

Unofficial translation

ACT ON THE PROTECTION OF PLANT BREEDERS' RIGHTS

(Swedish Statute Book, SFS, 1997:306, of May 29, 1997, as last amended by SFS 2010:1405)

Chapter 1. On the Acquisition of Plant Breeders' Rights

Article 1. Anyone who has in Sweden produced a new plant variety, or his successor in title, may acquire an exclusive right to exploit the plant variety according to this Act (plant breeder's right).

Anyone who has outside this country produced a new plant variety, or his successor in title, may acquire a plant breeder's right in respect of the plant variety, where the producer is a Swedish national or has his domicile in Sweden.

A plant breeder's right may also be acquired by

1. anyone who has produced a plant variety in a foreign State party to the Convention of December 2, 1961, on the Protection of Plant Varieties, or in a State which is party to an intergovernmental organisation which in its turn is party to this Convention, or the successor in title of such a person,
2. anyone who is a national of, or has his domicile in, such a State and who has, in cases other than those mentioned under 1, produced a new plant variety outside this country, or is the successor in title of such a person.

The provisions in the first to third Paragraphs apply also to anyone who has discovered and further developed a new plant variety, or his successor in title.

A plant breeder's right is acquired through registration of the plant variety.

Article 2. The Government may prescribe that a plant breeder's right may be acquired also in cases other than those provided for in Article 1, where this is of considerable importance for the supply of the Swedish market or for the Swedish plant cultivation.

The Government may furthermore provide for the application of this Act in relation to other countries on condition of reciprocity or where this follows from such an agreement with a foreign State or intergovernmental organisation which has been approved by the Parliament.

Article 3. A "plant variety" means for the purposes of this Act a plant grouping within one and the same botanically systematic entity of the lowest known rank, where this grouping can

1. be defined by the expression of characteristics resulting from a given genotype or combination of genotypes,
2. be distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
3. considered as a unit with regard to its suitability for being propagated in an unchanged form.

Chapter 2. On the Scope of the Plant Breeder's Right

Article 1. A plant breeder's right applies to

1. the plant variety which has been registered in accordance with the provisions of this Act,
2. groupings of plants which are not clearly distinguishable from the variety which has been registered,
3. plant varieties which are essentially derived from the registered variety, where the registered variety is not in itself an essentially derived variety, and
4. plant varieties whose production requires the repeated use of the registered variety.

A plant variety shall be deemed to be essentially derived where it

1. is predominantly derived from the initial variety, or from a variety that in itself is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype, or combination of genotypes, of the initial variety,
2. is clearly distinguishable from the initial variety, and
3. except for the differences which result from the act of derivation, conforms with the initial variety in the expression of the essential characteristics that result from the genotype, or combination of genotypes, of the initial variety.

Article 2. With the exceptions provided for in Articles 3 and 4, the plant breeder's right implies that nobody may, without the authorisation of the holder of the plant breeder's right, exploit a plant variety or another grouping of plants covered by the plant breeder's right through

1. producing or reproducing propagating material
2. conditioning propagating material for the purposes of propagation,
3. offering propagating material for sale,
4. selling or otherwise supplying propagating material,
5. exporting propagating material from Sweden,
6. importing propagating material to Sweden, or
7. stocking propagating material for any of the purposes indicated in items 1. to 6.

Where the holder of the plant breeder's right had no reasonable opportunity to exercise the right in relation to a certain propagating material, nobody may without his or her authorisation exploit the plant variety through such acts as mentioned in the first Paragraph, items 1. to 7. by using harvested material which has been produced by means of this propagating material.

Article 3. The plant breeder's right does not include

1. acts carried out privately and for non-commercial purposes,
2. acts carried out for experimental purposes, and
3. acts carried out for the purposes of breeding of new plant varieties.

Article 4. The plant breeder's right does not include the exploitation of plant variety material which has been brought on the market within the European Economic Area by the holder of the plant breeder's right or with his consent.

The provisions of the first Paragraph do not extend to the export of plant variety material which can be used for propagating purposes, where the export is directed towards a foreign

country where varieties of the plant genus or species concerned cannot be protected and the material exported is not intended for final consumption.

Article 5. The provisions on exceptions from the exclusive right in Article 14 of the Council Regulation (EG) No 2100/94 of July 27, 1994, on the Community Plant Variety Rights and the Implementing Regulations which have been issued on the basis of that Article shall apply also to plant varieties which have been registered according to this Act. The provisions in that Article and Regulation on the Community Plant Variety Rights shall apply to plant breeders' rights under this Act.

Chapter 3. On the Requirements for Registration

Article 1. A plant variety may be registered only if it is

1. new,
2. distinct,
3. uniform with respect to its essential characteristics, and
4. stable.

Article 2. A plant variety shall be considered as new where propagating material or harvesting material of the variety has not been sold or otherwise disposed of to others for the purpose of exploitation of the variety, by the breeder or his successor in title

1. in this country, earlier than one year before the date of the filing of the application for registration,
2. outside this country, earlier than six years before date of the filing of the application for registration, where this application concerns trees or vines, or
3. outside this country, earlier than four years before the date of the filing of the application for registration, where this application concerns plant varieties other than trees or vines.

Article 3. A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety the existence of which is known at the time of the filing of the application.

A plant variety shall be deemed as known, where propagating material of it has been, for commercial purposes, offered for sale, sold or otherwise disposed of to others. The plant variety shall also be deemed to be known where it has been registered for a plant breeder's right, has been entered into an official list of plant varieties, has been entered into a commonly available list of references, has been described in a commonly available publication or has in any other way come to the common knowledge of the public.

