

FRANCE

Law on the Protection of New Plant Varieties*

No. 70-489 of June 11, 1970

CHAPTER I

General Provisions

Article 1

For the purposes of this Law, “new plant variety” (*obtention végétale*) shall mean any new plant variety, whether created or discovered, which--

is different from similar already known varieties by one characteristic that is important, precise and subject to little fluctuation or by several characteristics the combination of which is such as to give it the status of a new variety;

is homogeneous in its characteristics; and

remains stable, that is to say identical with its original definition at the end of each cycle of multiplication.

Article 2

Any new plant variety fulfilling the conditions stated in the preceding Article shall be defined by a denomination to which shall correspond a description and a sample kept in a collection.

Article 3

Any new plant variety may be the subject of a title called “new plant variety certificate” (*certificat d’obtention végétale*), which shall confer on its owner an exclusive right to produce,

* French title: Loi relative à la protection des obtentions végétales.

Translation by the Office of the Union of the text published in the *Journal officiel* of June 12, 1970.

introduce into the territory to which this Law applies, sell or offer for sale all or part of the plant or any element for the reproduction or vegetative propagation of the variety or of varieties derived from it by hybridization where their reproduction requires the repeated use of the original variety.

Under the conditions provided for in Article 39 below, the provisions of the preceding paragraph shall be applied progressively to the various plant species according to the evolution of scientific knowledge and of the means of verification. The elements of the plant to which the breeder's right relates shall be determined at the same time for each such species.

Article 4

There shall be set up under the authority of the Minister of Agriculture a Committee for the Protection of New Plant Varieties chaired by a magistrate and composed of a number of persons, from both the public and the private sectors, qualified by reason of their theoretical or practical knowledge of genetics, botany and agronomy. The Committee shall either issue the certificate, with effect from the date of application, or reject the application, stating the reasons for so doing.

Article 5

The certificate shall be issued only if a preliminary examination has shown that the variety being the subject matter of the application is a new plant variety within the meaning of Article 1.

The Committee may dispense with the preliminary examination if it has already been carried out with sufficient references in another country party to the Paris Convention of December 2, 1961¹. The Committee may also call upon foreign experts.

Article 6

The duration of the certificate shall be twenty years from the date of issue. It shall be fixed at twenty-five years if the constitution of the elements for the production of the species requires a long period of time.

Article 7

A plant variety shall not be deemed new if, in France or elsewhere, and prior to the date of filing of the application, it has received sufficient publicity to enable exploitation or has been described in an application for a certificate or in an unpublished French certificate, or in an application filed abroad and enjoying the priority provided for in Article 10 below.

¹ International Convention for the Protection of New Varieties of Plants.

The use of the variety by its breeder in tests or experiments or its entry in a catalogue or an official register of a State party to the Paris Convention of December 2, 1961, for the Protection of New Varieties of Plants, or its display in an official or officially recognized exhibition within the meaning of the Convention relating to international exhibitions signed at Paris on November 22, 1928, and amended on May 10, 1948, shall in no case, however, constitute an act of disclosure causing prejudice to the novelty of the variety.

Nor shall disclosure constituting an evident abuse in relation to the breeder cause prejudice to the novelty of the variety.

Article 8

Any act concerning a new plant variety certificate and relating to the issue of the certificate, to the transfer of ownership, to the grant of a right of exploitation or to a pledge shall have effect vis-à-vis third parties only if it has been duly published in accordance with the conditions laid down by a decree issued under Article 39 below.

Article 9

The certificate shall designate the new plant variety by a denomination enabling it to be identified, without confusion or ambiguity, in any State party to the Paris Convention of December 2, 1961.

The breeder shall be under the obligation to keep at all times a vegetative collection of the protected new plant variety.

A description of the new variety shall be appended to the new plant variety certificate.

The certificate shall have effect vis-à-vis third parties as from the date of its publication.

Use of the denomination entered in the certificate shall be mandatory, as from the date of publication of the certificate, for any commercial transaction, even after expiry of the duration of the certificate.

The denomination given to the variety may not be the subject of a trademark filing in a State party to the Paris Convention of December 2, 1961. Such a filing may be made, however, as a precautionary measure, without preventing the issue of the new plant variety certificate, provided that evidence of the renunciation of the effects of the application in the States party to the Convention is produced prior to the issue of the certificate.

The provisions of the preceding paragraph shall not prevent the addition, in respect of one and the same new plant variety, of a trademark to the denomination of the variety concerned.

Article 10

(I) Any person possessing the nationality of one of the States party to the Paris Convention of December 2, 1961, or having his domicile or establishment in one of those States may apply for a new plant variety certificate in respect of varieties belonging to the genera or species mentioned in the list annexed to the said Convention or in a supplementary list drawn up under the provisions of the said Convention.

