

# Federal Law on the Protection of New Plant Varieties

(of March 20, 1975)\*

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\* *Title in French:* Loi fédérale sur la protection des obtentions végétales.

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*Note:* This Law has not yet entered into force.



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## CHAPTER I: GENERAL PROVISIONS

### Section 1: Scope

#### *Scope: Subject Matter*

#### 1. —

(1) New plant varieties (“varieties”) shall be protected by virtue of the International Convention of December 2, 1961, for the Protection of New Varieties of Plants (“the Convention”) and by virtue of this Law and of regulations made under it.

(2) The word “variety” shall mean any cultivar, clone, line, stock or hybrid, whatever the origin, artificial or natural, of the initial variation which gave rise to it.

(3) The new protected variety is defined by its official description or by the specimen cultivated in the reference collection of the authority responsible for carrying out the examination.

#### *Scope: Persons*

#### 2. —

(1) The rights conferred by this Law may be acquired by:

- (a) Swiss nationals and persons having their place of residence or registered office in Switzerland;
- (b) nationals of another member State of the International Union for the Protection of New Varieties of Plants (hereinafter called “member State”) if that State protects varieties of the same species or if the variety belongs to a species mentioned in the list referred to in Article 4(3) of the Convention.

(2) States which grant reciprocity to Switzerland shall be treated on the same footing as member States. Persons having their domicile or registered office in one of the former States shall enjoy the same treatment as the nationals of the latter States.

*Agent in Switzerland*

3. — No person having neither residence nor registered office in Switzerland can be party to an action instituted pursuant to this Law and enforce the rights derived therefrom unless he has an agent established in Switzerland. Such an agent shall have power to act on his principal's behalf before the Office for the Protection of New Varieties (the "Office" referred to in Article 23) and in legal proceedings relating to the protection of varieties. Nothing in this Law shall alter the provisions governing the exercise of the legal profession.

*Reservation in Favor of International Instruments*

4. — Applicants for a right to protection ("applicants") and the holders of such a right ("holders") may invoke the provisions of the most recent text ratified by Switzerland of multilateral conventions, when these are more favorable than the provisions of this Law.

**Section 2: Conditions Attached to  
the Protection of Varieties**

*Varieties Eligible for Protection*

5. —

(1) Protection shall be allowed and must be granted to new varieties which are stable and sufficiently homogeneous; such varieties must, in addition, belong to a botanical genus or species which the Federal Council has included in the list of species.

(2) A variety shall be considered to be new if it is clearly distinguished, by one or more important features, from any other variety whose existence is generally known at the time the application for a title of protection ("application") is filed.

(3) The fact that a variety is itself generally known shall in no way detract from its character of novelty unless, at the time the application was filed, the variety had already been offered for sale or marketed in Switzerland or — for more than four years — abroad, with the consent of the breeder or his successor in title.

*Denomination of Varieties*

6. —

(1) A variety shall be given a denomination.

(2) Such denomination shall not:

(a) be liable to mislead or to cause confusion with another denomination which has already been filed or registered in a member State for a variety of the same species or a similar botanical species;

(b) be contrary to public order or morality nor infringe federal law or international instruments;

(c) consist exclusively of figures.

(3) If the same variety has already been filed or registered in another member State, the same denomination shall be used unless it is improper for linguistic or other reasons.

*Trademarks*

7. —

(1) Apart from the denomination, a variety may be designated by a trademark differing from the denomination.

(2) If, for a particular variety, the applicant announces a denomination identical with the trademark under which he has registered it or another variety of the same or a similar botanical species, or if he announces a denomination which is liable to be confused with that trademark, he can no longer, from the time when he obtained the title to the protection of his variety in a member State, avail himself of the right deriving from the trademark within the limits of the protection resulting from the varietal denomination.

*Use of the Denomination of a Variety*

**8. —**

(1) Anyone selling or offering for sale propagating material on a commercial basis shall use the denomination of the variety even after the termination of protection.

