

KINGDOM OF SPAIN

**LAW 3/2000 GOVERNING THE
PROTECTION OF PLANT VARIETIES**

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JUAN CARLOS I

King of Spain

To all those who may see and here the following -

Let it be known that Parliament has adopted and I have duly ratified the following Law.

GROUND

1

The existence of a legal system for the protection of the rights of breeders of plant varieties will have a positive impact on the national economy in general and on the agricultural sector in particular in that it will stimulate the investigation and the consequent increase in private resources devoted to this activity, which will in turn facilitate the access of farmers to new technologies, improve farming productivity and, in the final analysis, result in an increase in the competitiveness of our products and the profits realised by farmers.

To date, the system for the protection of plant breeders has been covered by the International Convention for the Protection of New Varieties of Plants of 2 December 1961, administered by the International Union for the Protection of New Varieties Plants (UPOV), signed and ratified by the Kingdom of Spain, and embodied in Law 12/1975, of 12 March 1975, on the Protection of Plant Varieties based to a large extent on the said Convention.

2

There are two fundamental reasons that justify the adoption of new domestic legislation on the protection of plant breeders:

Firstly, it is necessary to adapt domestic legislation to a changing international legal environment. On one hand, the UPOV International Convention has been revised on various occasions; revisions introduced by the Conventions of 10 November 1972 and 23 October 1978 were incorporated into domestic legislation, yet the Convention of 19 March 1991 introduced novelties of which account must be taken in the law of the land.

Conversely, the European Union has adopted its own protection system with Council Regulations (CE) 2100/94 of 27 July 1994 governing Community protection of plant varieties. Nevertheless, Article 3 of these Regulations (CE) recognises the right of the States members of the European Union to "grant national property rights for plant varieties", although it expressly prohibits the simultaneous application of domestic and Community Law. The Spanish State opts for the establishment of its own protection system, although harmonised with that of the Community; in this connection, account should be taken of the fact that Community Law defers to domestic Law on all matters that could arise in connection with legal action that may be taken in respect of breaches of such a right.

Secondly, recent advances in biotechnology and genetic engineering that have accelerated the process of obtaining plant varieties and the experience acquired over the past twenty years, make it necessary and, of course, advisable to amend current legislation to bring it into line with all industrialised countries, not only of the European Union but also of other continents.

The fundamental objectives of the present Law, apart from adapting to international norms, is to reinforce the protection of plant breeders and to improve the operation of the public administration in the exercise of the functions relative to the matter governed by this Law.

The rights of plant breeders will be strengthened by the more precise and technically more perfect regulation of the facilities conferred on them by the plant breeder's rights, as well as the extended duration of protection for all plant species which, in turn, will encourage research in this field. Concretely, the main innovations of this Law are the following:

Firstly, it more precisely defines the facilities of plant breeders with respect to the exploitation of their protected varieties, clearly defining the Laws of third parties relating to such varieties that require the authorization of the breeders and it reinforces the action that can be taken against those who disregard such facilities.

Secondly, it clearly defines the term "farmer's exception" that refers to those situations in which farmers may avail themselves of the plant material produced on their own property for their own use without needing to obtain the authorization of the plant breeder of the variety used or making a payment to that breeder.

Besides the farmer's exception, some exceptions to the plant breeder's rights are clarified that were previously not very well defined. Possibly the most important is that of the use of the protected varieties as material for the creation of new varieties, thereby avoiding any limitation on research in this field. The concept of the essentially derived variety without a doubt plays an important role with respect to the limitation of the rights of plant breeders and will solve situations that in the past posed problems concerning the attribution of ownership of varieties.

Thirdly, the duration of protection for all plant species is increased, thereby offering greater incentive for research into the obtaining of new varieties and bringing these period into alignment with those applicable in other countries.

Fourthly, our legislation now offers the possibility of marketing plant varieties in Spain before requesting protection, so that the plant breeders may, before submitting to the protection system, determine, on the one hand, the practical results and productive value of a variety before incurring expenses that would not be covered in the case of varieties of mediocre results and, on the other, the reaction of farmers to the supply of new varieties.

An effort will be made to improve the operation of the organs involved in the exercise of these functions by more simply and precisely describing their functions and the procedures according to which they perform those functions. In general, the Law improves the operation of the various organs concerned by giving them a far more technical, legal and scientific content than they have had hitherto and by deeply involving representatives of economic agents.

From another point of view, this Law allows for greater international co-operation, not only with other States members of the European Union, but also with third countries, as the systems for establishing co-operation in this area become more flexible.

