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1. Introduction

New plants and plant products have an increasing impact on modern agriculture, horticulture, industry and medicine. If the development of improved varieties results in, for example, stronger resistance to diseases, better adaptation to extreme climates, higher nutritional value or plants that produce added pharmaceutically active components, then plant breeders must be able to obtain protection for their breedings.

2. Protection via patenting

Possibilities for protection of plants and plant products are provided by patent as well as plant variety law. Patents will be granted for plant inventions that are **new**, contain an **inventive step** and are **industrially applicable**. The patent granted protects - contrary to plant variety protection - not only plants and their naturally or artificially produced descendants, but also the method of production and use, as well as possible mutants. However, obtaining a patent may prove difficult. First, the conditions of patentability are strict, and second patents are not granted for plant varieties themselves (see art. 53 (b) [European Patent Convention](#)).

The [Directive 98/44/EC](#) on the Legal Protection of Biotechnological Inventions, in accordance with the EPC, allows patent protection for plants, when the patent protection is requested not only for the plant variety itself.

3. Protection via Plant Variety Rights

The protection of new plant varieties is a result of the procedures currently in force in Member States and of the procedures of [Regulation No. 2100/94 \(EC\)](#) on Community Plant Variety Rights (CPVR), which are generally based on the International Convention for the Protection of New Varieties of Plants ([UPOV Convention](#)).

The Community protection of plant varieties (CPVR) enables applicants, on the basis of one application to the [Community Plant Variety Office](#) (CPVO) in Angers, France, to be granted a single industrial property right, which is valid throughout the European Union. A CPVR has a uniform effect throughout the Community territory and can only be granted, transferred or terminated within this territory on a uniform basis. The new community-wide system exists alongside national systems as an alternative. It is not possible to hold Community and national plant variety rights simultaneously for the same variety. Furthermore, the CPVR cannot coexist with a patent. If a CPVR is granted in relation to a variety for which a national right or patent has already been granted, the national right or patent is suspended for the duration of the CPVR.

4. Conditions for protection

Varieties of all botanical genera and species, and particularly their hybrids, can be the object of a CPVR. For the definition of the term "plant variety" the regulation refers to the UPOV Convention 1991, Article 1. Protectable varieties must be **distinct**, **uniform**, **stable** and **novel** and also be

designated by a prescribed variety denomination (Articles 5 and 6). Upon receipt of an application, a technical examination must be carried out to ensure that protection criteria are complied with.

A variety must be identified by a variety denomination. The variety denomination is proposed by the applicant and approved by the Office for the variety in question if the Office considers this denomination suitable. The variety denomination is intended to serve as a kind of identity card for the protected variety, even after termination of the right.

5. How to apply for breeders' rights (plant variety protection)

The person who bred, or discovered and developed the variety shall be entitled to the Community plant variety right. This person is called the "breeder". If two or more persons bred, or discovered and developed the variety jointly, entitlement shall be vested jointly in them. An application may be filed jointly by two or more such persons. Applications for Community plant variety rights may be filed either directly with the Community Plant Variety Office or with one of the sub-offices or national agencies. Any individual or company whose domicile or headquarters are located in the European Union can apply for plant variety protection. Individuals or companies from a state that is a member of the International Union for the protection of new varieties of plants (UPOV) but not a member of the European Union can also apply, provided that an agent domiciled in the Community has been nominated.

6. Scope of protection of a CPVR and duration

Community plant variety rights confer upon their holder the right to perform the acts defined in Article 13 of EC Regulation 2100/94. This concerns, in particular, the production or reproduction, conditioning for the purpose of propagation, offering for sale, selling, exporting from the Community, importing to the Community, etc. of the variety for which Community protection has been granted.

In order to protect farming production, farmers are allowed to use crop products that are based on protected seed material that was purchased legally by the farmer ("reproduction seeds") for the purpose of progeny on crop growing on their own farm ("farmers' privilege"). The exemption is only applicable for certain crops (Art. 14).

The holder of a CPVR may bring an action for an injunction or compensation against infringement. The holder of a CPVR may also bring an infringement action against those who have used a variety denomination that may be confused with that of the holder, or who have not used a variety denomination correctly. As for every other property right, the Community plant variety right can be purchased or sold. Similar to a licence, a plant variety right can be a part or the whole of a contractual exploitation right.

Once granted, the maximum duration of a CPVR is 25 years, or 30 years in case of vine and tree varieties. These periods may be extended by legislation for an additional five-year period for specific genera or species; the duration of the right in relation to potato varieties has been extended to 30 years.