(2) The rights of third parties shall remain fully intact.

**Section 3: The Right to Protection**

*Principle*

**9. —**

(1) The right to the protection of a variety is acquired by a breeder or by his successor in title. Article 332 of the *Code des obligations* and Article 16 of the Federal Law on the Status of Officials shall apply *mutatis mutandis*.

(2) If several persons have jointly created a variety, the right belongs to them jointly.

(3) If the variety has been obtained independently by several persons, the right belongs to the one who can prove that his application was filed first or that his application enjoys priority.

*Position of Applicant*

**10. —** Anyone who has filed an application shall be considered, pending proof to the contrary, as being authorized to claim the title of protection.

*Priority*

**11. —**

(1) Anyone who files an application within twelve months of the date on which he or his agent has filed, for the first time, a regular application in another member State, shall enjoy the priority deriving from the first application. In such a case, any facts arising since the first application cannot be invoked in opposition to the second application.

(2) Priority shall be invoked when filing an application for a variety. Attested copies of the documents proving the first application must be submitted to the Office within three months. If these conditions are not fulfilled the priority shall lapse.

**Section 4: The Effects of the Protection of Varieties**

*General*

**12. —**

(1) The effect of the protection of varieties is that no one may, professionally, without the consent of the holder, produce propagating material of the protected variety with a view to marketing it, offering it for sale or selling it in the course of business.

(2) “Propagating material for the production of plants” means:

(a) reproductive propagating material (seeds, fruits, etc.); or

(b) vegetative propagating material (plants or parts of plants such as cuttings, tubers, bulbs, etc.).

(3) It is not necessary to have the authorization of the breeder or his successor in title to use the propagating material of a protected variety for creating or marketing a new variety. Such authorization is, however, required when the protected variety has to be used repeatedly to produce the new variety.

#### *Ornamental Plants*

#### **13. —**

(1) No one, without the consent of the holder may, for the commercial production of ornamental plants or cut flowers, use plants or parts of plants which propagate vegetatively and which are customarily marketed for purposes other than propagation.

(2) For certain varieties of ornamental plants, the Federal Council may extend such protection to the marketed product if this is necessary in the interests of the holders. In such cases, the extended protection applies only to Swiss holders and to the nationals of States granting reciprocity.

### **Section 5: Modifications Relating to the Existence of Protection**

#### *Expiry of the Period of Protection*

**14. —** Protection shall expire at the end of the 20<sup>th</sup> year following the issue of the title. The Federal Council may, in the case of certain species or groups of plants, increase the period of protection to 25 years at the most.

#### *Premature Forfeiture*

#### **15. —**

(1) A title of protection shall become forfeit when:

(a) the holder renounces his right by a written declaration addressed to the Office;

(b) an annual fee is not paid by the due date.

(2) Such renunciation may be revoked if it has not yet been published by the Office.

#### *Declaration of Nullity*

#### **16. —**

(1) When a complaint has been lodged, the judge may declare a title of protection null and void if it is proved that the variety is not new or that the same variety has already been protected by virtue of an earlier application or that priority was enforceable in respect of it.

(2) Anyone who establishes an interest may bring an action for nullity.

(3) When the Swiss Office has granted a title of protection on recognition of the priority derived from an application abroad and the foreign title has not been obtained, the holder must elucidate the reasons, producing documentary proof. If he refuses to do so, the judge may decide the case at his discretion.

#### *Annulment*

#### **17. —**

(1) The Office shall annul a title of protection when the holder:

(a) cannot supply propagating material capable of producing the new variety with its morphological and physiological characteristics as defined when the right was granted;

- (b) fails to produce within the prescribed period and after being requested to do so the propagating material, the documents and the information necessary for examining the new variety, or does not allow inspection of the measures which have been taken for the maintenance of the variety.
- (2) The annulment of a title of protection takes effect from the time of its entry in the register of titles of protection of varieties (“the register”).

