

**This is an unofficial translation of the Act on the Protection of Plant Breeders' Rights, SFS 1997:306. Should there be any differences between this translation and the authentic Swedish text, the authentic Swedish text will prevail.**

## **ACT ON THE PROTECTION OF PLANT BREEDERS' RIGHTS**

(Swedish Statute Book, SFS, 1997:306, as amended up to SFS 2020:544)

### **Chapter 1. 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, if 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 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, if 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, if 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. 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, if 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 if it

1. is predominantly derived from the initial variety, or from a variety that in itself is predominantly derived from the initial variety, if it has retained 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 consent 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.

If the holder of the plant breeder's right had no reasonable possibility to exercise the right in relation to a certain propagating material, nobody may without his or her consent exploit the plant variety through such acts which are 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 first Paragraph does not extend to the export of plant variety material which can be used for propagating purposes, if the export is directed to a foreign country where varieties of the plant

genus or species concerned cannot be protected and the exported material 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 pursuant to that Article shall apply also to a plant variety which has been registered under this Act. The provisions in that Article and in the Implementing Regulation on the Community Plant Variety Rights shall apply to plant breeders' rights under this Act.

### **Chapter 3. 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 if propagating material or harvesting material of the variety has not, with the consent of the breeder or his successor in title, been sold or otherwise disposed of to others for the purpose of exploitation of the variety,

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, if 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, if this application concerns some other plant variety than trees or vines.

**Article 3.** A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other varieties whose existence 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. The plant variety shall also be deemed to be known if 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, if its significant characteristics remain unchanged after repeated propagation or, when the plant variety has a particular cycle of propagation, at the end of each such 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 filed here 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 (priority).

Such priority may also be admitted 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 filed 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, at the Swedish Board of Agriculture, 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 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 must not be registered if it is already registered for a Community Plant Variety Right under Council Regulation (EG) No 2100/94 on the Community Plant Variety Rights.

#### **Chapter 4. On Plant Variety Denominations**

**Article 1.** A registered plant variety shall have a plant variety denomination. This denomination shall enable the distinction of that plant variety from other varieties.

A plant variety denomination must not be accepted if it

1. consists solely of figures, except if this is an established practice for designation of varieties,
2. is obviously likely to mislead the public,
3. is contrary to laws or other statutes 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 trade name or any other name or any other denomination for which someone other than the applicant enjoys protection and which would have constituted an obstacle to 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 first and second Paragraphs, where there are no exceptional reasons against it. (Act 2018:1672).

**Article 2.** Anyone who offers propagating material of a registered plant variety for sale or otherwise disposes of such material 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. The Application Procedure**

**Article 1.** Registration under this Act is made in the Plant Variety Register which is kept by the Swedish Board of Agriculture.

When a plant variety is registered, 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 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 only concern 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 the representative 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 to the applicant under his last known address. The serving shall be deemed to have been carried out when this has been done. (Act 2005:1216).

**Article 5.** If the applicant has not complied with the requirements relating to the application or if there is any other obstacle to the approval of the application, the applicant shall be invited to, within a prescribed period of time, either respond or file a correction.

If the applicant fails to, within the prescribed period of time, respond 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.** If an obstacle to the approval of the application exists also after the applicant has responded and the applicant has been given an opportunity to file observations concerning the obstacle, the application shall be rejected unless there is a reason for issuing a new invitation to the applicant.

**Article 7.** If someone 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 within a specified period of time, failing which the claim is disregarded in the course of the continued examination of the application.

If 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 2016:215).

**Article 8.** If someone 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 a claim, 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 claimed, 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 is complete and no obstacle to the registration exists, the Swedish Board of Agriculture shall publish an announcement concerning the application in order to give the public an opportunity to file oppositions against the application.

Oppositions shall be filed in writing at the Swedish Board of Agriculture within the time 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, is unnecessary. The applicant shall pay a prescribed fee for the testing carried out. (Act 2005:1216).

**Article 11.** When 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. In respect of this examination, Articles 4 to 8 apply.

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

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

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

## **Chapter 6. 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 in the year after that when the decision about the registration acquired 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 for the plant breeder's right shall be paid for each calendar year. This fee shall be paid from, and including, the year after that when the application for registration was approved.

The annual fee shall be paid 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 made or earlier than six months before the calendar year to which the fee relates.

The annual fee may, with the prescribed increase, be paid within six months after the date when it is payable.

**Article 3.** In order to control whether a registered plant variety is stable, the Swedish Board of Agriculture may invite 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. 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.

If 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 still remains liable for the fulfilment of the license agreement.

**Article 2.** If 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. If it is shown that a license which has been recorded in the Register has expired, also this fact shall be recorded.

The first Paragraph applies accordingly to compulsory licenses.

In a case or matter relating to plant varieties, the holder of the plant breeder's right shall be deemed the person who has last been recorded in the Register in this capacity.