Also, a plant variety which has not come to the common knowledge of the public shall be deemed to be known, where an application for an exclusive right or for the entering into an official list of plant varieties has been filed in any country and that application has later been approved.

Article 4. For the purpose of determination of whether a plant variety is uniform, variations which can be expected due to particular features of the propagation of the variety shall not be taken into account.

Article 5. A plant variety shall be deemed to be stable, where its significant characteristics remain unchanged after repeated propagation or, where the plant variety has a particular cycle of propagation, at the end of each such a cycle.

Article 6. If the applicant or someone from whom the applicant has acquired his right has earlier applied for protection of the plant variety in a State which is party to the Convention of December 2, 1961, on the Protection of Plant Varieties, or in a State or a territory party to the Agreement Establishing the World Trade Organization (WTO) and then applies for registration in this country within twelve months from the date when the earlier application was filed in the foreign State or territory, the application shall, for the purposes of Articles 2 to 5, be deemed to have been filed at the same time as the earlier application, if the applicant so requests.

Such priority may also be granted from an application for protection filed in another State or another territory if a corresponding priority from a Swedish application for the protection of a plant variety would be admitted where the earlier application was made and if the legislation in force there corresponds in its main features with the Convention. Where priority has been sought in several States or territories, the twelve month period is calculated from the date when the first application for protection was filed. (*Act 2000:1159*)

Article 6 a. An applicant wishing to obtain priority in accordance with Article 6 shall

1. apply for priority at the same time as the application is filed,
2. within three months from the date of the application file a copy of the earlier application to the Swedish Board of Agriculture, and
3. within five years from the date of the earlier application file the further documents and material needed for the consideration of the claim for priority.

The copy referred to in the first Paragraph, item 2. shall be certified by the Authority which received the earlier application.

If the earlier application has been rejected or withdrawn, the Swedish Board of Agriculture may decide on another term than the one prescribed in the first Paragraph, item 3.

If the provisions in the first to third Paragraphs are not complied with, the right to priority is not valid. (*Act 2005:1216*).

Article 7. A plant variety may not be registered where it is already registered for a Community plant breeder's right under the Council Regulation (EG) No 2100/94 on the Community Plant Variety Rights.

Chapter 4. On Plant Variety Denominations

Article 1. Any registered plant variety shall have a plant variety denomination. This denomination shall be such as to enable the distinction of that plant variety from other varieties.

A plant variety denomination must not be accepted where it

1. consists solely of figures, except where this is an established practice for designation of varieties,

2. is obviously likely to mislead the public,
3. is contrary to laws or other regulations or public order or is likely to cause offence,
4. is likely to be cause confusion with a variety denomination which has, for a variety of the same plant species, or of a closely related species, been entered into, or has been proposed for entrance into, the Plant Variety Register, any corresponding foreign Register or any other official list of varieties, or which is used as propagating material of such a variety,
5. is likely to cause confusion with a trademark, a name, a firm or any other denomination for which any person other than the applicant enjoys protection and which would have constituted an obstacle against the registration of the variety denomination as a trademark for material of a plant variety or for goods of a similar kind,
6. is likely to cause confusion with such a trademark for material of a plant variety or for goods of a similar kind for which the applicant enjoys protection.

On condition of reciprocity the Government may prescribe that a variety denomination which has been registered, or for which an application for registration has been filed, in a foreign State may be registered in Sweden notwithstanding the provisions in the first and second Paragraphs, where there are no exceptionally important reasons for not doing so.

Article 2. Anyone who offers for sale or otherwise disposes of propagating material of a registered plant variety shall use the registered variety denomination. This applies also where the term of protection has lapsed or the plant breeder's right has been terminated for other reasons.

A registered denomination for a variety or a denomination which is confusingly similar to that denomination must not be used for any other variety of the same plant species or for a plant species which is closely related thereto or for material of such a variety as long as the registration of the denomination is in force.

Chapter 5. On the Application Procedure

Article 1. Registration in accordance with this Act is effected in the Plant Variety Register which is kept by the Swedish Board of Agriculture.

In connection with the registration of a plant variety, also the denomination of the variety shall be recorded. (*Act 2005:2016*).

Article 2. An application for the registration of a plant variety shall be made in writing to the Swedish Board of Agriculture.

The application shall contain

1. a clear description of the variety with a special indication of the characteristic feature or features which distinguishes or distinguish the variety from other varieties,
2. an indication of the origin of the variety,
3. a proposal for the denomination of the variety, and
4. an indication of the name of the plant breeder.

Where a person other than the plant breeder applies for registration, the applicant shall prove his right to the variety.

To the application shall be attached a declaration, signed by the applicant himself, on his faith and honour, that the variety, to the best knowledge of the applicant, has not, before the date on which the application was filed or, according to Chapter 3, Article 6, shall be deemed to have been filed, been disposed of in such a way that it, according to Chapter 3, Article 2, shall not be deemed to be new.

The applicant shall, in connection with the application, make available plant material of the variety in a quantity sufficient to allow testing of the variety.

The applicant shall pay the prescribed application fee. (*Act 2005:2016*).

Article 3. An application may concern only the registration of one plant variety.