Such person may, when filing in France an application for a new plant variety certificate, claim the priority of the first application previously filed in respect of the same variety by himself or by his predecessor in title in one of the States referred to above, provided that the application in France is made not more than twelve months after the first application.

Such matters as the filing of another application, the publication of the subject matter of the application or the exploitation of the variety concerned, occurring within the period of priority, shall not constitute grounds for contesting the validity of a new plant variety certificate for which an application has been filed in accordance with the conditions provided for in the preceding paragraph.

(II) In addition to the cases provided for in paragraph (I) above, any foreigner may enjoy the protection instituted by this Law, provided that French nationals are accorded, in respect of the genera or species concerned, reciprocal protection in the State of which that foreigner is a national or in which he has his domicile or establishment.

Article 11

Fees for services rendered shall be charged in respect of preliminary examination, issue of the certificate and all entries in or deletions from registers.

A fee shall be payable annually throughout the period of validity of the certificate.

The tariff of such fees shall be fixed by order of the Minister of Agriculture and the Minister of Economy and Finance.

The income from such fees shall be credited to a special section of the budget of the National Institute of Agronomic Research.

CHAPTER II

Ex Officio Licenses and Obligations on the Breeder

Article 12

A variety essential to human or animal life may be subjected to the system of *ex officio* licenses (*licence d'office*) by decree of the Council of State (*décret en Conseil d'Etat*) or, where public health is affected, by joint order of the Minister of Agriculture and the Minister Responsible for Public Health.

Article 13

As from the date of publication of the order or decree subjecting new plant variety certificates to the system of *ex officio* licenses, any person offering appropriate technical and professional guarantees may apply to the Minister of Agriculture for the grant of a license to exploit the variety.

Such license shall be non-exclusive. It shall be granted by order under specified terms, particularly in respect of its duration and scope, but to the exclusion of the royalties arising from it.

The license shall take effect on the date of notification of the order to the parties.

In the absence of an amicable settlement, the amount of royalties shall be fixed by the court determined in accordance with Article 33 below.

Article 14

Where the holder of an *ex officio* licence fails to comply with the prescribed conditions, the Minister of Agriculture may, upon the advice of the Committee for the Protection of New Plant Varieties, declare the license forfeited.

Article 15

The State may, at any time, obtain *ex officio*, for the purposes of national defense, a license to exploit a plant variety being the subject matter of an application for a certificate or of a new plant variety certificate, whether the exploitation is to be made by the State itself or on its behalf.

The *ex officio* license shall be granted, at the request of the Minister Responsible for National Defense, by order of the Minister of Agriculture. The said order shall fix the terms of the license, to the exclusion of those relating to royalties arising from its use. The license shall take effect on the date of the request for the *ex officio* license.

In the absence of an amicable settlement, the amount of royalties shall be fixed by the court determined in accordance with Article 33 below.

Article 16

The rights deriving from an *ex officio* license may not be assigned or transferred.

Article 17

The Minister Responsible for National Defense shall be empowered to take cognizance, on a strictly confidential basis, of the applications for certificates with the Committee for the Protection of New Plant Varieties.

Article 18

A joint order by the Minister Responsible for National Defense and the Minister of Agriculture shall fix the list of the plant species whose new varieties being the subject matter of applications for a certificate may not be disclosed or exploited freely without special authorization.

Subject to Article 19, such authorization may be granted at any time. It shall be deemed to be vested *ipso jure* at the expiry of a period of five months from the filing date of the application for a certificate.

Article 19

Prior to the expiry of the period provided for in the last paragraph of Article 18, the prohibitions laid down in the first paragraph of that Article may be extended, at the demand of the Minister Responsible for National Defense, for a period of one renewable year. The extended prohibitions may be lifted at any time, under the same condition.

The extension of the prohibitions under this Article shall give rise to a right to compensation commensurate with the prejudice sustained, in favor of the owner of the application for a certificate. In the absence of an amicable settlement, such compensation shall be fixed by the courts.

Article 20

A certificate owner may request revision of the compensation provided for in Article 19, at the expiry of a period of one year from the date of the final judgment fixing the amount of the compensation.

The certificate owner shall submit evidence showing that the prejudice sustained by him is in excess of the assessment of the court.

Article 21

For the purposes of national defense, the State may, at any time, expropriate by decree all or part of a new plant variety being the subject matter of an application for a certificate or of a certificate.

In the absence of an amicable settlement, the amount of compensation for expropriation shall be fixed by the district court (*Tribunal de grande instance*).

