

Council Regulation (EC) No 2100/94 of 27
July 1994 on Community plant variety rights

PART SIX

CIVIL LAW CLAIMS, INFRINGEMENTS, JURISDICTION

Article 94

Infringement

- 1 Whosoever:
- a effects one of the acts set out in Article 13 (2) without being entitled to do so, in respect of a variety for which a Community plant variety right has been granted; or
 - b omits the correct usage of a variety denomination as referred to in Article 17 (1) or omits the relevant information as referred to in Article 17 (2); or
 - c contrary to Article 18 (3) uses the variety denomination of a variety for which a Community plant variety right has been granted or a designation that may be confused with it;

may be sued by the holder to enjoin such infringement or to pay reasonable compensation or both.

2 Whosoever acts intentionally or negligently shall moreover be liable to compensate the holder for any further damage resulting from the act in question. In cases of slight negligence, such claims may be reduced according to the degree of such slight negligence, but not however to the extent that they are less than the advantage derived therefrom by the person who committed the infringement.

Article 95

Acts prior to grant of Community plant variety rights

The holder may require reasonable compensation from any person who has, in the time between publication of the application for a Community plant variety right and grant thereof, effected an act that he would be prohibited from performing subsequent thereto.

Article 96

Prescription

Claims pursuant to Articles 94 and 95 shall be time barred after three years from the time at which the Community plant variety right has finally been granted and the holder has knowledge of the act and of the identity of the party liable or, in the absence of such knowledge, after 30 years from the termination of the act concerned.

Status: Point in time view as at 31/01/2008.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, PART SIX. (See end of Document for details)

Article 97

Supplementary application of national law regarding infringement

1 Where the party liable pursuant to Article 94 has, by virtue of the infringement, made any gain at the expense of the holder or of a person entitled to exploitation rights, the courts competent pursuant to Articles 101 or 102 shall apply their national law, including their private international law, as regards restitution.

2 Paragraph 1 shall also apply as regards other claims that may arise in respect of the performance or omission of acts pursuant to Article 95 in the time between publication of the application for grant of a Community plant variety right and the disposal of the request.

3 In all other respects the effects of Community plant variety rights shall be determined solely in accordance with this Regulation.

Article 98

Claiming entitlement to a Community plant variety right

1 If a Community plant variety right has been granted to a person who is not entitled to it under Article 11, the person entitled to it may, without prejudice to any other remedy which may be open to him under the laws of the Member States, claim to have the Community plant variety right transferred to him.

2 Where a person is entitled to only part of a Community plant variety right, that person may, in accordance with paragraph 1, claim to be made a joint holder.

3 Claims pursuant to paragraphs 1 and 2 may be invoked only within a period of up to five years of publication of the grant of the Community plant variety right. This provision shall not apply if the holder knew, at the time it was granted to or acquired by him, that he was not entitled to such rights or that entitlement thereto was not vested solely in him.

4 The person entitled shall be eligible *mutatis mutandis* to pursue claims pursuant to paragraphs 1 and 2 in respect of an application for grant of a Community plant variety right filed by a person who was not entitled to it or whom the entitlement was not vested solely.

Article 99

Obtaining identification of a variety

The holder of an initial variety and the breeder of a variety essentially derived from the initial variety shall be entitled to obtain an acknowledgement of the identification of the varieties concerned as initial and essentially derived.

Article 100

Consequences of a change in holdership of a Community plant variety right

1 In the event of a complete change in the holdership of a Community plant variety right in consequence of a final judgment delivered pursuant to Articles 101 or 102 for the purposes

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of claiming entitlement under Article 98 (1), any exploitation or other rights shall lapse with the entry of the person entitled in the Register of Community Plant Variety Rights.

2 Where the holder or a person enjoying the right of exploitation has effected one of the acts set out in Article 13 (2) or has made effective and genuine arrangements to do so prior to the commencement of the proceedings pursuant to Articles 101 or 102, he may continue or perform such acts provided he requests a non-exclusive exploitation right from the new holder entered in the Register of Community Plant Variety Rights. Such requests must be made within the time limit laid down in the implementing rules. The exploitation right may be granted by the Office in the absence of an agreement between the parties. Article 29 (3) to (7) shall apply *mutatis mutandis*.

3 Paragraph 2 shall not apply where the holder or persons enjoying the right of exploitation acted in bad faith when they effected the acts or began to make the arrangements.

Article 101

Jurisdiction and procedure in legal actions relating to civil law claims

1 The Lugano Convention as well as the complementary provisions of this Article and of Articles 102 to 106 of this Regulation shall apply to proceedings relating to actions in respect of the claims referred to in Articles 94 to 100.

2 Proceedings of the type referred to in paragraph 1 shall be brought in the courts:

- a of the Member State or another Contracting Party to the Lugano Convention in which the defendant is domiciled or has his seat or, in the absence of such, has an establishment; or
- b if this condition is not met in any of the Member States or Contracting Parties, of the Member State in which the plaintiff is domiciled or has his seat or, in the absence of such, has an establishment; or
- c if this condition is also not met in any of the Member States, of the Member States in which the seat of the Office is located.

The competent courts shall have jurisdiction in respect of infringements alleged to have been committed in any of the Member States.

3 Proceedings relating to actions in respect of claims for infringement may also be brought in the courts for the place where the harmful event occurred. In such cases, the court shall have jurisdiction only in respect of infringements alleged to have been committed in the territory of the Member State to which it belongs.

4 The legal processes and the competent courts shall be those that operate under the laws of the State determined pursuant to paragraphs 2 or 3.

Article 102

Supplementary provisions

1 Actions for claiming entitlement pursuant to Article 98 of this Regulation shall not be considered to fall under the provisions of Article 5 (3) and (4) of the Lugano Convention.

2 Notwithstanding Article 101 of this Regulation, Articles 5 (1), 17 and 18 of the Lugano Convention shall apply.

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3 For the purposes of applying Articles 101 and 102 of this Regulation, the domicile or seat of a party shall be determined pursuant to Articles 52 and 53 of the Lugano Convention.

Article 103

Rules of procedure applicable

Where jurisdiction lies with national courts pursuant to Articles 101 and 102, the rules of procedure of the relevant State governing the same type of action relating to corresponding national property rights shall apply without prejudice to Articles 104 and 105.

Article 104

Entitlement to bring an action for infringement

1 Actions for infringement may be brought by the holder. Persons enjoying exploitation rights may bring such actions unless that has been expressly excluded by agreement with the holder in the case of an exclusive exploitation right or by the Office pursuant to Articles 29 or 100 (2).

2 Any person enjoying exploitation rights shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the holder.

Article 105

Obligation of national courts or other bodies

A national court or other body hearing an action relating to a Community plant variety right shall treat the Community plant variety right as valid.

Article 106

Stay of proceedings

1 Where an action relates to claims pursuant to Article 98 (4) and the decision depends upon the protectability of the variety pursuant to Article 6, this decision may not be given before the Office has decided on the application for a Community plant variety right.

2 Where an action relates to a Community plant variety right that has been granted and in respect of which proceedings for revocation or cancellation pursuant to Articles 20 or 21 have been initiated, the proceedings may be stayed in so far as the decision depends upon the validity of the Community plant variety right.

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Article 107

Penalties for infringement of Community plant variety rights

Member States shall take all appropriate measures to ensure that the same provisions are made applicable to penalize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national rights.

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