Article 4. The Swedish Board of Agriculture may invite an applicant not having his domicile in Sweden to appoint a representative empowered to receive communications in the matter and having his domicile in this country, and to notify this fact to the Board. If the applicant does not comply with the invitation, the serving of communications may be carried out through the mailing of the document in question to the applicant under his last known address. The communication shall be deemed to have been carried out when this has been done. (*Act 2005:1216*).

Article 5. Where the applicant has not complied with the requirements relating to the application or where there is any other obstacle for the approval of the application, the applicant shall be invited to submit, within a prescribed period of time, either a statement or a correction.

Where the applicant fails to, within the prescribed period of time, submit a statement or remedy the deficiency, the application shall be removed from the files. An indication of this possibility shall be included in the invitation.

Article 6. Where an obstacle to the approval of the application exists also after the applicant has submitted a statement and the applicant has been given an opportunity to file a statement concerning the obstacle, the application shall be rejected unless there is a reason for issuing a new invitation to the applicant.

Article 7. If anyone claims, before the Swedish Board of Agriculture, to have a better right to the plant variety than the applicant and the matter is in doubt, the Board may invite him or her to bring an action in a Court of Justice within a determined period of time, failing which the claim may be disregarded in the course of the continued examination of the application.

Where a dispute concerning a better right to the plant variety is under consideration by a Court, the application for registration may be declared in abeyance pending a final decision in the case. (*Act 2005:1216*).

Article 8. If anyone proves before the Swedish Board of Agriculture that he or she has a better right to the plant variety than the applicant, the Board shall, upon request, transfer the application to him or her. The party to which an application is thus transferred, shall pay a new application fee.

If a transfer is requested, the application may not be removed from the files, rejected or approved until the claim has been finally considered. (*Act 2005:1216*).

Article 9. If the application documents are complete and there is no obstacle to the registration, the Swedish Board of Agriculture shall publish a notice of the application in order to give the public an opportunity to file an opposition against the application.

Any opposition shall be filed in writing at the Swedish Board of Agriculture within the period determined by the Board. (*Act 2005:1216*).

Article 10. The Swedish Board of Agriculture shall arrange for a test to be made of the plant variety material, unless this is, for special reasons, considered unnecessary. The applicant shall pay a prescribed fee for the testing carried out. (*Act 2005:1216*).

Article 11. Where the period for submitting an opposition against the application has expired and the tests of material of the plant variety have been finalised, the examination of the application shall continue. As regards this examination, Articles 4 to 8 apply.

The applicant shall be given an opportunity to submit observations concerning oppositions filed and concerning tests carried out.

Article 12. Where an application for the registration of a plant variety has been approved and the decision has obtained legal force, the variety shall be entered into the Plant Variety Register and a notice of the registration be published.

Where an application which has been published according to Article 9, has been removed from the files or rejected, the decision in this respect shall be published when it has obtained legal force.

Chapter 6. On the Term of Validity, Annual Fees and Subsequent Control.

Article 1. The plant breeder's right subsists from the date when the application for registration was approved and may be maintained for 25 years counted from, and including, January 1 the year after the year when the decision about the registration obtained legal force. As regards potatoes, trees and vines, the plant breeder's right may, however, be maintained for a period of 30 years calculated from the same point in time.

Article 2. A prescribed annual fee shall be paid for each calendar year for the plant breeder's right. This fee shall be paid as from, and including, the year after the application for registration was approved.

The annual fee shall be payable on the first day of the calendar year to which it relates. The latest day for the payment of the annual fee for a year which has commenced before the plant variety was registered or within two months thereafter shall, however, be payable only two months after the date of the registration. The annual fee must not be paid before the registration has been effected or earlier than six months before the calendar year to which the fee relates.

The annual fee, with the prescribed increase, may be paid within six months after the date when it is payable. (*Act 2005:1216*).

Article 3. In order to control whether a registered plant variety is stable, the Swedish Board of Agriculture may request the holder of the plant variety right to make available to the Board reproduction material as well as necessary documents and information. (*Act 2005:1216*).

Chapter 7. On Licenses

Article 1. If the holder of a plant breeder's right has granted someone else a right to exploit a registered plant variety (license), the licensee may transfer his right further only if the holder of the right has permitted it.

Where the license forms part of a business activity, it may, however, be transferred together with the activity or part thereof, unless there is an agreement to the contrary. If the license has been transferred in this manner, the transferor remains liable for the fulfilment of the license agreement.

Article 2. Where a plant breeder's right has been transferred to another person, or a license has been granted or transferred, an entry of this fact shall, upon request and against the payment of the prescribed fee, be made in the Plant Variety Register. Where it is shown that a license which has been recorded in the Register has expired, also this fact shall be recorded.

The provisions of the first Paragraph apply accordingly to compulsory licenses.

As the holder of the plant breeder's right shall, for the purposes of lawsuits or other legal cases relating to the plant variety, be deemed the person who has last been recorded in the Register in this capacity.

Article 3. Where there is no supply of reproduction material of a registered plant variety available on the market on reasonable terms and to the extent motivated by public interest and there is no acceptable reason for the failure, a compulsory license may be granted to any person who wants to exploit the plant variety in this country. The compulsory license includes also a right to obtain reproduction material from the holder of the plant breeder's right to the extent considered reasonable.

Article 3 a. A holder of a patent relating to a biotechnical invention who is not able to exploit it without infringing an earlier registered plant variety right, may obtain a compulsory license to exploit the plant variety protected by the plant variety right. Such a license may be granted only if the applicant proves that the invention constitutes an important technical improvement of considerable economic interest in relation to the plant variety.

