

BELGIUM

Law on the Protection of New Plant Varieties*

of May 20, 1975

CHAPTER I

GENERAL PROVISIONS

Article 1

This Law governs the protection of new plant varieties.

Without prejudice to the provisions of the Law of July 11, 1969, on Pesticides and Raw Materials for Agriculture, Horticulture, Forestry and Animal Husbandry, or to the provisions of the rules made under that Law, a new plant variety certificate, which confers on its owner the exclusive right to produce and commercialize the protected plant variety, may be granted for new plant species and varieties specified by the King which meet the conditions laid down in this Law.

The protection provided for in this Law excludes any protection provided for in the legislation on patents.

Article 2

For the purposes of the implementation of this Law:

- (a) (i) "variety" means any clone, line, stock or hybrid that is susceptible of cultivation, and any cultivar;
 - (ii) "reproductive or vegetative propagating material" means seeds, seedlings, plants or parts of plants that are intended for the reproduction of plants;
 - (iii) "breeder" means the natural or legal person who has bred or discovered a new variety, or his successor in title;
 - (iv) "applicant" means the natural or legal person who has filed an application for the recognition of the breeder's right;
 - (v) "commercialize" means to offer for sale, place on sale, stock for sale or delivery, exchange, sell, supply gratuitously or for a consideration, import or export.
- (b) (i) "Convention" means the Paris Convention for the Protection of New Varieties of Plants, signed on December 2, 1961;
 - (ii) "member State of the Union" means a State party to the Convention.
- (c) (i) "Service" means the Service for the Protection of New Plant Varieties;
 - (ii) "Council" means the Council referred to in Article 14;

(iii) "Minister" means the Minister with responsibility for agriculture.

Article 3

- (1) New plant variety certificates shall be granted only in respect of varieties that are new, sufficiently homogeneous and stable and have a denomination complying with the provisions of Articles 7 and 8, and provided that the applicant meets the obligations arising under this Law.
- (2) A new plant variety certificate shall be granted in respect of a variety only if an examination has shown that the conditions laid down in Articles 3 to 8 are fulfilled.

Article 4

(1) A variety shall be deemed new when, whatever the origin, artificial or natural, of the initial variation from which it has resulted, it is clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress; entry, or an application for entry, in an official register of varieties; inclusion in a reference collection; precise description in a publication.

A new variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be susceptible of precise description and recognition.

- (2) The fact that a variety has been entered in trials, or has been submitted for registration or entered in an official register, shall not prejudice the breeder of such variety or his successor in title.
- (3) With the exception of the varieties referred to in Article 49, a variety shall not be deemed new if, at the time of the application, it is commercialized in Belgium or has been commercialized abroad for more than four years, with the agreement of the breeder or his successor in title.

Article 5

The new variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

Article 6

The new variety must be stable in its essential characteristics, that is to say, it must remain true to the description given of it at the time of the grant of the new plant variety certificate after repeated reproduction or multiplication or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each such cycle.

Article 7

The applicant shall give the variety a denomination.

Article 8

The King shall specify, taking due account of the provisions of the Convention, the conditions to be fulfilled by the variety denomination and the conditions governing its use.

Article 9

- (1) If the variety has been bred outside Belgium, the new plant variety certificate shall be granted when Belgium is bound to do so under the Convention or any other international convention.
- (2) If the variety has been bred outside Belgium and paragraph (1) is not applicable, the new plant variety certificate shall be granted when the State in which it was bred grants equivalent protection to similar new varieties bred in Belgium.
- (3) If the variety has been bred outside Belgium without there being the obligation referred to in paragraph (1) or the reciprocity referred to in paragraph (2), the Minister may, on the advice of the Service, and after the Council has been heard, specify the conditions for the grant of a new plant variety certificate in respect of a variety bred outside Belgium which he considers to be beneficial to Belgian agriculture, horticulture or forestry. The Minister may impose limitations that are not provided for in the Convention.

Article 10

An applicant who has filed an application for the recognition of the breeder's right in another member State of the Union in accordance with the provisions in force in that State shall enjoy a right of priority with respect to the grant in Belgium of a new plant variety certificate for the same variety, provided that he:

- (a) files a request for the protection of the new variety and claims the priority of the first application within twelve months following the filing of that application;
- (b) submits, within three months from the filing of the request referred to under (a), copies, certified by the competent authority of the member State of the Union that received the first application, of the documents that were filed in relation to that application; and
- (c) submits, within four years following the expiration of the period referred to under (a), the additional documents and material in compliance with the conditions specified by the King.

Article 11

The King shall specify the duration of protection to be granted in respect of each species or group of species subject to this Law.

The duration of protection shall not be less than fifteen years, or eighteen years in the case of fruit trees and their rootstocks, vines, forest trees and ornamental trees. The maximum duration shall not exceed twenty-five years.