## **Section 6: Modifications Relating to the Right to the Issue of a Title of Protection and the Right to Protection**

### *Transfer*

#### **18. —**

- (1) The right to the issue of a title of protection and the right to protection may be transferred in whole or in part to third parties and may pass to successors in title.
- (2) Unless they have been recorded in the register the rights of third parties cannot be set up against anyone who, in good faith, has acquired rights to protection.

### *Assignment*

#### **19. —**

- (1) When an application has been filed by a person not having a right to protection, the successor in title may demand the assignment of the application or, if the title has already been granted, bring an action for assignment.
- (2) The action must be brought within two years from the date of publication of the title of protection. An action brought against a defendant who has acted in bad faith is not subject to any time limit.
- (3) If the action succeeds, any rights granted by the defendant to third parties become null and void.

### *Expropriation*

#### **20. —**

- (1) When necessitated by the national supply situation, the Federal Council may order the total or partial expropriation of a title of protection.
- (2) The expropriated person shall be entitled to full and complete compensation. In case of dispute, the compensation shall be fixed by the Federal Court (*Tribunal fédéral*). Chapter II of the Federal Law on Expropriation applies *mutatis mutandis*.

## **Section 7: Licenses**

### *Granting of Licenses, General*

#### **21. —**

- (1) The holder may authorize a third person to use a protected variety (granting of a license). If the variety belongs jointly to several persons, a license can only be granted by agreement between them.
- (2) Unless they have been recorded in the register, licenses cannot be set up against anyone who, in good faith, has acquired rights to protection.

*Compulsory Granting of a License*

**22.** —

(1) Any person whose request for a license is rejected by the holder on insufficient grounds may bring an action before the courts for the issue of a license. The granting of a license may be ordered only if required in the public interest.

(2) The judge shall fix the scope and duration of the license and the compensation to be paid. A compulsory license cannot be assigned and cannot be exclusive.

(3) Where an action appears well-founded, the judge may, after hearing the defendant and subject to a final decision, grant the license at the request of the claimant, provided he furnishes adequate security to the defendant.

## CHAPTER II: ORGANIZATION AND PROCEDURE

### Section 1: Organization and Competence

*Office for the Protection of Varieties*

**23.** — The Office for the Protection of Varieties (“the Office”) is attached to the Agricultural Division of the Federal Department of the Public Economy. Unless this Law provides otherwise, the Office is empowered to issue titles of protection and to examine questions concerning them.

*Authorities Responsible for Conducting Examinations*

**24.** —

(1) It shall be the responsibility of federal agricultural research stations to investigate whether a variety is new and sufficiently homogeneous and stable. In the case of varieties developed by the stations themselves, the Office shall entrust the task to some other authority fulfilling the required conditions. International agreements made pursuant to Article 30(2) of the Convention shall apply notwithstanding anything to the contrary herein.

(2) The authority responsible for the examination may, with the approval of the Office, call on the assistance of third parties and take into consideration the findings of examinations conducted abroad.

*Appeal Authority*

**25.** —

(1) The decisions of the Office concerning the admissibility of a variety to protection under Article 5 shall be subject to an appeal to the Appeals Section of the Federal Bureau of Intellectual Property. The decisions of the Section are not subject to appeal.

(2) An appeal under administrative law to the Federal Court is admissible against all other decisions of the Office.

(3) The appeals procedure is governed by the general provisions of the legislation on administrative justice.

## Section 2: Filing of Applications and Examination of Varieties

### *Form of Application and Filing Date*

#### 26. —

- (1) Anyone wishing to have a variety protected shall submit to the Office, in the prescribed manner, an application accompanied by the required indications and documents, and pay the application fee.
- (2) The filing date is taken to be the day on which all the file documents have been produced and the application fee has been paid.

### *Rectification Procedure*

#### 27. —

- (1) An improper application shall be rectified if the Office so requires. In case of need, the Office may at any time require other rectifications.
- (2) If the defects are not removed within the time limit stipulated, the application shall be rejected.