If the holder of a plant variety right obtains a compulsory license relating to a patent, the patent holder has a right to obtain, on reasonable terms, a compulsory license (cross-license) to exploit the protected plant variety.

Provisions on the possibility for a plant breeder to obtain, on certain conditions, a compulsory license to exploit an invention protected by a patent, are included in Article 46 a of the Patent Act (1967:837). (*Act 2004:160*).

Article 4. A compulsory license may be granted only to persons who can be presumed to be able to exploit the plant variety in an acceptable manner and in conformity with the license. The applicant also must prove that he or she has without success approached the holder of the plant variety right to obtain a license agreement on reasonable terms.

A compulsory license does not prevent the holder of the plant variety right from exploiting the plant variety himself or from granting licenses. A compulsory license may be transferred to someone else only together with the business activity in which it is exploited or was intended to be exploited. In respect of licenses referred to in Article 3 a, first Paragraph, also applies that the license may be transferred only together with the patent on which it is based. (*Act 2004:160*).

Article 5. A compulsory license is granted by a Court of Justice which also determines the extent to which a plant variety may be exploited and decides on the remuneration and other conditions for the license. When significantly changed circumstances call for it, the Court may, upon request, terminate the license or decide on new conditions for it.

Chapter 8. On the Termination of the Plant Breeder's Right, Etc.

Article 1. Where the annual fee according to Chapter 6, Article 2, is not paid, the plant breeder's right shall lapse as from January 1 of the year for which the fee was not paid. The Swedish Board of Agriculture shall also remove the entry concerning the plant variety from the Register. (*Act 2005:2016*).

Article 2. If the holder of the plant breeder's right, in writing to the Swedish Board of Agriculture, renounces his plant breeder's right, the Board shall remove the plant variety from the Register.

If the plant breeder's right is distrained, sequestered for debt or seized for securing the payment of a debt, or if a dispute concerning the transfer of a registration is pending, the plant variety may not, at the request of the holder of the plant breeder's right, be removed from the Register as long as the distraint, sequestration or seizure is still valid or the dispute has not been finally settled. (*Act 2005:2016*).

Article 3. A Court may, upon an action brought in this respect, invalidate the registration of a plant variety, where

1. the plant variety on the date of the filing of the application, or, if the holder of the plant breeder's right has enjoyed priority, on the date from which priority has been enjoyed, did not meet the requirement of novelty under Chapter 3, Article 2, or the requirement of distinctness in Chapter 3, Article 3,
2. the plant variety at the point in time mentioned under item 1. did not meet the requirement of uniformity under Chapter 3, Article 4, or the requirement of stability under Chapter 3, Article 5, if the variety was registered mainly on the basis of information provided by the applicant,
3. the plant variety has been registered in violation of the provisions of Chapter 3, Article 7, or
4. the plant variety has been registered for someone who was not entitled to it and no action has been brought for the transfer of the registration.

A registration must not be invalidated only on the ground that the person who has obtained the registration is entitled only to a part of the plant breeder's right.

Article 4. Where a plant variety has been registered for a person other than the one entitled to it under Chapter 1, Article 1, the Court shall, following an action in this respect by the person entitled to it, transfer the registration to him or her. Any action in this respect shall be brought within the period of time prescribed in Article 5.

Article 5. Any action under Article 3, first Paragraph, item 4, which is based on the fact that a plant variety has been registered for a party other than the one who is entitled it may be brought only by the party that claims to be entitled to the variety. Any action in this respect shall be brought within one year from the date when the plaintiff became aware of the registration and of the other circumstances on which the action is based. If the holder of the plant breeder's right was in good faith when the variety was registered or when the plant breeder's right was transferred to him, the action may not be brought later than three years from the registration.

In other cases an action under Article 3 may be brought by anyone who suffers a disadvantage from the registration and, where this is called for in the public interest, by a Public Authority as decided by the Government.

Article 6. The Swedish Board of Agriculture shall remove a plant variety from the Register where

1. the variety no longer meets the requirements under Chapter 3 as regards uniformity and stability, or
2. the holder of the plant breeder's right has not complied with an invitation under Chapter 6, Article 3, and the non-compliance constitutes an obstacle for a reliable subsequent control. (*Act 2005:2016*).

Article 7. Where a plant variety denomination has been registered in violation of the provisions of this Act and the ground for refusing registration remains, the Swedish Board of Agriculture shall register a new denomination for the plant variety. The same applies where a registered variety denomination obviously has become likely to deceive the public or has become contrary to public order or likely to cause offence.

In cases referred to in the first Paragraph the holder of the plant breeder's right shall be given an opportunity to propose a new denomination.

A registered denomination for a variety for which the term of protection has expired or the plant breeder's right has otherwise lapsed, may, at the request of the holder of plant breeder's right or where there is otherwise a reason for it, following an examination of the case by the Swedish Board of Agriculture, be removed from the Register if the denomination is no longer used. (*Act 2005:2016*).

Article 8. Article 92.2 of the Council Regulation (EG) No 2100/94 on the Community Plant Variety Rights contains special provisions which apply when a plant variety has been registered for a Community plant breeder's right after the variety has been registered according to this Act.

Chapter 9. On Liability and Compensation for Damages, Etc.

Article 1. Anyone who wilfully or with gross negligence infringes a plant breeder's right shall be punished by fines or imprisonment for not more than two years. A party that has violated a prohibition on penalty of a fine under Article 2 must not be adjudicated to criminal liability for the infringement covered by the prohibition.

