



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(2007) 445 final

2007/0161 (CNS)

Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 2100/94 as regards the entitlement to file an application
for a Community plant variety right**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Article 12 of the Community Regulation on plant variety rights sets out the conditions for the entitlement to file an application for a Community plant variety right. According to this provision, only breeders from countries which are members of the International Union for the Protection of New Varieties of Plants (UPOV) are entitled to apply for a Community plant variety right (CPVR) under the same rules as for applicants from a Member State.

For other applicants, the Commission has to decide whether they are entitled to file an application. According to Article 12(1)(b) of the Regulation, such a decision may be subject to reciprocal and equivalent requirements. The provision stipulates that the Commission's decision may depend on whether the country in question,

- € affords protection for varieties of the same botanical taxon,
- € affords this protection to nationals of all Member States,
- € and whether the level of protection afforded corresponds to the protection provided by Regulation (EC) 2100/94.

Objective of the proposed amendment

To facilitate trade and align the provisions of the Regulation with other Community law, it appears necessary to amend Regulation 2100/94 so that the conditions for entitlement to file an application for the CPVR are simplified and one application system for all applicants is introduced.

Potential impact of the amendment

Deleting the provisions of Article 12(1)(a) and 12(1)(b) will contribute to the simplification of Community legislation.

Since its establishment in 1994 the Community Plant Variety Office has received 27317 applications for Community Plant Variety Rights (situation on 28 February 2007). 4693 applications (17.1 %) originated from non-EU countries. During the whole period only 89 applications were received from applicants of third countries which were not member of UPOV, requiring a Commission decision in accordance with Article 12(1)(b).

Therefore, considering the twelve years experience with the implementation of the Regulation and the number and situation of countries which are not member of UPOV, this proposal will have no noticeable impact on small or medium-sized undertakings in the Member States.

The proposal has no new financial implications for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights³ creates a Community regime for plant varieties, which allows for the grant of Community plant variety rights (CPVR), valid throughout the Community.
- (2) In the interests of the facilitation of trade it is appropriate to make the CPVR easily accessible. Therefore, the conditions for entitlement to file an application for the CPVR should be simplified and one application system for all applicants should be introduced.
- (3) Regulation (EC) 2100/94 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) Article 12 is replaced by the following:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 227, 1.9.1994, p. 1. Regulation as last amended by Regulation (EC) No 873/2004 (OJ L 162, 30.4.2004, p. 38).

"Article 12

Entitlement to file an application for a Community plant variety right

An application for a Community plant variety right may be filed by any natural or legal person, or any body ranking as a legal person under the law applicable to that body.

An application may be filed jointly by two or more such persons."

(2) In Article 41(2), the words "12 (1) (b)," are deleted.

(3) Article 52(4) is replaced by the following:

"4. Paragraphs 2 and 3 shall also apply in respect of earlier applications that were filed in another Member State."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

*For the Council
The President*