### *Publication of Applications*

#### 28. —

- (1) A properly filed application shall be published by the Office. Such publication shall include at least:
  - (a) the filing date;
  - (b) the name or designation and the address of the applicant and of his agent, if any;
  - (c) the name or designation and the address of the breeder, if he is not the applicant;
  - (d) the proposal concerning the denomination of the variety;
  - (e) the genus or species to which the variety concerned belongs;
  - (f) where applicable, the country and date of a previous application giving priority.
- (2) Where an application is withdrawn or rejected after publication, or where the terms of a published application are subsequently modified, a new publication shall be made.

### *Objections*

#### 29. —

- (1) Anyone shall be entitled to present objections to an application during the three months following publication. Such objections shall be made in writing, giving reasons. The documents and plants serving as evidence shall be attached or indicated.
- (2) The only effect of objections can be to show that the variety for which an application has been filed is not eligible for protection under Article 5 or that its denomination is inadmissible under Article 6.
- (3) The applicant has the right to state his views about the objections presented. In particular, he shall state whether he intends to maintain his application, modify it or withdraw it.

### *Examination of Varieties*

#### 30. —

- (1) After publishing an application, the Office shall transmit it to the authority responsible for examining the variety informing it of any objections presented.
- (2) The applicant shall, within a fixed time limit, supply the propagating material required by the authority responsible for conducting the examination, provide it with all the necessary particulars and

authorize their verification. The breeder or his successor in title who claims priority for the application shall supply the propagating material within four years from the expiry of the priority period.

(3) Where the variety is subjected to a cultivation test, the applicant has the right to inspect the test in progress on the spot and to express his views on the results of the test.

#### *Granting of Protection*

#### **31. —**

(1) Once the examination is completed, the Office shall grant protection when all the requirements are fulfilled. Otherwise, it shall refuse to grant it.

(2) Protection is granted, without guarantee on the part of the Confederation, by the entry in the register. As title of protection, the applicant shall receive an extract from the register (“title of protection of the variety”).

(3) Until proof is produced to the contrary, the title shall be considered lawful and its holder as the rightful holder thereof.

### **Section 3: Register of Titles of Protection, Publication and Fees**

#### *Contents of the Register*

#### **32. —**

(1) The Office shall keep the register in which titles of protection are recorded, with the necessary indications, namely:

- (a) the denomination of the variety;
- (b) the description of the variety;
- (c) the name or designation and address of the holder and of his agent, if any;
- (d) the name or designation and address of the breeder, if he is not the holder;
- (e) the filing date of the application and its date of publication;
- (f) where applicable, the country and date of a former application giving priority.

(2) All changes affecting the title of protection or the right to protection shall likewise be recorded in the register. The courts shall send to the Office, in full and free of charge, any decisions, against which appeals may no longer be brought, which give rise to such changes.

(3) Provided it has previously informed the holder thereof, the Office may supplement the description of a variety where this is required by the description of another variety.

#### *Publication*

#### **33. —**

(1) The Office shall publish the entries made in the register.

(2) No one may avail himself of the claim that he was unaware of an entry in the register.

#### *Publicity of Register*

#### **34. —**

(1) Anyone may, on payment of a fee, consult the register or obtain information concerning its contents and request extracts.

(2) Apart from the report of the authority responsible for the examination, the documents contained in the register shall be confidential. They may not be consulted by third parties without the authorization of the holder. The courts do not require such authorization.

*Conservation of the Files*

35. — The Office shall conserve the originals or copies of the documents in the files relating to titles of protection for five years after the termination of protection; the register, however, shall be conserved indefinitely.

*Fees*

36. —

(1) The competent services shall collect the following fees for the issue of a title of protection:

- (a) a fee for the filing of the application;
- (b) fees for the examination of the variety;
- (c) annual fees during the duration of protection.