Attempts to commit an infringement under the first Paragraph, as well as the preparation of such acts, shall be punishable according to the provisions of Chapter 23 of the Criminal Code.

A Public Prosecutor is entitled to bring an action for violations as mentioned in the first and the second Paragraphs only upon complaint by the injured party and such an action is called for in the public interest.

Article 1 a. Property in relation to which a violation has occurred pursuant to Article 1 shall be declared forfeited if this is not obviously unreasonable. Instead of the property itself its value may be declared forfeited. Also profits from such a violation shall be declared forfeited if this is not obviously unreasonable. The same applies to what someone received as a compensation for costs related to such a violation, or the value of what has been received, if the reception constitutes a violation pursuant to Article 1.

Property that has been used as an implement in connection with a violation under Article 1 may be declared forfeited, where this needed in order to prevent criminal acts or where there are otherwise special reasons. The same applies to property that has been intended to be used as an implement in connection with a violation under Article 1, if the violation has been completed or if the action constituted a punishable attempt or a punishable preparation. Instead of the property itself, its value may be forfeited. (*Act 2005:314*).

Article 2. Upon a petition by the holder of the plant breeders' right or by a party that, on the basis of a license, has the right to exploit the plant variety, a Court of Justice may issue an injunction prohibiting, on penalty of a fine, a party that commits, or contributes to, an act constituting an infringement of the plant breeders' right to continue it.

The provisions in the first Paragraph shall apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements. (*Act 2009:115*).

Article 3. If the plaintiff shows a probable cause that an act constituting an infringement of the plant breeders' right, or a contribution thereto, takes place and if it can reasonably be expected that the defendant, through the continuation of the act, or the contribution thereto, diminishes the value of the exclusive right in the plant variety, the Court may issue an injunction, on penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for damage.

The provisions of the first Paragraph apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements.

An injunction mentioned in the first Paragraph may be issued only if the plaintiff deposits a security at the Court for the damage that may be caused to the defendant. If the plaintiff is not

capable of depositing such a security, the Court may liberate him from it. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition issued under the first Paragraph shall continue to apply. (*Act 2009:115*).

Article 4. As regards appeals against decisions under Article 3 and as regards the proceedings in higher courts the provisions in Chapter 15 of the Code of Judicial Procedure on appeals against decisions apply.

Article 5. An action for the imposition of a fine may be filed by the party that has requested the injunction. In connection with such an imposition, an action may be brought for a new injunction to be issued on penalty of a fine.

Article 5 a. If the applicant shows a probable cause than someone has committed an infringement of a plant breeders' right, the Court may order, on penalty of a fine, one or several of the parties referred to in the second Paragraph to provide information to the applicant on the origin of, and distribution networks for, the goods or services in respect of which the infringement has been committed (*order to provide information*). Such an order may be issued upon a petition by the holder of the plant breeders' right or by a party that, on the basis of a license, has the right to exploit the plant variety. It may be issued only if it can be assumed that the information would facilitate the inquiry into the infringement relating to the goods or services.

The obligation to provide information relates to any party that

1. has committed, or contributed to, the infringement,
2. has on a commercial scale been exploiting the goods that the infringement concerns,
3. has on a commercial scale been exploiting the service that the infringement concerns,
4. has on a commercial scale made available an electronic communication service or another service that has been used in connection with the infringement, or
5. has been indicated by a party referred to in items 2 to 4 as being involved in the production or distribution of the goods or the making available of the service that the infringement concerns.

The information on the origin or distribution network of goods or services may, in particular, include

1. the names and addresses of producers, distributors, suppliers and others who have previously held the goods or made available the service,
2. the names and addresses of intended wholesalers and retailers, and
3. information on how much has been produced, delivered, received or ordered and the price obtained for the goods or services.

The provisions in the first to third Paragraphs apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements. (*Act 2009:115*).

Article 5 b. An order to provide information may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The obligation to provide information pursuant to Chapter 9, Article 5 a, does not include information the revelation of which would disclose that the provider of the information or any person closely related to him or her as referred to in Chapter 36, Article 3, of the Code of Judicial Procedure has committed a criminal offence.

The Act (1998:204) on Personal Data contains provisions that limit the use that can be made of personal data received. (*Act 2009:115*).

Article 5 c. A decision on an order to provide information may be rendered by the Court where a trial relating to an infringement is pending. In other respects the competence of the Courts is decided by the provisions in the Code of Judicial Procedure that relate to civil infringement cases. The provisions in the Code of Judicial Procedure relating to limitation of the competence of a Court in cases that have to be brought in a way other than before a Court shall, however, not apply.

If the petition for an order to provide information is directed against the applicant's opposing party in a case related to an infringement, the provisions on court proceedings for that case apply. Decisions on orders to provide information may be appealed separately.

If the application for an order to provide information is directed against a party other than the one referred to in the second Paragraph, the provisions in the Act (1996:242) on Matters Brought Before a Court shall apply. For the purpose of the inquiry, also an oral hearing may be held pursuant to Chapter 37 of the Code of Judicial Procedure. The Court may decide that each party shall bear its own litigation costs.

An action for the imposition of a fine may be brought by the party that has applied for the order and shall be processed in accordance with the provisions in the Code of Judicial Procedure on prosecutions for offences for which no higher penalty than a fine is prescribed. In connection with such an action, an action may be brought for a new order to provide information. (*Act 2009:115*).

