

DENMARK

Law on the Protection of Plant Breeders' Rights*

Consolidated Text of Law No. 205 of June 16, 1962, as Amended by
Law No. 169 of May 15, 1968, Law No. 197 of March 29, 1974,
and Law No. 131 of March 25, 1981

Article 1

(1) Any person who has created a plant novelty through plant breeding in Denmark, or any person to whom the breeder's right has been lawfully transferred, may obtain the protection of the breeder's right in accordance with the provisions of this Law. The same applies to any Danish breeder who has created a plant novelty abroad. Unless the context otherwise requires, "plant breeder" shall be understood in the following as including the breeder's lawful successor in title.

(2) This Law shall come into force for each group of cultivated plants by an Order of the Minister of Agriculture made after consultation with the professional organizations interested in the group concerned. Once a group of cultivated plants has been brought within the scope of this Law, it may not be withdrawn by administrative action.

(3) Plant breeders' rights may be protected only where the following conditions are fulfilled:

(a) The plant novelty--whether produced by artificial or natural means --must be distinguishable by one or more features from any other plant form whose existence is well known at the time when protection is applied for. The features which may come into consideration may be either morphological features, such as structure, form and color, or physiological and invisible features, such as resistance, possession of valuable substances (dry matter, oil, etc.) and suitability for special kinds of processing.

(b) The plant novelty must be sufficiently homogeneous.

(c) The plant novelty must be stable in its special features (essential characteristics) during propagation, provided that such propagation is carried out in the framework of the system specified by the breeder.

* Danish title (of Law No. 205 of June 16, 1962): Lov om beskyttelse af foraedlerrettigheder for planter.

Consolidated text prepared by the Office of the Union on the basis of translations kindly supplied by the Danish Ministry of Agriculture.

(4) Breeder's protection under this Law shall not be granted for plant novelties that have been offered for sale or commercialized with the breeder's consent before the date of the application. Where necessary for the fulfillment of international agreements, the Minister may provide that protection may be granted notwithstanding the fact that the plant novelty concerned was offered for sale or commercialized in another country during the four years preceding the application. However, in respect of trees, the Minister of Agriculture may provide that the period shall be extended to six years.

(5) Subject to Article 3(1) of this Law, where more than one person applies for protection in respect of the same plant novelty, the first to file the application shall be given priority.

Article 2 [Repealed]

Article 3

(1) The Minister of Agriculture may provide that breeders' rights in plant novelties created abroad may be protected in Denmark either in the event of reciprocity or where breeders' rights in plant novelties created in Denmark may be protected in the country concerned under the same conditions as apply to plant novelties created in that country. Subject to the same conditions, the Minister may provide that nationals of countries granting protection to Danish nationals may obtain breeders' protection, irrespective of their place of residence. For the purposes of the provisions of Article 1(3)(a), (4) and (5) of this Law, the Minister of Agriculture may provide that an application for protection of a plant novelty which has already been the subject of an application for protection in a foreign country shall be deemed upon request to have been filed at the same time as the application in the foreign country. The Minister shall determine the conditions for claiming such priority.

(2) In addition to the cases referred to in paragraph (1), the Minister may exceptionally provide that it shall be possible to grant protection under the provisions of this Law to a breeder of plant novelties created abroad in so far as such protection is, in the particular case, found to be in the interest of the agricultural economy.

Article 4

(1) Applications for protection shall be decided upon by a board set up by the Minister of Agriculture: the Board for Plant Novelties.

(2) The Minister of Agriculture shall determine the composition of the Board and its procedure and in doing so decide whether the Board should be divided into sections for the various groups of plants or for the main groups of plants.

(3) For the examination of individual cases, the Board may call upon particular experts.

Article 5

(1) The Board for Plant Novelties shall keep a Journal, in which applications for protection shall be entered in chronological order immediately upon receipt, as well as a Register of Plant Novelties, in which plant novelties being the subject of an application shall be entered when the Board has ascertained that the conditions governing final entry in the Register are satisfied. The Board shall moreover deposit applications, cultivation reports and all other documents relating to each plant novelty being the subject of an application in its Archives on Plant Novelties.

