words: “carried out by the Ministry and the Institute”.

Article 19

In Article 18, paragraph 1, the Croatian word translated as: “grant” is replaced by another Croatian word, with no relevance to the English translation, and the words: “for the grant of a breeder’s right (hereinafter referred to as: application)” are inserted after the word: “application”.

In paragraphs 2, 3 and 4, the Croatian word translated as: “granting” is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 6, the Croatian word translated as: “grant” is replaced by another Croatian word, with no relevance to the English translation.

Article 20

In Article 18.a, paragraph 1, the words: "for the grant of breeders' rights" are hereby deleted.

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 4, the words: "for the grant of breeders' rights" are hereby deleted.

Article 21

In Article 19, paragraph 2, the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation, and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 3, the words: "reproduction material" are replaced by the word: "material".

Article 22

In Article 20, the words: "for the grant of breeders' rights" are hereby deleted.

Article 23

In the subheading above Article 21, the words: "for the grant of breeders' rights" are hereby deleted.

In Article 21, paragraph 1, the words: "for the grant of breeders' rights" are hereby deleted, and the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the word: "application" is inserted after the word: "Registry".

Article 24

In Article 22, paragraph 1, the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation, and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "comply" is replaced by another Croatian word, with no relevance to the English translation.

Article 25

In Article 23, paragraph 1, the words: "for the grant of breeders' rights" are hereby deleted.

Article 26

In Article 24, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation.

Article 27

In the subheading above Article 25, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In Article 25, paragraph 1, the word: "Institute" is replaced by the word: "Ministry", the words: "with the previous consent" are replaced by the words: "upon proposal", and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 3, the Croatian word translated as: "comply" is replaced by another Croatian word, with no relevance to the English translation, the word: "Institute" is replaced by the word: "Ministry", and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 28

In Article 26, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 29

In Article 28, paragraphs 1 and 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 30

In Article 29, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, the word: "breeders" is inserted after the word: "rights", and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 31

In the subheading above Article 30, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In Article 30, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, and the Croatian word translated as: "comply" is replaced by another Croatian word, with no relevance to the English translation.

Article 32

In Article 31, paragraph 1, the word: "Institute" is replaced by the word: "Ministry".

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 33

In the subheading above Article 32, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation word.

In Article 32, paragraph 1, the word: "Institute" is replaced by the word: "Ministry", and the Croatian word translated as: "granted" is replaced by another Croatian word, with no relevance to the English translation.

In item 1, the Croatian word translated as: "distinct" is replaced by another Croatian word, with no relevance to the English translation.

Article 34

In Article 33.a, in the introductory sentence of paragraph 1, the word: "Institute" is replaced by the word: "Ministry", the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, and the words "where it is established:" are inserted after the word: "if".

In item 2, subparagraph 2, the Croatian word translated as: "granted" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the words: "after paragraph 2" are replaced by the words: "under paragraph 1".

Article 35

In Article 38, paragraph 2, the word: "Institute" is replaced by the word: "Ministry".

In paragraph 3, the word: "propagating" is hereby deleted.

In paragraph 4, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 36

In Article 39, the word: "Institute" is replaced by the word: "Ministry".

Article 37

In Article 40, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, and the word: "Institute" is replaced by the word: "Ministry".

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 38

After Article 40, Article 40.a is added which reads:

„Article 40.a

(1) In cases where the breeder cannot exercise or make benefit of his/her plant breeders' rights without violating the previously granted patent right to a bio-technological innovation, then he/she is entitled to file a request for a compulsory mutual licence for non-exclusive use of bio-technological innovation protected by the patent; and the compulsory mutual licence shall be provided only to the extent necessary for making use of the plant variety in order to keep the same protected by the plant breeders' rights, and which shall be subjected to paying a corresponding compensation to the holder of the plant breeders' right.

(2) When, in compliance with paragraph 1 of this Article, a compulsory mutual licence was granted to the breeder for the purpose of the grant of the breeders' rights, the compulsory mutual licence for the protected variety shall be granted to the holder of the patent right for bio-technological innovation under reasonable conditions.

(3) When the holder of the patent right for bio-technological innovation cannot exercise or make benefit of his/her right to the patent for bio-technological innovation without violation the previously granted breeder's right for a certain variety, then he/she is entitled to file a request for a compulsory mutual licence for non-exclusive use of the variety protected by this breeders' right, and which shall be subjected to paying a corresponding compensation to the holder of the breeders' right.

(4) When, in compliance with paragraph 3 of this Article, a compulsory mutual licence was granted to the holder of the patent right for bio-technological innovation for the purpose of exercising his/her right, then a compulsory mutual licence for the protected patent for the bio-technological innovation shall be granted concerning the variety in question to the holder of the breeders' right under reasonable conditions.

(5) In accordance with paragraphs 1 and 3 of this Article, the breeder, i.e. the holder of the patent right for bio-technological innovation, shall, in order to establish his/her rights to a compulsory mutual licence, submit an application to the Ministry.

(6) The applicant referred to in paragraph 5 of this Article, for the purpose of exercising the right referred to in paragraphs 1 and 3 of this Article, shall provide evidence proving:

a) he/she failed in requesting from the holder of the breeders' rights the obtaining of contracted licence, and

b) innovation to be of significant technological progress of substantial economic value when compared with the breeders' rights."

Article 39

In Article 42, paragraph 1 and 2 are amended to read:

“(1) A complaint against the violation of the breeders’ rights can be lodged in the time period of three years from the day of the grant of the breeders’ right and when the holder of the breeders’ right has learned about the violation of the right and has learned the violator’s identity.

(2) In the case of absence of the knowledge referred to in paragraph 1 of this Article, the holder of the breeders’ right is entitled to lodge a complaint within the period of 30 years at the latest from the day of the violation of the right.”

Article 40

In Article 44, paragraph 1, the word: “Institute” is replaced by the word: “Ministry”.

Article 41

In the subheading above Article 46, the Croatian word translated as: “grant” is replaced by another Croatian word, with no relevance to the English translation.

In Article 46, paragraph 1, the Croatian word: “grant” is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 3, the Croatian word: “grant” is replaced by another Croatian word, with no relevance to the English translation.

Article 42

In Article 47, paragraph 1, the Croatian word translated as: “grant” is replaced by another Croatian word, with no relevance to the English translation.

Article 43

After Article 51, Article 51.a is added which reads:

„Article 51.a

The Minister shall issue the list of plant species, in accordance with Article 3, paragraph 2, items (i) and (ii) of the Regulation on accessing the International Convention for the Protection of New Plant Varieties (Official Gazette – International Agreements, No. 1/01), which may be **protected by granting of the breeders' rights.**”

Article 44

This Act shall enter into force on the eighth day after its publication in the Official Gazette.

Class: 320-20/08-01/02
Zagreb, 30 May 2008

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament
Luka Bebić, m. p.