Furthermore, it should be pointed out that advantage is being taken of this Law to incorporate into domestic legislation Article 12 of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions relating to the compulsory granting of cross-licences.

Finally, in the case of varieties that contain or consist of genetically modified organisms, Law 15/1994, of 3 June 1994 will be applied which determines the legal system governing the technical examination required for the confined use, voluntary release and commercialization of modified organisms in order to prevent risks to human health and the environment.

The present Law is issued pursuant to Article 149.1.9 of the Constitution that confers on the State exclusive jurisdiction to legislate on intellectual and industrial property and Article 149.1.1 that confers on the State the right to regulate the basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and the performance of their constitutional obligations.

PREAMBLE

GENERAL PROVISIONS

Article 1

Object of the Law

1. The object of the present Law is to establish the legal regime governing the protection of plant varieties.
2. A plant variety right shall be granted for the recognition and protection of the entitlements of the breeder of a new plant variety.

Article 2

Definition of variety

1. For the purpose of this Law, 'variety' shall be taken to mean a group of plant within a single botanical taxon of the lowest known rank, which group, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:
 - (a) Defined by the expression of the characteristics that result from a given genotype or combination of genotypes,
 - (b) Distinguished from any other plant group by the expression of at least one of the said characteristics, and

(c) Considered as a unit with regard to its suitability for being propagated unchanged.

2. For the purpose of this Law, a plant group shall consist of entire plants or parts of plants as far as such parts are capable of producing entire plants.

Article 3

Definition of plant breeder

1. For the purpose of the provisions of this Law, 'plant breeder' shall be understood as the person who created or discovered and developed a variety, or his successors.

2. 'Breeder's rights' shall be understood as all of the rights conferred the holder of a plant variety right under the terms of the present Law.

Article 4

Scope of Application

The present Law shall apply to all plant genera and species including hybrids of genera or species.

PART I

SUBSTANTIVE LAW

CHAPTER I

REQUIREMENTS OF PLANT VARIETY

Article 5

Conditions of variety

1. Plant variety rights shall be granted for varieties that are:

(1) New

(2) Distinct

(3) Uniform, and

(4) Stable

2. The granting of plant variety rights may not depend on any conditions additional to or different from those mentioned, provided that the variety be designated by a denomination according to articles 47, 48 and 49, that the plant breeder has complied with the formalities foreseen by this Law and any complementary provisions and that he has paid the appropriate fees.

Article 6

Novelty

1. The variety shall be deemed new if, on the date of filing of the variety right application, the reproductive or vegetative multiplication material or a harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder for purposes of exploitation of the variety or, if this has been done, the following periods have not elapsed:

- (a) One year from the above-mentioned date, if the sale or disposal took place in Spain;
- (b) Four years from the above-mentioned date, if the sale or disposal took place outside Spain and did not concern trees or vines;
- (c) Six years from the above-mentioned date, if the sale or disposal took place outside Spain and concerned trees or vines.

2. The condition of novelty shall not be deemed forfeit for sale or disposal to others in the following cases:

- (a) If it results from an abuse committed to the prejudice of the breeder;
- (b) If it results from a transfer of rights to the variety;
- (c) If it results from material for the reproduction or multiplication of the variety being produced by a third party on behalf of the breeder, provided that such material comes under the control of the breeder.
- (d) If it results from its use by a third person to conduct field or laboratory trials including small-scale transformation tests for the purpose of evaluation.

3. Likewise, the condition of novelty shall not be forfeit by the mere fact of the variety having been entered in an Official Varieties Register admitted for marketing purposes or in compliance with other legal obligations relating to biosecurity.

4. When the production of a variety requires the repeated use of one or more other varieties, the sale or disposal to others of material for reproduction or multiplication or of the product of the harvest of the first-mentioned variety on the conditions set forth in sub-paragraph 1 above, the condition of novelty of the variety or varieties used in such production shall no longer obtain.

Article 7

Distinctness

1. A variety shall be deemed to be distinct if it is clearly distinguishable, by reference to the expression of the characteristics that result from a particular genotype or combination of

genotypes, from any other variety whose existence is a matter of common knowledge on the date of application.

2. The existence of a variety shall in particular be deemed to be a matter of common knowledge from the date on which an application has been filed in any country for:

- (a) either a plant variety right, provided that this leads to obtaining the requested protection;
- (b) or entry of the variety in an official register, provided that it is finally registered.

3. Common knowledge of the existence of another variety may also be deduced from the exploitation of the variety having commenced, the presence of the variety in a reference collection or from any other means of proof.