Article 5 d. Anyone who, pursuant to Chapter 9, Article 5 a, second Paragraph, items 2 to 5, has been ordered to provide information pursuant to the first Paragraph of the same Article has a right to a reasonable compensation for the costs and inconvenience caused. The compensation shall be paid by the party that has requested the information.

Anyone who makes available an electronic communication service and who has, pursuant to an order to provide information, delivered information referred to in Chapter 6, Article 20, of the Act (2003:389) on Electronic Communications, shall send a written notice about this fact to the party that the information concerns not earlier than one month and not later than three months from the delivery of the information. Costs for the notice shall be compensated in accordance with the first Paragraph. (*Act 2009:115*).

Article 5 e. Notwithstanding the prohibition in Article 21 of the Act (1998:204) on Personal Data, personal data on violations of the law that constitute criminal offences pursuant to Chapter 9, Article 1, may be processed if this is necessary in order for a legal claim to be established, asserted or defended. (*Act 2009:115*).

Article 5 f. At the petition of the plaintiff, the Court may, in infringement cases, order the party that has committed, or contributed to, the infringement to pay a pecuniary compensation for appropriate measures to disseminate information about the judgement in the case.

The provisions in the first Paragraph apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements. (*Act 2009:115*).

Article 6. Anyone who wilfully or with negligence commits an infringement of a plant breeders' right shall pay a reasonable compensation for the exploitation of the plant variety and compensation for the further damage that the infringement has caused. When the amount of the compensation is decided, particular attention shall be given to

1. lost profits,
2. profit that the infringer has made,
3. damage caused to the reputation of the plant variety,
4. moral damage,
5. the interest of the holder in that infringements are not committed.

Anyone who commits an infringement of a plant breeders' right without intent or negligence shall pay a compensation for the exploitation of the plant variety if and to the extent reasonable.

An action for compensation may only concern damage that has been caused during the last five years before the action was brought. If no action is brought within the time period now mentioned, the right to compensation is lost. (*Act 2009:115*).

Article 7. Upon a petition by a party that has suffered an infringement in a plant breeders' right, the Court may, to the extent reasonable, decide that such plant material that the infringement concerns shall be recalled from the market or be destroyed or that some other measure shall be taken in respect of it. The same applies to implements that have been, or have been intended to be, used in connection with the infringement.

Notwithstanding the provisions in the first Paragraph, the Court may, where there are exceptional reasons, upon a petition, decide that the holder of material mentioned there shall be allowed to have disposal of the material against a reasonable compensation and on other reasonable conditions. Such a decision may be rendered only if the holder has acted in good faith.

The provisions of the first and second Paragraphs apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements.

A decision on a measure pursuant to the first Paragraph must not imply that the party that has suffered an infringement of a plant breeders' right has to pay a compensation to the party against which the measure is directed.

Any measure pursuant to the first Paragraph shall be paid for by the defendant where there are no specific reasons against it.

A decision referred to in this Article shall not be rendered, if forfeiture or a measure for the prevention of wrongful acts shall be decided pursuant to Chapter 9, Article 1 a, or the Criminal Code. (*Act 2009:115*).

Article 7 a. Where it can reasonably be assumed that someone has committed, or contributed to, an infringement, the Court may, for the purpose of preserving evidence relating to the infringement, order that an investigation shall be undertaken in respect of that party in order to search for objects or documents that can be assumed to be of importance for the investigation into the infringement (*infringement investigation*).

An order for an infringement investigation may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm caused to the party against which it is directed or to any other opposite interest.

The provisions in the first and second Paragraphs apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements. (*Act 2009:115*).

Article 7 b. An order for an infringement investigation is issued by the Court where legal proceedings relating to the infringement are pending. Where legal proceedings have not yet been initiated, the issue of the competence of the Courts is governed by the provisions for civil infringement cases in the Code of Judicial Procedure. The provisions in the Code of Judicial Procedure relating to limitation of the competence of a Court in disputes which have to be initiated otherwise than before a Court shall, however, not apply.

Issues relating to infringement investigations may be taken up for consideration only upon a petition by the holder of plant breeder's right or by anyone who, on the basis of a license, has a right to exploit the plant variety. Where a legal proceeding has not yet been initiated, the petition shall be submitted in writing.

The opposite party shall be given an opportunity to respond before an order for an investigation is rendered. Where a delay would entail a risk that objects or documents of importance for the inquiry into the infringement would be removed, destroyed or distorted, the Court may, however, immediately issue an order to be valid until otherwise decided.

In other respects, any issue relating to an infringement investigation which arises before legal proceedings have been initiated shall be processed in the same way as if the issue had arisen in the course of a trial. (*Act 2009:115*).

Article 7 c. An order for an infringement investigation may be rendered only where the applicant deposits a security at the Court for the injury that may be caused to the opposite party. Where the applicant is not capable of depositing a security, the Court may liberate him from it. As regards the type of the security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court, unless the opposite party has accepted it.

As regards appeals against the decision by the Court relating to an infringement investigation proceeding and as regards the proceedings in higher Courts the provisions concerning appeal against decisions prescribed in Chapter 15 of the Code of Judicial Procedure apply. (*Act 1998:1460*).

Article 7 d. An order for an infringement investigation shall contain information about

1. the purpose of the investigation,
2. the objects and documents that may be searched for, and
3. the venues that may be searched.