The period of protection shall commence on the date of the grant of the new plant variety certificate.

CHAPTER II

GRANT OF THE NEW PLANT VARIETY CERTIFICATE

Article 12

A special service for the grant of new plant variety certificates, called the Service for the Protection of New Plant Varieties, shall be created by the King at the Ministry of Agriculture.

Article 13

The Service shall maintain a register of applications for new plant variety certificates, and a register of new plant variety certificates granted, called the Register of Varieties.

Article 14

The Service shall be assisted by a Scientific Council composed of persons specially qualified in law, genetics, botany and plant science.

The tasks, composition and functioning of the Council and of its sections shall be specified by the King. The members of the Council shall be appointed and dismissed by the King.

Article 15

Applications for new plant variety certificates shall be filed with the Service. The King shall specify the conditions which shall govern their entry in the Register of Applications and determine the order in which they are entered. He shall lay down the procedure for publication of the entries and fix the period during which any person giving evidence of a legitimate interest may submit observations.

The applicant may at any time renounce his application. He shall inform the Service of such renunciation in compliance with the conditions specified by the King. Fees paid under Article 45 shall remain the property of the Service.

Article 16

Any alteration of the application entered in the Register of Applications shall be treated as a new application.

Incomplete applications shall be treated as not having been received. The respective applicant shall be responsible for the storage and return, where applicable, of material and documents.

Article 17

New plant variety certificates shall be granted after verification of the existence of the conditions laid down in Articles 3 to 8 and after examination of any observations that may have been submitted.

The variety for which a new plant variety certificate has been granted shall be entered by the Service in the Register of Varieties.

Article 18

(1) Examinations shall be carried out under the direction of the Service; the Service may seek the assistance of the Council referred to in Article 14.

The findings of the Service and the Council shall be communicated to the applicant. The applicant may inspect the examination file and submit observations.

Any person having submitted observations shall be sent the results of the examination concerning them. The Service may authorize that person, at his request, to inspect the part of the examination file that relates to his observations. He shall be entitled to enlarge upon those observations.

The King shall specify the periods during which the observations referred to in this Article have to be submitted.

(2) The decision of the Service to reject the application for a new plant variety certificate or to disregard observations shall state the reasons on which it is based.

Article 19

The applicant and the party having submitted observations shall be obliged to provide the Service with all information, documents, propagating material and seeds that are considered necessary for the examination.

Article 20

The King shall have power to conclude agreements with foreign scientific institutions with a view to the examination of new plant varieties and to take all such executive measures as are required to that end.

CHAPTER III

RIGHTS AND OBLIGATIONS OF THE OWNER OF A NEW PLANT VARIETY CERTIFICATE

Section 1: Licenses and Compulsory Licenses

Article 21

The owner of a new plant variety certificate shall have the exclusive right to make the production for commercial purposes and the commercialization of reproductive or vegetative propagating material of the respective variety subject to his prior authorization and to conditions specified by him. He may grant licenses.

Vegetative propagating material shall be deemed to include whole plants.

The right of the owner shall extend to ornamental plants or parts thereof that are normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

Article 22

The provisions of Article 21 shall not apply in so far as the production and maintenance of propagating material of a variety take place only with a view to scientific research or the production of new varieties.

The authorization of the owner of the new plant variety certificate shall be required, however, when the repeated use of the new variety is necessary for the commercial production of another variety.

Article 23

The owner of the new plant variety certificate shall inform the Service without delay, in the manner specified by the King, of licenses granted by him in Belgium. Such licenses shall be entered in the Register of Varieties.

Article 24

The owner of a new plant variety certificate must grant such licenses as are necessary to supply the market with propagating material and to provide the licensee with the material necessary for the exercise of his license.

Such licenses shall be granted at fair prices and shall not contain provisions liable to disrupt the normal conditions of competition.

Article 25

The exclusive right of the owner of a new plant variety certificate may only be subject to limitation for reasons of public interest and only by means of a compulsory license granted by the Service in compliance with conditions specified by the King.

Such compulsory licenses shall be granted when the Minister considers, on the advice of the Service, and after the Council has been heard, that the provisions of Article 24 have not been fulfilled.

The compulsory license may only be granted to one or more natural or legal persons offering the required scientific, professional and material guarantees. It shall be entered in the Register of Varieties.

The owner of the new plant variety certificate shall be entitled to fair remuneration to be paid by the grantee of the compulsory license, except where there is reason to make such remuneration payable by the Treasury.

Section 2: Entitlement

Article 26

The breeder's right shall belong to the person who has bred or discovered the new variety or to his successor in title.

If the breeder is working for an employer, the right shall belong to that employer, unless otherwise agreed.