Article 8 *Uniformity*

A variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its sexual propagation or vegetative multiplication, it is sufficiently uniform in the expression of those characteristics.

Article 9 *Stability.*

A variety shall be deemed to be stable if the expression of its specific characteristics remains unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

CHAPTER II REQUIREMENTS OF THE APPLICANT

Article 10 *Entitled applicant*

1. The person who bred a variety as defined in Article 3(1) above may apply for a plant variety right. Where the application is filed by an entitled assignee of the plant breeder that assignee shall provide due proof of his condition as assignee.

2. Save proof to the contrary, the applicant shall be considered the holder of the breeder's right.

3. If two or more persons bred or discovered and developed the variety jointly, entitlement shall be vested jointly in both or all of them.

4. This entitlement shall also apply to the breeder and any other person if the breeder and the other person have agreed to share such rights.

5. If the breeder is an employee working for another or a civil servant, the entitlement to a plant variety right shall be determined in accordance with the law applicable to the employment relationship in question and, where none such exist, in accordance with the regulations governing inventions by employees contained in Part IV of the Patent Law, being Law 11/1986 of 20 March 1986.

Article 11

Nationality of applicant

The following individuals or bodies corporate may apply for the plant variety rights governed by the present Law:

- (a) Those of Spanish nationality or that have their domicile or registered office in Spain.
- (b) National of a State member of the European Union or of the International Union for the Protection of New Varieties of Plants (UPOV) or of a State that is member of an inter-governmental organization that is member of the said Union or that have their domicile or registered office in one of those States.
- (c) Foreigners not included in the previous paragraphs, whenever, in the State of which they are nationals, Spanish individuals or bodies corporate are granted equivalent rights.

CHAPTER III

PLANT BREEDER RIGHTS

Article 12

Scope of plant breeder's rights

1. Protection of the variety confers the beneficiary or the beneficiaries of the plant variety rights the exclusive right to execute the several Laws described below on the variety in question.

2. Without prejudice to the provisions of Articles 14 and 15, the following Laws in respect of variety constituents shall require the authorization of the holder:

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other form of marketing;

- (e) exporting;
 - (f) importing, or
 - (g) stocking for any of the purposes mentioned in (a) to (f).
3. The holder may make his authorization subject to conditions and limitations.

Article 13

Other cases that require the authorization of the holder

1. Notwithstanding the provisions of Articles 14 and 15, the authorization of the holder shall be required for the Laws mentioned in Article 12(2), conducted on the product of the harvest, including whole plants and plant parts, obtained by the unauthorized use of reproduction or multiplication material of the protected variety, unless the plant breeder has been reasonably able to exercise his right in respect of this reproduction or multiplication material.
2. Regulations may provided that, subject to the provisions of Articles 14 and 15, the authorization of the plant breeder shall be required for the Laws mentioned in Article 12(2)(a) to (g), when conducted on products manufactured directly from the yield of a crop of the protected variety covered by the provisions of clause 1 of the present article, by the unauthorized use of the said harvest yield, unless the plant breeder has been reasonably able to exercise his right in respect of this harvest yield.
3. The provisions of Articles 12 and 13(1) and (2) shall also apply to:
- (a) The varieties derived essentially from a protected variety when that is not in turn an essentially derived variety.
 - (b) Varieties that are not clearly distinguished from the protected variety, pursuant to the provisions of Article 7.
 - (c) Varieties whose production needs the repeated use of the protected variety.
4. For the purposes of paragraph 3(a), a variety shall be deemed to be essentially derived from another variety, referred to hereinafter as 'the initial variety' when:
- (a) It is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety while at the same time conserving those expressions of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
 - (b) It is quite distinct from the initial variety; and

- (c) Except for the differences which result from the Law of derivation, it conforms essentially to the initial variety in the expression of the characteristics that result from the genotype or combination of genotypes of the initial variety.