(2) Fees are payable in advance and fixed at such a level as to cover costs.

(3) The Federal Council shall lay down rules concerning the amount and due date of fees and the time limits within which they shall be paid. It may declare other services relating to the protection of varieties to be subject to the payment of fees.

## CHAPTER III: PROTECTION IN CIVIL LAW

### Section 1: Claims

*Motions for Injunctions to Desist, and to put an End to a State of Affairs (Actions en cessation et en suppression de l'état de fait), and Actions for Damages*

37. —

(1) Anyone who is threatened or who is injured in his rights deriving from protection or in his right to the denomination of a variety may bring an action for an injunction ordering the discontinuance of the act complained of or the elimination of the unlawful situation resulting from it.

(2) In the event of negligence, the injured party may also claim damages; the amount of the damages need not be indicated in the plaintiff's pleadings.

*The Right to bring an Action before Protection has been Granted*

38. —

(1) As soon as the application has been published and before protection has been granted, the applicant may bring an action for an injunction for the discontinuance of acts or the elimination of their consequences, provided he furnishes adequate security to the opposing party.

(2) Actions for damages may be brought only when protection has been granted, but they may then include damage caused by the defendant's negligence since the publication of the application.

*Declaratory Proceedings*

39. — Anyone who can prove an interest may bring an action with a view to establishing the existence or absence of a legal relation falling to be judged in accordance with this Law.

*Preservation of Manufacturing or of Business Secrets*

40. —

(1) The manufacturing or business secrets of the parties concerned shall be preserved.

(2) The opposing party shall be informed of evidence liable to reveal such secrets only in so far as this is compatible with their preservation.

#### *Jurisdiction*

#### **41. —**

(1) The actions provided for under this Law shall be brought before the judge of the defendant's place of residence in Switzerland.

(2) If the defendant does not have a place of residence in Switzerland, the competent judges shall be:

(a) in the case of actions brought against third persons by the applicant or the holder: the judge of the place in which the act was committed, or of the place in which the result was produced;

(b) in the case of actions brought by third persons against the applicant or the holder: the judge of the place of business of the agent named in the register or, if the agent has been struck off the register, the judge of the place where the Office has its headquarters.

(3) If more than one place is eligible, the competent judge shall be the one before whom the action is brought.

#### *Exclusive Cantonal Jurisdiction*

#### **42. —**

(1) Each canton shall appoint for the whole of its territory a court which shall have exclusive cantonal jurisdiction over the actions covered by the present Law.

(2) Appeal to the Federal Court is admissible irrespective of the amount in dispute.

### **Section 2: Interim Orders**

#### *Conditions*

#### **43. —**

(1) At the request of a person entitled to bring an action, it shall be possible to make interim orders, for example, with a view to ensuring the provision of evidence, the continuance of a state of affairs or the exercise of disputed rights relating to the discontinuance of an act or the elimination of the situation resulting from it.

(2) The applicant shall establish the likelihood that the opposing party has infringed or intends to infringe the provisions of this Law and that he is consequently threatened with damage difficult to make good and which can only be prevented by interim orders.

(3) The opposing party shall be heard; if there is danger in delay, the interim orders may be made in advance.

#### *Security*

#### **44. —**

(1) Interim orders which are liable to cause damage to the opposing party shall be subject to an obligation to provide security.

(2) Where the opposing party provides adequate security to the applicant, the making of interim orders may be waived or such orders, if already made, may be revoked.

*Time Limit for Bringing Action*

45. — When an interim order is made before an action has been initiated, the applicant shall be granted an additional time limit of 60 days in which to bring an action; he shall be warned that, if he does not institute proceedings within this period, the interim order shall lapse.

*Responsibility of Applicant*

46. —

(1) The damage resulting from an interim order shall be made good if the claim on the grounds of which the order was made proves to be ill-founded.

(2) The action for damages shall be barred one year from the day on which the interim order lapsed.

