

COMMISSION REGULATION (EC) No 2605/98

of 3 December 1998

amending Regulation (EC) No 1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community Plant Variety Rights

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ⁽¹⁾ (the Basic Regulation), as amended by Regulation (EC) No 2506/95 ⁽²⁾, and in particular Article 14(3) thereof,

Whereas Article 14 of the Basic Regulation provides for a derogation from Community plant variety rights for the purposes of safeguarding agricultural production (agricultural exemption);

Whereas Commission Regulation (EC) No 1768/95 ⁽³⁾ has established conditions to give effect to this derogation and to safeguard the legitimate interests of the breeder and of the farmer;

Whereas it was not possible at that time to specify the level of the equitable remuneration to be paid for the use made of the aforesaid derogation;

Whereas, however, it was stipulated in that Regulation that the initial level as well as the system for subsequent adaptations should be specified as soon as possible;

Whereas in the meanwhile agreements between breeders' and farmers' organisations have been concluded in several Member States, which concern, *inter alia*, the level of the remuneration;

Whereas it is appropriate to ensure that the agreements are made operational as Community guidelines in respect of the level of remuneration, for the respective areas and the respective species;

Whereas, in areas or for species, to which such agreements do not apply, the remuneration to be paid shall in principle be 50 % of the amounts charged for the licensed production of propagating material, modulated by an appropriate sliding scale, where such scale has been established in respect of the respective national plant variety rights;

Whereas those levels shall be reviewed by 1 January 2003 at the latest;

Whereas it is appropriate to provide for a reasonable incentive for a speedy conclusion of further agreements between breeders' and farmers' organisations for areas or species not yet covered, where they are already under preparation; whereas a level which is inferior to the one specified above and only applicable for a limited period of time may encourage certain organisations to reach finalisation of such agreements as soon as possible;

Whereas the Administrative Council of the Community Plant Variety Office has been consulted;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraphs 4, 5, 6 and 7 are added to Article 5 of Regulation (EC) No 1768/95:

‘4. Where in the case of paragraph 2 the level of remuneration is the subject of agreements between organisations of holders and of farmers, with or without participation of organisations of processors, which are established in the Community at Community, national or regional level respectively, the agreed levels shall be used as guidelines for the determination of the remuneration to be paid in the area and for the species concerned, if these levels and the conditions thereof have been notified to the Commission in writing by authorised representatives of the relevant organisations and if on that basis the agreed levels and conditions thereof have been published in the “Official Gazette” issued by the Community Plant Variety Office.

5. Where in the case of paragraph 2 an agreement as referred to in paragraph 4 does not apply, the remuneration to be paid shall be 50 % of the amounts charged for the licensed production of propagating material as specified in paragraph 2.

However, if a Member State has notified the Commission before 1 January 1999 of the imminent conclusion of an agreement as referred to in paragraph 4 between the relevant organisations established at

⁽¹⁾ OJ L 227, 1. 9. 1994, p. 1.

⁽²⁾ OJ L 258, 28. 10. 1995, p. 3.

⁽³⁾ OJ L 173, 25. 7. 1995, p. 14.

national or regional level, the remuneration to be paid in the area and for the species concerned shall be 40 % instead of 50 % as specified above, but only in respect of the use of the agricultural exemption made prior to the implementation of such agreement and not later than 1 April 1999.

6. Where in the case of paragraph 5 the farmer has made use, in the relevant period, of the agricultural exemption at a ratio of more than 55 % of the total material of the relevant variety used for his production, the level of the remuneration to be paid in the area and for the species concerned shall be the one which would apply in respect of such a variety if it was protected in the relevant Member State under its national system of plant variety rights, if a national system exists which has established such level, and provided that that level is more than 50 % of the

amounts charged for the licensed production of propagating material as specified in paragraph 2. In the absence of such level under the national scheme, the provisions of paragraph 5 shall apply irrespective of the ratio of use.

7. By 1 January 2003 at the latest, the provisions of paragraph 5, first subparagraph, and of paragraph 6 shall be reviewed in the light of experiences gained under this Regulation and of developments of the ratio referred to in paragraph 3, with a view to their possible adaptation, by 1 July 2003, as may be necessary to establish or to stabilise the reasonably balanced ratio, stipulated in the aforesaid paragraph, in the whole or part of the Community.'

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 December 1998.

For the Commission
Franz FISCHLER
Member of the Commission