Article 14

Exception for the benefit of the farmer

1. Farmers shall be authorized for the purpose of propagation on their own farms, to use the product of the harvest obtained from the sowing on such farms of material for the propagation of a protected variety that has been legally acquired and is neither hybrid nor synthetic.
 - (a) For the purpose of this Law, the term "own farm" shall be understood to be any farm or part thereof that the farmer really uses to cultivate plants, whether he be the proprietor thereof or whether he administer it under his responsibility and for his own account, in particular in the case of leased land.
 - (b) Similarly the term "farmer" shall be understood as referring to any individuals, bodies corporate, co-operatives, agricultural processing companies, mercantile companies or any other admitted in Law as owner of the farm for the purpose of administering it under their own responsibility and for their own account.
2. The exception to which this Article refers shall apply only to the plant species mentioned in Annex 1.
3. The exercise of the exception shall be subject to the following rules:
 - (a) There shall be no quantitative restrictions on the farmer's exploitation when the operational needs of the farm require that no such restrictions apply.
 - (b) The product of the harvest may be processed to provide seed stock to be sown by the farmer himself or by any services to which he may resort but the identity of the product to be processed and the product resulting from the process must be clearly identified at all times.
 - (c) Smallholding farmers shall not be obliged to pay the right-holder a fee. For the purpose of this Law, smallholding farmers shall be considered those determined by regulation according to the peculiarities of the species they produce.
 - (d) All other farmers shall be obliged to pay the holder a fee that shall be considerably less than the amount paid for production under licence of the propagation material of the same variety in the same area.
 - (e) Verification of the observance of the provisions of this Article or of those adopted pursuant hereto shall be the exclusive responsibility of the holder of the plant varieties right.

- (f) Farmers and those providing processing services shall, on request, provide the holder of the plant varieties right with any information he may deem necessary.

4. Official bodies involved in verification may provide relevant information if they came by it in the ordinary performance of their duties and provided that this incurs no additional burden or cost. This provision shall be understood in accordance with domestic or Community provisions on personal data protection.

Article 15

Limitations on the plant breeder's rights

The plant breeder's rights shall not extend to:

- (a) Laws done privately and for non-commercial purposes;
- (b) Laws done for experimental purposes;
- (c) Laws done for the purpose of breeding other varieties as well as Laws referred to in Article 12(2) and Article 13(1) and (2), in respect of such other varieties, except where the other varieties are: varieties essentially derived from the protected variety or that they are not clearly distinguished from the protected variety or that they are varieties whose production needs the repeated use of the protected variety.

Article 16

Material of a variety

1. The plant breeder's rights shall not extend to Laws concerning any material of the protected variety, or of a variety covered by the provisions of Article 13(3), which has been disposed of or marketed to others by the holder or with his consent in Spain, or any material derived from the said material, unless such Laws:

- (a) Involve further reproduction or propagation of the variety in question; or
- (b) Involve the export of variety constituents, from which it can be produced, to a third country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

2. For the purposes of the present Law, the word "material" used in relation to a variety shall be understood to mean:

- (a) The reproduction or vegetative multiplication material in any form.
- (b) The product of the harvest, including whole plants and plant parts.
- (c) All products directly made from the product of the harvest.

Article 17
Limitations in the public interest

1. The exercise of the plant breeder's rights may be limited only for reasons of public interest that shall be approved by Royal Decree adopted by the Council on a proposal from the Minister of Agriculture, Fisheries and Food.
2. Reasons of public interest shall be deemed to exist:
 - (a) When the initiation, increase in the generalization of exploitation of the protected variety, or the improvement of the conditions in which such exploitation is conducted be of crucial importance to public health or to national defence or the environment.
 - (b) When the lack of exploitation or the inadequate quality or quantity of exploitation incurs a serious threat to the economic or technological development of the country.
 - (c) When national supply requirements so demand.
3. When the limitations referred to in the previous paragraphs result in allowing a third party to do any of the Laws for which the authorization of the plant breeder is required, the Government shall adopt such measures as may be necessary to ensure that the plant breeders receive equitable economic compensation.
4. Likewise, exercise of the plant breeder's rights may, without the need to resort to the regime foreseen in paragraph 1 above, be limited when the varieties concerned by the rights contain genetically modified organisms by applying the provisions of Law 15/1994, of 3 June 1994, for which purpose the juridical regime shall be established for the confined use, voluntary liberation and commercialization of genetically modified organisms, in order to prevent risks to human or animal health and to the environment.

Article 18
Duration of protection

1. The term of the plant breeder's right shall run until the end of the 25th calendar year or, in the case of varieties of vine and tree species, until the end of the 30th calendar year, following the year of grant.
2. During the period ranging from the filing of the application to the granting of the plant breeder's right, the applicant for a plant varieties right shall be entitled to receive financial compensation from anyone who, during the said period, has done Laws which, after the granting of the right, would require authorization from the plant breeder, in accordance with the provisions of Articles 12 and 13.
3. To receive the financial compensation foreseen in the previous paragraph, the applicant shall inform the third party of the existence of the application.

4. Should the plant variety right not be granted, an applicant having received the financial compensation mentioned in this article shall reimburse that compensation with legal interest, unless otherwise expressly agreed between the parties.