**Article 3.** If no supply of reproduction material of a registered plant variety is made 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 a reasonable extent.

**Article 3 a.** A holder of a patent on 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 a party that can be presumed to be able to exploit the plant variety in an acceptable manner and in conformity with the license. The applicant must also 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 which also determines the extent to which a plant variety may be exploited and fixes the remuneration and other conditions for the license. When significantly changed circumstances call for it, the Court may, upon a claim, terminate the license or decide on new conditions for it. (Act 2016:215).



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

**Article 1.** If the annual fee according to what is prescribed in 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 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 or impounded, or if a dispute concerning the transfer of a registration is pending, the plant variety must 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 impounding is still valid or the dispute has not been finally settled. (Act 2005:2016).

**Article 3.** The Court shall, upon a claim, invalidate the registration of a plant variety, if

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 fulfil 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 fulfil the requirement of uniformity under Chapter 3, Article 4, or the requirement of stability under Chapter 3, Article 5, if the variety was registered essentially 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 on the ground that the party that obtained the registration is entitled only to a part of the plant breeder's right. (Act 2016:215).

**Article 4.** If a plant variety has been registered for someone other than the one entitled to it under Chapter 1, Article 1, the Court shall, upon an action by the party entitled to it, transfer the registration to him or her. The action shall be brought within the time in Article 5.

**Article 5.** An 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 entitled to it may be brought only by the party claiming to be entitled to the variety. The action shall be brought within one year after 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 or her, the action must 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 if

1. the variety no longer fulfils the requirements under Chapter 3 with respect to 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.** If a plant variety denomination has been registered in violation 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 if a registered variety denomination obviously has become likely to mislead 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 the plant breeder's right or if 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 of July 27 1994 on the Community Plant Variety Rights contains special provisions which apply when a plant variety has been registered for a Community plant variety right after the variety has been registered under this Act.

## **Chapter 9. Liability and Obligation to Pay Compensation for Damages, etc.**

**Article 1.** Anyone who intentionally or by gross negligence infringes a plant breeder's right is punishable for plant breeder's right violation with a fine or imprisonment for up to two years.

If the violation was committed intentionally and is considered serious, the person is punishable for serious plant breeder's right violation with imprisonment for a minimum of six months up to a maximum of six years. When assessing whether the violation is serious, particular consideration has to be given to whether the act concerned

1. has been preceded by particular planning,
2. was part of criminal activities conducted in an organised form,
3. was conducted on a large scale, or
4. was otherwise of a particularly dangerous nature.

Anyone who has violated an injunction issued with a penalty of a fine pursuant to Article 2, must not be held liable for infringements covered by the injunction.

Responsibility is assigned under Chapter 23 of the Criminal Code for attempting to commit or preparation of plant breeder's right violation or serious plant breeder's right violation.

The prosecutor may initiate a prosecution for violations referred to in this Article only if the prosecution is motivated for being in the public interest. (Act 2020:544)

**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 act of receiving constitutes a violation pursuant to Article 1.

Property used as an implement in connection with a violation under Article 1 may be declared forfeited, if this needed in order to prevent criminal acts or where there are otherwise special reasons. The same applies to property intended to be used as an implement in connection with a violation under Article 1, if the violation has been completed or has 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 claim by the holder of the plant breeders' right or by a party that, pursuant to a license, has the right to exploit the plant variety, the Court may issue an injunction with a penalty of a fine, prohibiting a party that commits, or contributes to, an infringement of the plant breeders' right to continue it.

The provisions in the first Paragraph apply also to acts constituting attempts, and preparatory acts, in respect of infringements. (Act 2016:215).

**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, with a 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, in respect of infringements.

An injunction referred to 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 the plaintiff from it. In respect of the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code apply. The security shall be examined by the Court unless the defendant has approved it.

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

**Article 4.** In respect of appeals against decisions under Article 3 and in respect of 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 requesting the injunction. (Act 2018:215).

**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, with a 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 claim by the holder of the plant breeders' right or by a party that, pursuant to a license, has the right to exploit the plant variety. It may be issued only if the information can be assumed to facilitate the inquiry into an 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 identified 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 a 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 services,
2. the names and addresses of intended wholesalers and retailers, and
3. information about 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 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) contains provisions limiting the use can be made of personal data received (Act 2018:287).

**Article 5 c.** If the claim for an order to provide information is directed against the applicant's opposing party in an infringement case, 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 first Paragraph, the Act (1996:242) on Matters Brought before a Court shall apply. 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. (Act 2016:215).

**Article 5 d.** Anyone who, under 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 applied for the order to provide 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 Communication, shall send a written notification concerning this fact to the party whom the information concerns not earlier than one month and not later than three months from the delivery of the information. Costs for the notification shall be compensated in accordance with the first Paragraph. (Act 2009:115).