CHAPTER III

Forfeiture of Rights

Article 22

The rights of the owner of a new plant variety certificate shall be forfeited where--

- (1) he is unable to furnish the administration at any time with the elements of reproduction or vegetative propagation such as seeds, cuttings, grafts, rhizomes and tubers, enabling the protected variety to be reproduced with its morphological and physiological characteristics as defined in the new plant variety certificate;
- (2) he refuses to submit to inspections carried out for the purpose of checking the measures he has taken for the maintenance of the variety;
- (3) he fails to pay, within the prescribed period, the annual fee provided for in the second paragraph of Article 11.

Such forfeiture shall be declared by the Committee for the Protection of New Plant Varieties. Where it is declared in accordance with subarticle (3) above, the owner of the certificate may, within the six months following the expiry of the prescribed period, lodge an appeal for reinstatement of his rights if he can give legitimate reasons for his failure to pay the fee. Such appeal shall not, however, prejudice any rights acquired by third parties. The final decision declaring forfeiture of rights shall be published.

CHAPTER IV

Infringement, Legal Proceedings and Penalties

Article 23

Any violation of the rights of the owner of a new plant variety certificate as defined in Article 3 above shall constitute an infringement for which the offender shall be liable. However, violations committed by a third party other than the person carrying out the reproduction or propagation shall constitute infringement only if they were committed with knowledge of the facts.

Subject to the provisions Article 3, the use of the protected variety as a source of initial variation with a view to obtaining a new variety shall not constitute violation of the rights of the certificate owner.

The holder of an ex officio license under Article 12 or Article 15 and, unless otherwise stipulated, the beneficiary of an exclusive right of exploitation may institute proceedings under the first paragraph above where the certificate owner fails, after a summons, to do so.

The certificate owner shall be entitled to take part in proceedings brought by the licensee in accordance with the preceding paragraph.

Any holder of a license shall be entitled to take part in proceedings brought by the certificate owner to obtain compensation for the prejudice that he personally has sustained.

Article 24

Any intentional violation of the rights of the owner of a new plant variety certificate, as defined in Article 3, shall constitute an offense punishable by a fine of from 2,000 to 15,000 francs. In the event of recidivism, a sentence of imprisonment of from two to six months may also be passed. Recidivism shall have occurred, within the meaning of this Article, when the accused has been convicted of the same offense during the five preceding years.

Article 25

Public proceedings for the imposition of the sentences provided for in the preceding Article shall be instituted by the public prosecutor only upon formal complaint of the injured party.

The criminal court (*tribunal correctionnel*) hearing the case shall make no decision until the civil court, by a decision amounting to *res judicata*, has found the offense committed. Pleas of nullity of the new plant variety certificate or of matters relating to ownership of the certificate may only be entered by the respondent before the civil court.

Article 26

Acts committed prior to the publication of the issue of the certificate shall not be considered to violate the rights under the certificate. Acts committed after a true copy of the application for a certificate has been served on the party presumed liable may however be the subject of a report and prosecution.

Article 27

The owner of an application for a new plant variety certificate or of a certificate shall be entitled, with the court's authorization, to cause a detailed description to be made, with or without effective

seizure, of any plants or parts of plants or of any elements of reproduction or vegetative propagation alleged to have been obtained in violation of his rights. This right shall also be available to the assignee of an exclusive right of exploitation or the holder of an ex officio license, subject to the condition set forth in Article 23, third paragraph.

Where the claimant fails to petition the court within the prescribed period, the description or the seizure shall be null and void, *ipso jure*, without prejudice to any damages which may be claimed.

Article 28

The civil court may order, at the request of the injured party and on its behalf, the confiscation of any plants or parts of plants or of any elements of reproduction or vegetative propagation obtained in violation of the rights of the owner of a new plant variety certificate and, where appropriate, of the instruments specifically intended for use in the reproductive cycle.

Article 29

The civil and criminal actions under this Law shall be statute-barred at the end of three years counted from the acts concerned.

The institution of civil actions shall suspend the statute of limitations for criminal actions.

Article 30

Where a variety being the subject matter of an application for a certificate or of a new plant variety certificate is exploited for the purposes of national defense by the State or by its contractors, sub-contractors and subsidiary suppliers, without a license for exploitation having been granted, the court hearing the case shall have no authority to order either the discontinuance or the interruption of exploitation, or the confiscation provided for in Article 28.

If an official appraisal or a description, with or without effective seizure, is ordered by the presiding judge of the court hearing the case, the appointed law official shall refrain from proceeding with the seizure, the description and any investigation into the business if the contract for research or reproduction or propagation has a defense security classification.

The same shall apply where research, reproduction or propagation is carried out in a military establishment.

The presiding judge of the court hearing the case may, if so requested by the entitled person, order an official appraisal, which shall be carried out only by persons approved by the Minister Responsible for National Defense and in the presence of his representatives.