If two or more natural or legal persons have bred the same new variety independently, the breeder's right shall belong to the first applicant.

Article 27

Actions claiming breeders' rights in their entirety or an indivisible part thereof shall be brought within five years following the grant of the new plant variety certificate.

The Service shall be informed by the claimant of the action brought, according to the procedure specified by the King.

Article 28

Licenses acquired in good faith before an action claiming a breeder's right was brought shall remain valid in relation to the new owner of the new plant variety certificate.

Section 3: Renunciation and Assignment

Article 29

The owner of a new plant variety certificate may renounce his right.

Renunciation shall be effective only as from its entry in the Register of Varieties.

Article 30

Renunciation may not be entered if, according to the entries in the Register of Varieties, there are persons who, in relation to the breeder's right, possess rights or have obtained licenses, or who have initiated an action claiming the breeder's right, except where those persons consent to the renunciation.

Article 31

The King shall specify the formalities and the time limits to be observed for the implementation of Articles 29 and 30.

Article 32

The owner of the new plant variety certificate may assign his rights in whole or in part.

Such assignment shall be evidenced in writing and notified to the Service according to the formalities and within the time limits specified by the King.

It shall not be binding on third parties until it has been entered in the Register of Varieties.

CHAPTER IV

FORFEITURE AND NULLITY

Section 1: Forfeiture

Article 33

- (1) The Service shall declare the forfeiture of the right to the new plant variety certificate, in the manner specified by the King, when the owner of the certificate or the licensee is no longer able to provide, on being requested to do so by the Service, reproductive or vegetative propagating material capable of producing the new variety with the morphological and physiological characteristics defined at the time of the grant of the new plant variety certificate.
- (2) The owner of a new plant variety certificate may be deprived of his right by the Service when he:
 - (a) fails to provide the Service, on being requested to do so and within the prescribed period, with the reproductive or vegetative propagating material, the documents and the information deemed necessary for checking the new variety, or opposes the examination of the measures taken for the maintenance breeding of the variety;
 - (b) has not complied with the obligation referred to in item 2 of Article 44 after expiration of the periods specified by the King.
- (3) Forfeiture shall be entered in the Register of Varieties.

Section 2: Nullity

Article 34

The new plant variety certificate shall be declared null and void by the Service if it appears that the conditions laid down in Article 4 were not fulfilled at the time when it was granted.

Nullity shall be pronounced either at the request of any interested party or ex officio; it shall be notified to the owner of the certificate.

Nullity shall be entered in the Register of Varieties.

CHAPTER V

INFRINGEMENT

Article 35

Either of the following acts, committed knowingly and without the authorization of the owner of the new plant variety certificate, shall be considered acts of infringement:

(a) the commercial production and commercialization of reproductive or vegetative propagating material of a variety protected by a new plant variety certificate, including ornamental plants or parts thereof that are normally marketed for purposes other than propagation;

(b) the repeated use in each reproduction cycle of the reproductive or propagating components of a variety protected by a new plant variety certificate in order to produce another variety for the purposes of commercialization.

Article 36

An infringement action may be brought after the grant of the new plant variety certificate.

The purpose of the action may be:

1. confiscation of the objects produced by means of the infringement;
2. cessation of the infringement;
3. payment of compensation for the loss caused by the infringement.

Notwithstanding the first paragraph of this Article, an action for restraining injunctions may be brought as soon as the application for a new plant variety certificate has been entered in the Register of Applications provided for in Article 15.

Article 37

Until such time as the Service has ruled on the application for the grant of a new plant variety certificate, the Court may order the cessation of acts of infringement.

It may require the plaintiff to deposit security.

If the decision of the Service is favorable, the security shall be returned on presentation of the new plant variety certificate.

If the Service rejects the application for the grant of a new plant variety certificate, the party having sought the restraining injunction shall indemnify the other party.

CHAPTER VI

DISPUTES

Article 38

(1) Disputes relating to civil rights which arise out of this Law shall be within the jurisdiction of the Court of first instance.

Disputes relating to the validity of applications for new plant variety certificates and to the refusal, grant, forfeiture and nullity of such certificates shall also be within the jurisdiction of the said Court. Actions shall not stay the procedure. However, if the dispute arises in the course of the administrative processing of the application for a

certificate, the Service may, at the request of one of the parties to the Court proceeding, suspend the grant of the certificate until the Court has delivered its decision.

In cases where the action concerns intellectual property rights and is not directed against the State, the plaintiff shall be obliged to call upon the State to take part in the proceedings.

(2) Any action referred to in paragraph (1) and any decision delivered on such an action shall be entered in the Register of Applications or the Register of Varieties, as the case may be.

Article 39

Article 569(1) of the Civil Procedure Code is hereby completed by the following provision:

“20. Actions referred to in Article 38 of the Law of May 20, 1975, on the Protection of New Plant Varieties.”