**Article 5 e.** In addition to what is prescribed in Chapter 3, Articles 8 and 9, of the Act (2018:218) on Additional Provisions Relating to the European Union Data Protection Regulation, personal data on violations of the law constituting criminal offences under Chapter 9, Article 1, may be processed if this is necessary in order for a legal claim to be established, asserted or defended. (Act 2018:281).

**Article 5 f.** Upon a claim by the plaintiff, the Court may, in infringement cases, order the party that has committed, or contributed to, the infringement to defray appropriate measures to disseminate information about the judgment 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 by 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 caused by the infringement. When the amount of the compensation is decided, particular attention shall be given to

1. lost profits,
2. profit made by the party committing the infringement,
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 caused during the last five years before the action was brought. If no action is brought within that time, the right to compensation is lost. (Act 2009:115).

**Article 7.** Upon a claim by a party that has suffered an infringement of a plant breeders' right, the Court may, to the extent reasonable, decide that plant material that the infringement concerns shall be recalled from the channels of commerce 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 for the infringement.

Notwithstanding the provisions in the first Paragraph, the Court may, where there are exceptional reasons, upon a claim, decide that the holder of plant 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 issued 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 suffering an infringement of a plant breeders' right would have to pay a compensation to the party against which the measure is directed.

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

A decision referred to in this Article shall not be issued, 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.** If 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 to acts constituting attempts, and to preparatory acts, relating to infringements. (Act 2009:115).

**Article 7 b.** Issues relating to infringement investigations may be taken up for consideration only upon a claim by the holder of plant breeder's right or by someone who, pursuant to a license, has a right to exploit the plant variety. If 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 issued. If 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 legal proceeding. (Act 2016:215).

**Article 7 c.** An order for an infringement investigation may be issued only if the applicant posts a security at the Court for the damage that may be caused to the opposite party. Where the applicant is not able to post such a security, the Court may liberate the applicant from it. In respect of 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 approved it.

In respect of appeals against the decision by the Court relating to an infringement investigation proceeding and in respect of 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. which premises 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 undertaken in the context of the execution of the infringement investigation shall immediately be invalidated to the extent possible. The same applies if an order for an infringement investigation is invalidated after the execution has been concluded. (Act 998:1460).

**Article 7 f.** An order for an infringement investigation is executed by the 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 issued 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 shall be executed. The execution must not begin before the attorney has arrived. This does, however, not 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, if 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 someone 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, if the application results in a registration. Criminal liability or forfeiture may, however, not be adjudicated in respect of such an exploitation. Compensation for damages in respect of an exploitation which took place before the application was published pursuant 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 if 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.** If the registration of a plant breeder's right has been invalidated through a judgment which has acquired legal force, the Court may not adjudicate a sanction or decide on other measures under Articles 1 to 9.

If 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. If 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 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 damage caused. If the negligence is of minor importance, criminal liability shall not be adjudicated. In such cases 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, pursuant to a license, has a right to exploit a plant variety, is entitled to bring an action in order to determine whether the registration provides protection against another party. A condition for 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, on the same conditions, bring an action against the holder of a plant breeder's right in order to determine 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, will 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 notification requirement shall be considered as fulfilled when a notification has been sent, in registered mail, to the address recorded in the Plant Variety Register.

If 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.** The Patent and Market Court is the competent Court in cases and matters under this Act. The same applies to cases concerning better title to a plant variety under Chapter 5, Article 7.

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 to applications for an order to provide information or for an order for an infringement investigation. (Act 2016:215).

**Article 4.** The Court shall transmit a copy of any judgment 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 by the party concerned by the decision.

An appeal against a decision whereby 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.

A decision whereby an application for the transfer of a registration under Chapter 5, Article 8, has been approved may be appealed by the applicant. Anyone who has brought an action for such a transfer may appeal a decision through which the claim has been rejected. (Act 2016:215).

**Article 6.** A decision by the Swedish Board of Agriculture may be appealed to the Patent and Market Court within two months from the date of the decision. (Act 2016:215).

## **Chapter 11. Special Provisions**

**Article 1.** A holder of a plant breeder's right who does not have domicile in Sweden shall have a representative with residence here. The representative shall be authorised to receive serving of summons, invitations and other documents in cases relating to the plant breeder's right with the exception of summons in criminal cases 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 a representative under the first Paragraph, the serving may instead be carried out by the transmission of the document to be served to him or her, to the address recorded in the Plant Variety Register. If no complete address is recorded in the Register, the serving of the document may be carried out through keeping the document available at the Swedish Board of Agriculture and the publishing of this fact and of the main contents of the

document in a publication decided by the Government. The serving of shall be deemed to have carried out when what has been said now has been fulfilled. 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 pursuant 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 variety 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 Variety Rights. In such cases, the provisions on infringement of a plant breeders' right shall apply to infringement of a Community Plant Variety 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 (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.

**Note.** The provisions on the entry into force of subsequent amendments to the Act are not translated here.

-----