(2) The Journal and the Register of Plant Novelties shall be available to the public. The Minister shall determine to what extent the Archives on Plant Novelties shall be available to the public.

(3) A list of the protected varieties [*sorter og stammer*] shall be published at regular intervals. This list may be published in connection with a list of varieties [*sortliste*] drawn up on the initiative of the State Plant-Growing Committee.

Article 6

(1) The application for entry in the Register of Plant Novelties may be filed by the breeder himself or by an agent resident in Denmark having a written power of attorney from the breeder. Where the person in whose name an application is filed is resident abroad, the application shall be made through an agent resident in Denmark, who shall have been given full power to represent the breeder before the Board for Plant Novelties and who may be summoned before the courts, for any matter relating to the registration, in the name of the person appearing on the application.

(2) The application shall be filed in triplicate, one copy being stamped by the Board for Plant Novelties and returned to the applicant immediately after entry of the application in the Journal.

Article 7

(1) The application shall contain the following particulars:

1. The applicant's name and address.
2. The breeder's name and address.
3. A description of how the plant novelty came into existence.
Such information may however, with the authorization of the Board for Plant Novelties, be omitted in special cases. An appeal may be made to the Minister of Agriculture against the decision of the Board within a period of four weeks.
4. A description of the plant novelty mentioning in particular the characteristic features distinguishing it from known plants (see Article 1(3)(a)) accompanied--where necessary--by drawings and photographs.

5. A declaration that the plant novelty has not been commercialized with the breeder's authorization contrary to the provisions of this Law.

(2) The Board may request such further particulars as it deems necessary. Where the applicant is not the breeder, he shall furnish proof of his entitlement to file the application.

(3) The applicant may also submit special information concerning private test growings or official test growings carried out in Denmark or abroad.

(4) At the time of filing the applicant shall pay an application fee to be fixed by the Minister of Agriculture, to cover the administrative expenses of the Board for Plant Novelties. The Board may require the applicant to pay, as soon as possible after its request, a deposit to cover the expenses relating to the test growings (see Article 9).

Article 8

(1) As soon as possible after entry of the application in the Journal, the Board for Plant Novelties shall carry out a provisional examination as to whether the plant novelty can be considered as fulfilling the conditions for registration. Unless the Board finds circumstances indicating that the conditions are not fulfilled, it shall cause a short notice of the application to be published in the Official Gazette [*Statstidende*], in accordance with rules to be made by the Minister of Agriculture. The notice shall contain an invitation to persons interested to make known their objections to registration of the plant novelty. The Board may publish a further notice shortly before final registration.

(2) Where--in cases other than objections to the applicant's entitlement--the Board finds an objection so put forward justified, it may, after giving the applicant an opportunity to express his opinion, accept the objection, remove the application from the Journal and terminate the test growings. In such a case, the Board shall inform both the person who made the objection and the applicant of its decision, and a notice on this fact shall be published in the Official Gazette. Where the objection is to the effect that the applicant has no entitlement to the plant novelty being the subject of the application, the Board shall invite the person making the objection to take proceedings against the applicant in accordance with the provisions of Article 18. Where the Board is informed about such proceedings, it shall make the appropriate annotation on the application.

Article 9

(1) Before the plant novelty which is the subject of an application may be entered in the Register of Plant Novelties, it shall be established, by means of test growings organized by the Board for Plant Novelties, that the plant novelty fulfills the conditions laid down in Article 1 and that it possesses the specific features mentioned in the application.

(2) The Minister of Agriculture shall decide, or leave it to the Board to decide, where the test growings will take place. In the case of the groups of cultivated plants for which an official

performance trials system has already been established, that system shall preferably be used also as far as it relates to the novelty test.

(3) The normal duration of the test growings shall be determined by the Minister of Agriculture for each group of plants. The Board for Plant Novelty may extend the duration of the test growings if, in the particular case, it considers the duration too short for it to determine with a sufficient degree of certainty whether the conditions for approval are fulfilled.