The provisions of Article 26 shall not apply to applications for a new plant variety certificate the subject matter of which is being exploited under the conditions set forth in the present Article so long as such applications are subject to the prohibitions provided for in Articles 18 and 19.

The person engaged in such exploitation shall incur, ipso jure, the liability referred to in this Article.

Article 31

Any person improperly claiming ownership of a certificate or of an application for a new plant variety certificate shall be liable to a fine of from 2,000 to 5,000 francs. In the event of recidivism, the fine may be doubled. Recidivism shall have occurred, within the meaning of this Article, when the accused has been convicted of the same offense during the five preceding years.

Article 32

Without prejudice, should circumstances dictate, to the heavier penalties provided for violations of State security, any person who has knowingly committed a breach of the prohibitions laid down in Articles 18 and 19 shall be liable to a fine of from 3,000 to 30,000 francs. Where such violation has effectively prejudiced national defense, a sentence of imprisonment of from one to five years may also be passed.

Article 33

Any litigation arising out of this Law shall fall within the jurisdiction of the district courts and of the corresponding courts of appeal, with the exception of appeals from decrees and ministerial orders and decisions which shall fall within the jurisdiction of the administrative courts.

The Court of Appeal of Paris shall hear directly appeals from decisions of the Committee for the Protection of New Plant Varieties made under this Law.

A decree shall designate the district courts competent to hear civil actions. The number of such courts shall not be less than ten. The same decree shall also define the precincts within which the said courts shall perform the functions thus assigned to them.

Article 34

(I) Article 7, second paragraph, of Law No. 68-1 of January 2, 1968, to Promote Inventive Activity and Revise the Patent System shall be supplemented as follows:

“The following, in particular, shall not constitute industrial inventions:

.....

(4) new plant varieties of a genus or species enjoying the protection instituted by Law No. 70-489 of June 11, 1970, on the Protection of New Plant Varieties.”

(II) Article 16 of the same Law shall be supplemented as follows:

“Any patent application shall be rejected:

.....

(7) which relates to a new plant variety of a genus or species enjoying the protection instituted by Law No. 70-489 of June 11, 1970, on the Protection of New Plant Varieties.”²

Article 35

The provisions of Articles 42 and 43 of the Law of January 2, 1968, mentioned above shall apply to applications for new plant variety certificates and to new plant variety certificates.

The same shall apply to Articles 44, 46 and 47 of the Law referred to above, the Committee for the Protection of New Plant Varieties being substituted for the National Institute of Industrial Property.

CHAPTER V

Miscellaneous Provisions

Article 36

The breeder of a plant variety may apply for the protection of his rights by a certificate, if the variety has lost its character of novelty at the time of application, provided that, for less than twenty or twenty-five years, depending on the cases referred to in Article 6 above, and in any event before the entry into force of the decree provided for in Article 39 concerning the procedure for the issue of a certificate and the organization of the Committee for the Protection of New Plant Varieties, the variety in question--

² The Law referred to, as last amended and supplemented by Law No 78-742 of July 13, 1978, bears the title: "Patent Law" (*Loi sur les brevets d'invention*). The second paragraph of Article 7 has become the sole paragraph, subparagraph (4) has become subparagraph (b) and the introductory sentence has been amended to read as follows: "The following shall not be patentable." Subparagraph (7) of Article 16 has been repealed.

has been the subject of a patent issued in a State party to the Paris Convention of March 20, 1883,

or has been entered in an official catalogue of one of the States party to the Paris Convention of December 2, 1961,

or has been registered with a French professional association approved by the Committee for the Protection of New Plant Varieties.

The authenticity of the variety shall be determined by the date of filing of the application for a patent, of the entry in the official catalogue or of registration by the professional association.

The new plant variety certificate, if granted, shall take effect from the date of application. Its duration shall be reduced by the period which has elapsed since the filing of the patent application, the entry in the official catalogue or the registration by the professional association.

Where the breeder of the variety concerned has at different times fulfilled more than one of the above conditions, only the date of the earliest such condition shall apply.

Article 37

Assignments of new plant variety certificates and exploitation concessions shall be registered for a fixed fee of 50 francs.

Article 38

This Law shall apply to the overseas territories of New Caledonia, French Polynesia, Saint-Pierre and Miquelon;³ Wallis and Futuna and the French Southern and Antarctic Territories.

Article 39

The detailed application of this Law shall be fixed by decree of the Council of State.

³ The overseas territory of Saint-Pierre and Miquelon acquired the status of an overseas department by Law No. 76-664 of July 19, 1976. The Law on the Protection of New Plant Varieties was extended to that department by Article 14 of Order No. 77-1106 of September 26, 1977, Extending and Adapting to the Department of Saint-Pierre and Miquelon Various Legislative Provisions Relating to Industry, Agriculture and Commerce.