CHAPTER IV

THE PLANT BREEDER'S RIGHT AS A PROPERTY RIGHT

Article 19

Independence of the plant breeder's right

The validity of the plant breeder's right shall not depend on any restrictions or limitations imposed on the production, monitoring and commercialization of the material of the varieties or the import and export of that material.

Article 20

Assignment of the right

1. Rights deriving from a duly filed application and the right of the plant breeder shall be assignable by any of the means admitted by Law, without prejudice to any limitation set by Law.
2. Laws whereby rights deriving from a duly filed application or from the plant breeder's rights are assigned or modified shall not affect rights acquired by third parties prior to the date of such Laws.
3. To be valid, all the Laws to which the previous paragraphs refer shall be set down in writing.

Article 21

Violation of the plant breeder's rights

The holder of a plant varieties right may take appropriate action of any class and nature before the courts of ordinary jurisdiction against anyone who violates those rights and may demand that the necessary measures be taken to safeguard those rights.

In particular the holder may demand:

- (a) An injunction for cessation of the Laws that violate the right.
- (b) Payment of damages.
- (c) The collection of all obtained vegetable material that is in the possession of any of the persons responsible for the violation and the destruction of such material, if indispensable.

- (d) The granting of ownership of the plant material referred to in the previous paragraph, in which case its value shall be set against the damages awarded. If the value of the said products should exceed the damages granted, the holder of the right shall compensate the condemned party for the excess.
- (e) Publication of the sentence at the cost of the condemned party.
- (f) Adoption of measures necessary to avoid continuation of the violation of the rights.

Article 22

Damages

1. Anyone infringing the plant breeder's rights shall be liable for damages in respect of their having:
 - (a) Conducted any of the operations cited in Article 12(2) of this Law without possessing the authorization of the holder of the plant variety rights.
 - (b) Used, to the point of creating a risk of confusion, an identical or similar denomination to that of a protected variety, if that denomination is applied to another variety of the same or a botanically close species.
 - (c) Omitted to use the denomination for a certain protected variety or changed the mentioned denomination.
2. Anyone violating the rights of the plant breeder in any other way different from those mentioned in paragraph 1, shall be liable for damages only when, in their performance they employed deceit or negligence, where deceit is deemed to obtain from the moment the offender has been warned by the holder of the plant variety right and summoned to cease violating the plant breeder's rights.
3. Damages in favour of the holder of the plant varieties rights shall include not only the value of the loss suffered and the earnings forfeited by the holder but also the prejudice that may be deemed to have been suffered from the discredit of the plant variety covered by the plant variety right caused by the offender through improper use thereof. In no case may the damages be less than the benefit derived by the person who committed the offence.

CHAPTER V

EXPLOITATION LICENSES

Article 23

Contractual licences

1. The holder of a plant varieties right may grant exploitation licences to the variety covered by the right provided that the conditions stipulated by that holder and on this matter in the present Law and its complementary provisions are met.
2. The licences may be exclusive or non-exclusive.
3. The licence contracts shall be set down in writing and shall not apply to third parties until duly entered in the Licence Register.

Article 24

Compulsory licences

1. The Council of Ministers may, by Royal Decree on the proposal of the Minister of Agriculture, Fisheries and Food, grant compulsory exploitation licences to varieties covered by plant varieties rights, pursuant to the terms of Article 17(2), if that be deemed necessary in order to safeguard the public interest.
2. A compulsory licence shall be granted only if the following requirements are met:
 - (a) That the applicant be in a position, in particular technically and financially, to exploit the plant breeder's rights competently and professionally.
 - (b) That the holder of the plant breeder's rights has refused to grant the applicant a licence or is not willing to grant it under reasonable conditions.
 - (c) That more than three years have elapsed between the date of granting of the plant breeder's rights and the date of application for the granting of the compulsory licence.
 - (d) That the person requesting the compulsory licence has paid the required fee for the granting thereof.
3. The mandatory licence confers on the holder thereof the non-exclusive right to do all or some of the Laws covered by Articles 12 and 13.

Article 25

Compulsory cross-licences

1. When a plant breeder cannot obtain or exploit a right to a plant variety without violating a prior patent, he may, by paying appropriate financial compensation to the owner of the patent, request a non-exclusive compulsory licence to the invention protected by the prior patent, to the extent that that licence is in fact necessary for the exploitation of the plant variety that is to be protected. This financial compensation shall be determined by evaluating the factors relevant for that purpose and especially the economic importance of the invention.

When a licence of this type is granted, the holder of the patent shall be entitled to a reciprocal licence on reasonable conditions to use the plant variety for which the plant variety right was granted.