(4) The Board for Plant Novelty can, without test growings in Denmark, approve a plant novelty, if a novelty test has been carried out by an institution recognized under the International Convention for the Protection of New Varieties of Plants (UPOV) and if the test has been made in accordance with rules approved by UPOV. Where, in other cases, there is a test of the plant novelty made by domestic or foreign official testing stations, the duration of the test growings may be shortened by decision of the Board.

Article 10

(1) Where, on completion of the test growings, the plant novelty is found to fulfill the conditions laid down in Article 1, it shall be entered in the Register of Plant Novelty under the variety name indicated by the applicant (see Article 11) with, where relevant, a reference to the fact that legal proceedings are pending (see Article 8(2)).

(2) Following registration, the Board shall publish a notice in the Official Gazette. At the same time, the Board for Plant Novelty shall draw up and issue to the applicant a certificate of protection.

Article 11

(1) The plant novelty shall in all cases--even after the expiry of protection --be designated by a variety name in accordance with rules to be made by the Minister of Agriculture.

(2) Any designation that is protected as a trademark for plants of the same or a related species or any designation likely to give rise to confusion therewith may not be used as a variety name. The Minister may permit, subject to specified conditions, a trademark, a name of a person, firm or place or a name distinctive of a landed property to be used in conjunction with the name of the variety.

(3) Any name which belongs, at the time protection is granted, to a plant form of the same or a related species or any designation likely to give rise to confusion therewith may not be used as variety name of a plant novelty. It shall be prohibited to use, for any subsequently created plant novelty, the variety name of a plant novelty of the same or a related species for which breeders' protection is or has previously been granted, or any designation likely to give rise to confusion therewith.

(4) At the request of the breeder, the Board for Plant Novelty may in special cases authorize that the plant novelty be given a name other than the one originally given to it or that a translation into Danish be used instead of a foreign name.

Article 12

(1) The breeder's protection shall lapse on the expiration of the following periods, calculated from the date of issue of the certificate of protection:

1. Asexually (vegetatively) propagated plants:
 - a. potatoes 25 years
 - b. forest trees, fruit trees and their rootstocks, as well as ornamental trees 18 years
 - c. other plants 5 years
2. Sexually propagated plants 20 years

(2) The Minister of Agriculture may provide that the breeder's protection in respect of novelties of the plants mentioned in paragraph (1), under 1.b and c, for which a certificate of protection has been issued before January 1, 1970, shall not lapse before the expiration of a period of 20 years.

Article 13

While the protection is in force, the breeder shall periodically pay a fee. The fees shall be fixed by the Board for Plant Novelties in accordance with rules to be approved by the Minister of Agriculture.

Article 14

(1) No material for sexual or asexual propagation (basic seed, seed potatoes, cuttings, etc.) of a protected plant novelty may be produced for purposes of sale, offered for sale or commercialized without the authorization of the breeder or in breach of the agreed terms, including the terms relating to payment of royalties. In the case of asexual (vegetative) propagating material, this provision shall apply also to whole plants.

(2) Where ornamental plants normally commercialized for purposes other than propagation, or parts of such plants, are used commercially as propagating material with a view to the production of ornamental plants or cut flowers, the provisions of paragraph (1) shall also apply.

(3) Any person who, for purposes of sale, propagates a protected plant novelty or who offers for sale or commercializes propagating material thereof shall of his own accord furnish the breeder with the necessary information for the calculation and collection of the royalty due to the breeder.

Article 14a

The Minister of Agriculture may provide that any breeder of novelties of specified groups of plants to which Article 14(2) does not apply shall be entitled to collect royalties, on the

conditions determined by the Minister, from any person who, for purposes other than sale of propagating material, produces such material in his own professional interest. The breeder's right to royalties may be restricted to a shorter duration than the period of protection and be made to relate to propagation with a view to the production of crops for specified purposes. the provisions of Article 14(3) shall apply *mutatis mutandis*.

Article 15

Protected plant novelties may be freely used for actual breeding work.