Where this is necessary, the Court shall set also other conditions for the execution of the order. (*Act 1998:1460*).

Article 7 e. An order for an infringement investigation is immediately enforceable. If an application for its execution has not been filed within one month from the order, it becomes invalid.

If the applicant does not, within one month from the conclusion of the execution, file an action or initiate in some other manner a proceeding relating to the matter, any measure that has been undertaken in the context of the execution of the infringement investigation shall be invalidated to the extent possible. The same applies where an order for an infringement investigation is invalidated after the execution has been concluded. (*Act 1998:1460*).

Article 7 f. An order for an infringement investigation is executed by the Local Enforcement Authority in accordance with the conditions prescribed by the Court and in applying Chapters 1 to 3, Chapter 17, Articles 1 to 5, and Chapter 18, of the Enforcement Code. The applicant's opposite party shall be informed about the execution only if the order for an infringement investigation has been rendered after hearing the opposite party. The Authority has the right to take photographs and to make video and sound recordings of such objects for which it is authorised to search. The Authority also has the right to make copies of, and extracts from, such documents for which it is authorised to search.

An infringement investigation must not concern written documents referred in Chapter 27, Article 2, of the Code of Judicial Procedure. (*Act 2006:725*).

Article 7 g. The opposite party has the right to summon an attorney when an order for infringement investigation is to be executed. The execution must not commence before the attorney has arrived. This does not, however, apply if

1. the investigation is thereby unnecessarily delayed, or
2. there is otherwise a risk that the purpose of the measure will not be achieved.

In the course of the execution, the Enforcement Authority is authorised to engage, as necessary, the services of an expert.

The Authority may permit the applicant or a representative of the applicant to attend the investigation in order to provide information. If such a permission is granted, the Authority shall see to it that the applicant or the representative is not being informed about the findings at the investigation more than can be justified by the execution. (*Act 2006:725*).

Article 7 h. Photographs and video and sound recordings of objects as well as copies of, and extracts from, documents shall be listed and shall be held available for the applicant and the opposite party. (*Act 1998:1460*).

Article 8. Property referred to in Chapter 9, Article 7, may be seized if it can reasonably be assumed that a criminal offence pursuant to Chapter 9, Article 1, has been committed. In respect of such seizures the provisions on seizure in criminal cases in general apply.

The provisions of the first Paragraph apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements. (*Act 2009:115*).

Article 9. If anyone exploits a plant variety which is referred to in an application for registration, what is said about infringement of a plant breeder's right shall apply, where the application results in a registration. Criminal liability or forfeiture may, however, not be adjudicated for such exploitation. Compensation for damages based on an exploitation which took place before the application was published according to the provisions of Chapter 5, Article 9, may, however, be determined only according to the provisions in Article 6, second Paragraph.

Notwithstanding the provisions of Article 6, third Paragraph, the right to compensation is not lost where an action in this respect is brought no later than one year from the registration of the plant breeder's right. (*Act 2005:314*).

Article 10. Where the registration of a plant breeder's right has been invalidated through a judgement which has obtained legal force, the Court may not adjudicate a sanction or decide on other measures under Articles 1 to 9.

Where an action is brought concerning infringement of a plant breeder's right and the defendant claims that the registration should be invalidated, the Court shall, at his request, order the proceedings to be in abeyance until the question of the invalidation of the registration has been finally decided. Where no action in this respect has been brought, the Court shall, in connection with the order for the proceedings to be in abeyance, determine a specified period of time for the party against which an action for infringement is brought to initiate an action for invalidation.

Article 11. Anyone who wilfully or by negligence violates the provisions of Chapter 4, Article 2, shall be adjudicated fines and shall pay a compensation for the injury caused. Where the negligence is of minor importance, criminal liability shall not be adjudicated. In such cases also the amount of the compensation may be adjusted.

Chapter 10. Provisions on Judicial Proceedings

Article 1. The holder of a plant breeder's right or anyone who, on the basis of a license, has a right to exploit a plant variety, is entitled to bring an action aiming at determining whether the registration provides protection against another party. A condition this is that there is uncertainty in this respect and that this is to the disadvantage of the holder of the plant breeder's right or the licensee.

Anyone who carries out, or intends to carry out, a business activity may, under the same conditions, bring an action against the holder of a plant breeder's right for the purpose of determining whether there is, due to the registration, an obstacle against the activity.

If it is claimed, in a case as referred to in the first Paragraph, that the registration should be invalidated, the provisions of Chapter 9, Article 10, second Paragraph, shall apply.

Article 2. Anyone who intends to bring an action for the invalidation of the registration of a plant variety, for the transfer of a registration or for obtaining a compulsory license shall notify the Swedish Board of Agriculture about this fact and inform anyone who is recorded in the Plant Variety Register as a licensee having the right to exploit the plant variety. If a licensee intends to bring an action for the infringement of the plant breeder's right or for the determination of a matter referred to in Article 1, first Paragraph, the licensee shall notify the holder of the plant breeder's right about this fact.

The requirement for notification shall be considered as fulfilled when a notification has been sent, in registered mail, to the address which has been recorded in the Plant Variety Register.

Where it is not shown, when the action is brought, that a notification has been made or information has been sent, the plaintiff shall be given time to do so. If the plaintiff does not comply within the time period afforded, the action must not be taken up for consideration. (*Act 2005:1216*).