2. When the holder of a patent for a biotechnological invention cannot exploit it without infringing a plant variety right he may request a non-exclusive mandatory licence to that plant variety protected by the said plant variety right by paying appropriate financial compensation to the holder of the plant variety right. This financial compensation shall be determined by evaluating the factors relevant for that purpose and especially the economic importance of the plant variety.

When a licence of this type is granted, the holder of the plant variety right shall be entitled to a reciprocal licence on reasonable conditions to use the protected invention.

3. Applicants for the licences referred to in the previous paragraphs shall demonstrate:

- (a) That an approach had in vain be made to the holder of the patent or the plant varieties right to obtain a contractual licence, and
- (b) That the variety or invention constitutes a significant technical advance of considerable economic importance as compared to the invention claimed in the patent or to the protected plant variety.

4. The formalities and the handling of applications for compulsory cross-licences for the non-exclusive use of a patented invention, shall be governed in accordance with the provisions of Part IX, Chapter III of the Patent Law 11/1986, of 20 March 1986, and its supplementary regulations.

5. The formalities and the handling of applications for mandatory cross-licences for the non-exclusive use of a patented invention, shall be governed in accordance with the provisions of the present Law.

Article 26

Conditions of the compulsory licences

The Council of Ministers shall:

- (a) Set the equitable remuneration that the beneficiary of a compulsory licence shall pay the holder of the plant breeder's right, bearing in mind, *inter alia*, the economic importance of the variety.
- (b) Require, where necessary, that the holder of the plant breeder's right make available to the beneficiary of the compulsory licence the quantity of reproduction or multiplication material necessary for the reasonable use of this licence, subject to payment of appropriate remuneration.

- (c) Set the term of the compulsory licence which may not exceed four years and may be extended if deemed appropriate if the conditions for the granting of the said licence persist.
- (d) Withdraw the compulsory licence if the beneficiary infringes any of the conditions imposed when it was granted him.

CHAPTER VI

NULLITY AND EXTINCTION OF THE PLANT BREEDER'S RIGHT

Article 27

Nullity of right

The plant variety right shall be declare null and void in the cases foreseen in Article 62.1 of Law 30/1992 of 26 November 1992, being the Public Administrations and Civil Service Procedures Law, and, in particular, in the following circumstances:

- (a) When it is found that, at the time of the grant of the right, the protected variety did not comply with any of the conditions laid down in Articles 6 and 7 and, if the grant of the right was essentially based upon information and documents furnished by the applicant, that the protected variety did not comply with conditions laid down in Articles 8 and 9.
- (b) When the plant variety right was granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

Article 28

Lapse of the right

1. The plant breeder's right shall lapse for the following reasons:

- (a) Because the period for which it was granted has expired.
- (b) Because the holder waives the right.
- (c) Because events occur which cause the loss of the essential properties of the plant variety as stated in Articles 8 and 9.
- (d) Because of failure to meet the obligations set forth in paragraph 2 below after having been summoned to do so by the Administration.

2. The plant variety holder shall meet the following obligations within the deadlines and in the manner established by regulation:

- (a) Submit to the competent authority the data, documents and material necessary for verifying the maintenance of the essential requirements of the protected variety.
 - (b) Pay the due maintenance fee as referred to in Article 56.
 - (c) Propose an appropriate denomination for the protected variety in the event of cancellation of that initially designated.
3. The lapse of the right shall incur the cancellation of the registration of the plant variety right in the Official Protected Varieties Register.

PART II

OFFENCES AND PENALTIES

Article 29

Administrative offences

1. Administrative offences shall be classified minor, serious and very serious.
2. The following shall be deemed very serious offences:
 - (a) The transfer of plant material protected by a plant variety right that does not comply with the characteristics shown in its official description.
 - (b) The non-fulfilment of the conditions stipulated in the exploitation licence of a protected variety which conditions affect the intrinsic qualities of the material or the circumstances that prompted the grant of the plant variety right.
 - (c) The provision of false data that could be relevant to obtaining the rights protected by the present Law.
3. The following shall be deemed serious offences:
 - (a) The concealment or the intent to conceal information relevant to obtaining the rights protected by the present Law.
 - (b) Laws whose purpose is to render more difficult verification of the activities governed by this Law and observance of the rules laid down herein for their conduct and inspection.
 - (c) Refusal or resistance to providing data or information required by the appropriate body or its agents for the purpose of performing the functions of gathering information, conducting formalities, inspecting and executing matters referred to in the present Law.