Article 15a

- (1) In so far as necessary to ensure that the public is provided on reasonable terms with plant material, the breeder shall satisfy within a reasonable time, either himself or through others, orders for suitable propagating material of the protected plant novelty.
- (2) Any person whose request for authorization under Article 14(1) has been refused by the breeder may, either himself or through the appropriate professional organization, submit the matter to the Terms Board for Plant Novelties. If the Board finds that the breeder has not complied with the provisions of paragraph (1), it may order him to give to the interested person the authorization sought and supply him with suitable material.
- (3) The Board may not order the breeder to give his authorization and supply propagating material to any person, who in the Board's judgment, is unable to carry out the propagation or satisfactorily exploit the plant novelty.

Article 15b

If the Minister of Agriculture thinks it necessary, in order to secure the widespread distribution of a plant novelty or to prevent a substantial deterioration in a branch of industry, he may, on the recommendation of the Terms Board for Plant Novelties, order the breeder to authorize the propagation, offering for sale or commercialization of a protected plant novelty by any person whom the Board deems qualified (see Article 15a(3)) and to satisfy, within a reasonable time, the orders of such person for suitable propagating material of the plant novelty.

Article 15c

- (1) The terms of the authorization to propagate, offer for sale and commercialize a protected plant novelty, including royalty terms, shall be determined by the breeder. This provision shall apply also in the cases provided for in Articles 15a(2) and 15b.
- (2) Any person considering the terms of an authorization unreasonable may, either himself or through the appropriate professional organization, submit the matter to the Terms Board for Plant Novelties. If the Board finds that the terms are unreasonable, it may amend them.

(3) A reservation to submit the conditions to the Terms Board for Plant Novelty shall not entitle the breeder to refuse an authorization to propagate.

Article 16

(1) The Board for Plant Novelty shall remove any plant novelty from the Register of Plant Novelty:

1. where it is shown that the plant novelty did not fulfill the conditions for entry in the Register of Plant Novelty laid down in Article 1(3)(a) or (4);
2. where, after a post-check, the Board finds the plant novelty not to be sufficiently maintained;
3. where the breeder fails to comply with the Board's request to supply it with the necessary material for the purposes of postchecking; or
4. where the breeder fails to pay the fee provided for in Article 13 within two months after it is due.

(2) Where the Board for Plant Novelty finds that any of the grounds set out in paragraph (1) for removal of a plant novelty from the Register of Plant Novelty exists, it shall notify the breeder thereof by registered letter and invite him to put forward any objections within a period of four months. After the expiry of that period, the Board shall decide whether the plant novelty should be removed. In the cases set out in paragraph (1), under 3 and 4, the Board may abstain from taking a decision as to removal if the breeder supplies it with the necessary material for post-checking or pays all the fees due before the expiry of that period. The breeder shall be informed of the decision by registered letter.

(3) The decision of the Board shall not be subject to appeal to any higher administrative authority.

(4) Any action before the Court for review of the Board's decision shall be brought within two months after the breeder has received the notification of the decision.

(5) The removal from the Register shall take place on the expiry of the period provided for in paragraph (4). In the event of legal proceedings, the removal shall be postponed pending the final decision on the case.

(6) Once a plant novelty has been removed, it may not be re-entered in the Register. The same applies to removals at the breeder's request. The removal shall be published in the Official Gazette.

Article 17

Where a protected plant novelty did not fulfill the conditions for entry in the Register of Plant Novelties laid down in Article 1(3)(a) or (4), any person having a legal interest therein may bring proceedings for removal of the plant novelty from the Register. Such proceedings shall be brought against the breeder.

Article 18

Any dispute over the right to a plant novelty being the subject of an application may be brought before the Court, both before and after final entry in the Register of Plant Novelties, by any person claiming to have a better right to the plant novelty. The action shall be brought against the applicant or the person whose name has been entered in the Register. Where the Court decides that the plaintiff has a better entitlement to the plant novelty, the Board shall transfer the protection to him.