Article 3. Where there is not, under the Code of Judicial Procedure, any Court competent as regards an action relating to a better right in a plant variety, to an invalidation of the registration of a plant variety, to the transfer of such a registration, to the granting of a compulsory license or to the determination of a legal situation according to Article 1, the action shall be brought at the Stockholm District Court.

Article 4. The Court shall transmit a copy of any judgement or final decision in cases under this Act to the Swedish Board of Agriculture. (*Act 2005:1216*).

Article 5. A final decision by the Swedish Board of Agriculture may be appealed against by the party which is concerned by the decision if it goes against him or her.

An appeal against a decision through which an application for registration has been approved may, however, be brought only by a party that has, in due course, filed an opposition against the application. If the opponent withdraws his appeal, the case may still be brought to a decision where special reasons exist.

Any decision through which an application for the transfer of a registration under Chapter 5, Article 8, has been approved may be appealed against by the applicant. Anyone who has brought an action for such a transfer may lodge an appeal against a decision through which the claim has been rejected. (*Act 2005:1216*).

Article 6. A decision by the Swedish Board of Agriculture may be appealed against to the Court of Patent Appeals within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed against to the Supreme Administrative Court within two months from the date of the decision. In such a case, the provisions contained in Articles 35 to 37 of the Act on Administrative Proceedings (*Act 1971:291*) on appeals against decisions by the Administrative Court of Appeal shall apply. The decision of the Court of Patent Appeals shall contain an indication of the fact that a

special permit has to be obtained for the case to be brought to the Supreme Administrative Court and of the grounds on which such a permit may be granted. (*Act 2010:1405*).

Chapter 11. Special Provisions

Article 1. Anyone who holds a plant breeder's right and does not have domicile in Sweden shall have a representative having his or her residence here. The representative shall be authorised to receive writs, invitations and other documents in cases relating to the plant breeder's right with the exception of writs in cases relating to criminal liability and of invitations to parties to personally appear before the Court. The representative shall be notified to the Plant Variety Register and be recorded there.

If the holder of the plant breeder's right has not notified any representative under the first Paragraph, any notices may instead be served through the transmission of the document, which is to be served to him or her, to the address recorded in the Plant Variety Register. Where a complete address is not recorded in the Register, the serving of the notice may be carried out through the holding available of the document at the Swedish Board of Agriculture and the publishing of this fact and of the main contents of the document in a publication as decided by the Government. The serving of a notice shall be deemed to have carried out when what has been said now has been carried out. (*Act 2005:1216*).

Article 2. The Government or a Public Authority as decided by the Government may issue provisions concerning the amount of fees under this Act.

Article 3. The Government may prescribe that plant varieties for which registration is being sought may be submitted to tests at a Public Authority in another State or at an International Institution. Furthermore, the Government may prescribe that persons who apply for registration of a variety for which they have earlier applied for registration in another State shall be obliged to provide information about what the Public Authority in that State has stated to them as regards the examination of the conditions for registration.

Chapter 12. On European Community Plant Variety Rights.

Article 1. Anyone who files an application for a European Plant Variety Right to the Swedish Board of Agriculture for transmission according to Article 49.2 of the Council Regulation (EG) No 2100/94 of July 27, 1994, on the Community Plant Variety Rights shall pay a fee to an amount decided by the Government. (*Act 2005:1216*).

Article 2. In cases of infringement of a Community plant breeders' right, the provisions in Chapter 9, Articles 1 and 1 a, on liability and forfeiture and Articles 7 a to 7 h on infringement investigation shall apply. In other respects, Chapter 9, Articles 2 to 7 apply in so far as otherwise does not follow from Council Regulation (EC) No 2100/94 of 27 July 1994 on the Community Plant Breeders' Right. In such cases, the provisions on infringement of a plant breeders' right shall apply to infringement of a Community Plant Breeders' Right. (*Act 2009:115*).

Transitional Provisions (*Act 1997:306*).

1. This Act enters into force on the date decided by the Government. Through this Act the Act on Plant Breeder's Rights (No 1971:392) is abrogated. (**Note:** According to

Regulation in Swedish Statute Book, SFS, 1997: 308 the Act entered into force on July 1, 1997).

2. This Act applies also to plant varieties registered at the date of the entry into force or which have been registered on the basis of applications filed before that date, where not otherwise follows from what is prescribed below.
3. An application for registration which has been published before the entry into force shall be processed and decided according to the provisions previously in force.
4. The new provisions do not apply to measures taken or rights acquired before the entry into force.
5. The provisions of Chapter 2, Article 4, second Paragraph, in the new Act do not apply to plant variety material which has been brought into circulation according to Article 4, third Paragraph, of the Act previously in force.
6. The question of invalidation of a registration of a plant variety which has been registered according to the provisions previously in force shall be determined according to the previous provisions.
7. Where someone before has, the entry into force, started the exploitation of plant variety material in a manner which did not require authorisation by the holder of the plant breeder's right under the provisions previously in force but which requires such an authorisation under this Act, he or she may, notwithstanding the new provisions, continue the planned activity to the extent necessary and customary, however not for more than five years from the entry into force. Such a right has also, under the same conditions, anyone who has taken significant measures to exploit the plant variety.
8. Where an application for registration concerns a plant variety on which the provisions previously in force were not applicable and the application is filed within one year from the entry into force of this Act, the time limit under Chapter 3, Article 2. item 1, shall be four years instead of one year.
9. As regards decisions by the National Plant Variety Board which have been taken before the entry into force, the provisions concerning appeals which were previously in force shall apply.