- (d) The concealment of information by the entities authorized to package seed stock, with respect to the provisions of Article 14.
 - (e) Failure to comply with the obligation to use the denomination designated to the variety as envisaged in Article 49(3).
4. Minor offences shall be any of the Laws described in paragraphs 2 and 3 above which do not involve deceit but mere negligence.

Article 30

Penalties

1. Offences described as very serious shall be penalized by a fine of between 700,001 and 1,500,000 pesetas.
2. Offences described as serious shall be penalized by a fine of between 300,001 and 700,000 pesetas.
3. Offences described as minor shall be penalized by a fine of between 100,000 and 300,000 pesetas.
4. In addition to the fines indicated in this article, the seizure of the plant material shall be ordered in the cases envisaged in Article 29(2)(a) and (b).

Article 31

Amount of the penalties

The amount of the fines shall in each case be determined by taking account of whether there was intent or repetition of the offence, the nature of the prejudice caused and whether this was a first or repeated offence.

PART III

ORGANIZATION

Article 32

Competent body

The Ministry of Agriculture, Fisheries and Food shall, directly or through a public body answerable thereto, be responsible for the formalities and handling of the grant procedures for plant varieties rights and shall exercise the right to impose penalties in relation thereto. Also, it

shall conduct relationships in this matter, through the corresponding channels, with other States and international bodies.

Article 33

Official Protected Varieties Register

1. An Official Protected Plant Varieties Register shall be constituted and kept by the Ministry Agriculture, Fisheries and Food, wherein shall be registered applications for protection, decisions to grant plant variety rights and exploitation licences, as well as any other relevant circumstance determined by Law.
2. The Official Register shall be organized in books as required by Law.

Article 34

Plant Variety Protection Right Committee

1. A Plant Variety Protection Right Committee shall be created that shall be answerable to the Ministry of Agriculture, Fisheries and Food and which shall be given the following functions:
 - (a) To propose to the Minister of Agriculture, Fisheries and Food a resolution on the procedures for granting "Plant Variety Rights".
 - (b) To officially propose to the Minister of Agriculture, Fisheries and Food the revision of Laws which are null and void or that annulable Laws related with the protection of plant varieties be declared prejudicial.
 - (c) To propose to the Minister of Agriculture, Fisheries and Food that draft Royal Decrees on the granting of compulsory licences be submitted to the Council of Ministers pursuant to the terms of Article 25.
 - (d) To propose to the appropriate body that measures be adopted and the relative norms be prepared for the protection of plant breeders' rights.
 - (e) To investigate any matters relating to plant breeder's rights that are submitted to it.
 - (f) Any other functions referred to it by Law or regulation.
2. The Committee shall comprise experts of recognized prestige in the spheres of botany, genetics, of seed stock and nursery plant production and jurists specialized in the system for protecting the plant breeder's rights. The Committee shall not represent the various sectors affected.
3. The nature, nomination, composition and operation of the Committee shall be determined by regulation.

PART IV

PROCEDURE

CHAPTER I

Application

Article 35

Application

1. Any person interested in the grant of a plant varieties right for a given variety shall submit an application to the Ministry of Agriculture, Fisheries and Food that shall, as minimum, include the following details:

- (a) First names, last names and address of the applicant and, where applicable, of the applicant's representative.
- (b) First names, last names and address of the plant breeder should this be different from the applicant.
- (c) Genus and species to which the variety belongs.
- (d) Denomination proposed for the variety or, if necessary, a provisional denomination.
- (e) Nationality of the applicant and, where applicable, of the plant breeder.
- (f) Technical description of the variety and of the procedure whereby the variety was obtained or discovered and developed and its genealogy.
- (g) The date of any prior presentation in another country, the denomination under which the variety has been registered or, where there is none such, the provisional denomination and the country in which the plant breeder's right was requested, all of which will be required if a priority right is claimed for a previous application.
- (h) Proof that the required fees have been paid.

2. The form and the detailed content of the application form, as well as the documents that must accompany it, will be specified by regulation.

3. Applications for the granting of a plant variety right may be filed with any of the offices and registries referred to in Article 38.4 of Law 30/1992, of 26 November 1992, being the Public Administrations and Civil Service Procedures Law.

Article 36

Priority application

The right of priority of an application shall be determined by the date of receipt of the application. Where applications have the same date of application, the priorities thereof shall be determined according to the order in which they were received, if this can be established. Otherwise they shall have the same priority.