Article 19

- (1) For the settlement of the disputes referred to in Articles 15a(2) and 15c(2), the Minister of Agriculture shall set up a board, the Terms Board for Plant Novelties.
- (2) The Board shall consist of a Chairman, nominated by the Minister of Agriculture, who shall satisfy the general conditions for appointment as a High Court judge [*landsdommer*], and three other persons nominated by the Minister, one of whom shall be an expert in plant breeding. The Minister shall also appoint, on the recommendation of the organizations concerned, one representative of agriculture, one representative of horticulture (including the nursery business and fruit-growing), one representative of the owners of varieties of cereals, other seed-reproduced plants and potatoes, and one representative of the owners of novelties of vegetatively propagated plants other than potatoes.
- (3) In its activities, the Board shall endeavor to make plant novelties available to the public in reasonable quantities and at reasonable prices and to ensure equitable remuneration for the breeder.
- (4) The Board's decision shall be the final administrative decision. The Board may, upon request, amend a decision taken by it, where this is warranted by a change in circumstances.
- (5) The Minister shall make further rules concerning the functioning of the Board and may thereby make provisions on costs and security for costs.

Article 20

(1) Any person who deliberately or through gross negligence infringes Article 14 shall be liable to a fine, provided that he is not liable to a heavier penalty under the general law.

(2) Any person who:

1. infringes the provisions of Article 11,
2. fails to comply with any order made in pursuance of Articles 15a(2) or 15b,
3. fails to comply with any decision made in pursuance of Article 15c(2),

shall also be liable to a fine.

(3) The infringement referred to in paragraph (1) shall be subject to private prosecution.

Article 20a

Where any person is presumed to have sustained damage resulting from an infringement of Article 14 but the extent of the damage is not capable of proof, he may be awarded damages not exceeding 5.000 kroner.

Article 21

(1) This Law shall not extend to the Faroe Islands or Greenland.

(2) [Repealed]

Article 3 of Law No. 197 of March 29, 1974

(1) The provisions of Articles 14, 15a, 15b and 15c in the Law on the Protection of Plant Breeders' Rights (see Law Compilation [*Lovbekendtgørelse*] No. 172 of May 17, 1968) shall not apply to:

- 1) plant novelties in respect of which protection has been applied for or granted before June 1, 1968,
- 2) foreign plant novelties which are the subject of an application in Denmark on the basis of an application made in another country prior to the date mentioned in subparagraph 1) above,
- 3) plant novelties, other than potatoes, that are normally vegetatively propagated, in respect of which protection has been applied for or granted before June 1, 1974,

4) foreign plant novelties of the types of plants mentioned in subparagraph 3) above, which are the subject of an application in Denmark on the basis of an application made in another country prior to the date mentioned in subparagraph 3) above.

(2) Any propagation for the purposes of sale of a protected plant novelty to which paragraph (1) above is applicable may only take place on the basis of propagating material received from the breeder or his representative.

(3) The breeder of a protected plant novelty to which paragraph (1) is applicable shall, within a reasonable time after the order, make suitable propagating material of the plant novelty available to any person who so requests. The provisions of Article 15a(3) of the Law on the Protection of Plant Breeders' Rights shall apply *mutatis mutandis*. In the case of plants not subject to degeneration, the person concerned shall, unless otherwise agreed, be entitled to continue, under the breeder's supervision, the propagation in subsequent years on the basis of the propagating material received, provided that he fulfills his obligations to the breeder.

(4) For the rest, the breeder shall himself fix the terms for the supply of propagating material, including terms concerning payment of royalties. The terms shall not be abusive, however. All things being equal, the breeder's remuneration for a given plant novelty shall be the same for everybody.

(5) The producer shall of his own accord furnish the breeder with the necessary information for the calculation and collection of the remuneration under paragraph (4).

(6) Any dispute as to whether the terms fixed by the breeder are reasonable and whether the breeder is entitled to refuse to supply propagating material pursuant to paragraph (3) may be brought before the Terms Board for Plant Novelties.

(7) Any intentional or grossly negligent infringement of paragraph (2) or (5) shall be liable to a fine, provided that a heavier penalty is not applicable under the general law. The infringement of paragraph (2) shall be subject to private prosecution.

(8) Article 20a of the Law on the Protection of Plant Breeders' Rights shall apply *mutatis mutandis* to any infringement of paragraph (2) or (5).