Article 40

Article 627, item 5, of the same Code is hereby replaced by the following provision:

“5. the Court of the place where the infringement occurred in the case of actions brought in matters of infringement of copyright, patents for inventions and plant variety protection.”

Article 41

Article 1481(1) of the same Code is hereby replaced by the following provision:

“Holders of patents, owners of new plant variety certificates or of applications therefor, successors in title and owners of copyright may, with the judge’s authorization, obtained on application, cause a description to be made, by one or more experts appointed by the judge, of the apparatus, machines, works, varieties, reproductive or vegetative propagating material and all other articles and processes alleged to constitute infringement, together with any plans, documents, calculations, writings, plants or parts of plants which may prove the infringement alleged, and any instruments which have served directly in the manufacture proceeded against.”

Article 42

In Article 1482 of the same Code, the words “The patent” are hereby replaced by the words “The patent, the new plant variety certificate or a copy of the registered application, certified by the Service for the Protection of New Plant Varieties.”

Article 43

The registrar shall communicate free of charge to the Service, within a month of their being delivered, copies of Court rulings on the disputes referred to in Article 38(1), without prejudice to the application of Article 792 of the Civil Procedure Code to the other disputes referred to in Article 38.

CHAPTER VII

FINAL AND TRANSITIONAL PROVISIONS

Article 44

The King shall specify, according to the genus, species or variety:

1. the fee to be paid by the applicant for the filing of his application;
2. the annual fee payable by the owner of the breeder's right.

Article 45

The King shall also specify:

1. the fees payable for the entries made by the Service under Articles 15, 17, 23, 25, 29 and 32;
2. the fees payable for the issue of extracts and copies by the Service.

Advance payment of the fees provided for in this Article may be demanded.

Article 46

The income generated by fees shall be applied to the expenditure incurred by the Service.

Income and expenditure shall be credited and debited to a special fund created in the special section of the budget of the Ministry of Agriculture.

The special fund shall be managed by the Minister of Agriculture; the accountant who collected the income shall have direct access to the assets of the special fund.

At the close of every fiscal year, any surplus of receipts over expenditure in excess of 250,000 francs shall be paid to the Treasury. This amount may be amended by the King.

Article 47

Applications for the grant of new plant variety certificates and all instruments, requests and documents relating to the implementation of this Law or the rules made thereunder shall, when they issue from a person residing abroad, be written in French or Dutch or be accompanied by a translation into one of those languages.

Article 48

The entries and observations required by Articles 15, 16, 17, 23, 25, 27, 29, 32, 33 and 34 shall be published by the Service in the manner specified by the King.

Article 49

(1) Where, prior to the entry into force of this Law, a variety has been the subject:

(a) of a patent acquired in Belgium;

(b) of a patent or title of protection acquired in one of the member States of the Union;

(c) of an entry in a Belgian list of varieties established under the Royal Decree of March 25, 1952, Organizing the Control of Agricultural and Horticultural Seeds and Seedlings, or under the Royal Decree of May 17, 1968, Organizing the Control of Basic Materials and Reproductive Materials for Forest Trees, or of an entry in the National Catalogue of Varieties of Agricultural Plant Species established under the Royal Decree of May 12, 1972, on the National Catalogue of Varieties of Agricultural Plant Species, or of an entry in the Catalogue of Varieties of Vegetables established under the Royal Decree of June 13, 1973, on the Commercialization of Vegetable Seeds, or of an entry in the register of a Belgian professional association that fulfils the conditions specified by the King;

the breeder may, within one year following the entry into force of this Law with respect to the species and varieties specified by the King under Article 1, request application of this Law without the common knowledge within the meaning of Article 4 arising from facts subsequent to the date of the grant of the said patents or title or of the entries referred to in paragraph (c) above being held against such application.

(2) Where the provisions of this Article are applied, and subject to the examination for novelty, stability, homogeneity and of the denomination:

1. the variety in question must have fulfilled these conditions at the time of the filing of the application for a patent or title of protection, or at the time of the entry in an official Belgian list of varieties or in a national catalogue or in the register of a Belgian professional association;

2. the duration of the protection granted under the provisions of Article 11 of this Law shall be reduced by the time that has elapsed between the date of the initial entry, as defined above, and that of the entry in the Register of Varieties.

This provision shall apply also to varieties which, prior to the entry into force of this Law, have enjoyed the protection provided for in the Convention in one or more member States of the Union.

Article 50

This Law shall enter into force on the date set by the King and at the latest one year after its publication in the *Moniteur Belge*.

* Titles in the National Official Languages: Loi sur la protection des obtentions végétales; Wet tot bescherming van kweekprodukten.

Source: Moniteur belge - Belgisch staatsblad of September 5, 1975.