(3) If the applicant has provided security, this shall be returned to him only when it is certain that no action for damages will be brought; in case of doubt, the judge may, even if the applicant does not so request, fix a time limit for bringing an action.

*Competence and Procedure*

47. —

(1) So long as an action has not been initiated, competence based on place shall be determined by the rules which apply to the action.

(2) Once proceedings have started, the judge before whom they have been brought is alone competent.

(3) The cantons shall appoint the authority competent to make interim orders and shall prescribe the relevant procedure.

## CHAPTER IV: PROTECTION IN PENAL LAW

*Infringement of the Provisions relating to the Protection of Varieties*

48. —

(1) Anyone who unlawfully produces for commercial purposes the propagating material of a protected variety, offers it for sale or sells it in the course of business,

anyone who unlawfully and constantly uses the propagating material of a protected variety with a view to producing the propagating material of a new variety,

anyone who unlawfully uses plants or the parts of plants of a protected variety customarily put up for sale for purposes other than propagation for the commercial production of ornamental plants or cut flowers,

anyone who unlawfully sells in the course of business ornamental plants or cut flowers of species for which protection has been extended, within the meaning of Article 13(2), to the marketed product,

shall, if he has acted intentionally, be punished on the complaint of the injured party by imprisonment for up to one year, or by a fine.

(2) If he has acted negligently, he shall be punished by a fine.

(3) The right to lodge a complaint shall lapse on the expiry of a period of six months from the date on which the identity of the person responsible is known to the injured party.

*Misleading Publicity and other Offenses*

**49.** —

(1) Anyone who, in advertisements, on his business papers or in the marketing of products, gives indications liable to give rise to the false belief that the products are protected,

anyone who does not use the denomination of the variety when, in the course of business, he sells the propagating material of a protected variety,

anyone who, in his professional activity, uses the denomination of a protected variety or a denomination liable to be confused with it for another variety of the same or a similar botanical species,

anyone who infringes the present Law or the regulations which apply to it in any other way, shall be punished by a fine, if he has acted intentionally.

(2) The attempt to commit an offense and complicity in an offense shall also be punishable.

*Confiscation of Material*

**50.** — Even in cases where no specific person can be prosecuted and sentenced, the judge may order the confiscation of products manufactured unlawfully.

*Penal Prosecution*

**51.** — Penal prosecution shall be the responsibility of the cantons.

## CHAPTER V: FINAL PROVISIONS

*Amendments to Existing Law*

**52.** —

(1) The Federal Law of April 11, 1889, on prosecution for debts and bankruptcy shall be amended as follows:

*Art. 132, subparagraph 2*

2. The same rule shall apply to the making of inventions, to titles of protection for varieties, to industrial designs, to trademarks and to copyright.

(2) The Judicature Law of December 16, 1943, shall be amended as follows:

*Art. 100, subparagraph (n) (new)*

(n) In relation to the protection of plants: the decisions relating to the admissibility of plant varieties.

*Protection of Known Varieties*

**53.** —

(1) Notwithstanding Article 5(3), varieties which, with the consent of the breeder or his successor in title, have been offered for sale or marketed in Switzerland for less than four years may also be submitted for protection during a transitional period of one year from the entry into force of this Law. If protection is granted, its duration shall be reduced by the number of whole years which have elapsed between the first time the variety was offered for sale or marketed and the time when it was submitted.

(2) The same rule shall apply mutatis mutandis to varieties of species newly included in the list of species after the entry into force of this Law.



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*Application*

54. — The Federal Council shall lay down the required regulations for the application of this Law.

*Committee of Experts on the Protection of Varieties*

55. — The Federal Council shall appoint a committee of experts on the protection of varieties on which the interested groups shall be fairly represented. The function of the committee shall be to advise the authorities in the application of this Law and to make proposals to them.

*Referendum and Entry into Force*

56. —

- (1) This Law is subject to the optional referendum.
- (2) The Federal Council shall fix the date of its entry into force.