Article 37

Publication of the applications

1. The Ministry of Agriculture, Fisheries and Food shall periodically publish an official gazette of protected varieties, of a merely informative character.
2. Data determined by regulation and in any case the following information shall be published in the gazette of protected varieties:
 - (a) The applications for plant breeder's rights submitted and withdrawn.
 - (b) The applications of denominations of varieties for which protection applications are being filed, a list of approved denominations, as well as of changes of denomination.
 - (c) The plant variety rights granted and the applications refused.

Article 38

Priority Right

1. An applicant for a "Plant Variety Right" may benefit from the priority of an application to protect the same variety that was previously presented in:
 - (a) Any State member of the European Union.
 - (b) The 'Community Plant Varieties Office' of the European Union.
 - (c) Any State member of the UPOV or of an intergovernmental organization affiliated thereto.
 - (d) Any State which, without belonging to the UPOV, recognizes applications filed in Spain as having a priority right with equivalent effect.
2. Recognition of the priority of an application shall be requested within twelve months from its date of presentation and be duly accredited. Should several prior applications have been filed pursuant to paragraph 1 above, the priority shall refer to the oldest application.

3. Once a previous application has been recognized as having priority, the filing date of the application for the grant of the plant varieties right shall, for the purposes envisaged in Articles 6 and 7, be deemed to be the filing date of that application.
4. The Ministry of Agriculture, Fisheries and Food shall require that an applicant claiming priority provide a copy of the documents substantiating the first application, certified by the authority to which they were submitted, as well as any other proof that the variety referred to in the two applications are one and the same. The applicant shall have a minimum term of three months from the date on which the priority claim was filed to do this.
5. The plant breeder shall have two years from the expiry of the period for filing the priority claim, or from the time the first application was rejected or withdrawn in which to provide the Ministry of Agriculture, Fisheries and Food with any information, documentation or material demanded for conducting the examination foreseen in Article 40.
6. Events that occur within the term set in paragraph 2 above, such as the filing of another application, or the publication or use of the variety to which the first application applied shall not constitute grounds for rejecting the later application nor can these events create rights in favour of third parties.

CHAPTER II

APPLICATION PROCEDURE

Article 39

Examination of the application

1. The Ministry of Agriculture, Fisheries and Food shall ensure that the application filed meets the required conditions and, in particular, that:
 - (a) It has been filed pursuant to the provisions of Article 10.
 - (b) It meets the conditions set in Article 35(1).
 - (c) It is accompanied by the documents determined by the relevant regulations pursuant to the provisions of Article 35(1).
 - (d) It complies with the provisions of Article 38 if priority is claimed for a prior application.
 - (e) Proof is provided that the relevant fees have been paid pursuant to the procedure set forth in Article 53.
2. The Ministry of Agriculture, Fisheries and Food will examine the documentation appended to the application to ensure that the variety be entitled to the plant breeder's right.

3. If, as a result of these verifications, certain lacunae are found, the applicant shall be granted ten days in which to make them good or to furnish the required documents for each case, and shall be informed that should he not comply, he shall be deemed to have withdrawn the application subject to a prior decision adopted to that effect by the appropriate body.

Article 40

Technical examination

1. Once the examinations referred to in the previous Article have been conducted with positive results, the variety will be subjected to a technical examination whose purpose shall be:

- (a) To ensure that the variety belongs to the described botanical taxon.
- (b) To determine that it is distinct, uniform and stable in accordance with the provisions of Articles 7, 8 and 9 respectively.
- (c) To establish an official description of the variety.

2. The Ministry of Agriculture, Fisheries and Food shall for each species or group of species, determine the precise norms for the conduct of the technical examination of which, at least the following shall be given in detail:

- (a) The plant material that the plant breeder is required to provide in order that the relevant observations may be made.
- (b) The characteristics as to the quality of the said material.
- (c) The dates and places where the said material should be deposited.
- (d) The duration of the examinations which shall last at least two years or seasons unless special circumstances indicate the contrary and any other details of the conduct thereof.

3. The technical examination shall be conducted under the responsibility of the Ministry of Agriculture, Fisheries and Food which may conduct it directly or in agreement with the Autonomous Communities or other Spanish or foreign institutions that perform similar tasks.

4. In such cases as may be determined, the results of technical examinations carried out in another country with which Spain has agreements on the protection of plant breeder's rights may be used provided that the necessary technical guarantee can be provided.

5. In cases where the conduct of the technical examination involves difficulties, the Ministry of Agriculture, Fisheries and Food may agree that account be taken of the results of cultivation trials or other trials already conducted by the plant breeder.

6. In the case of a variety that contains, or constitutes a genetically modified organism, the specific regulations concerning the confined use, voluntary liberation and commercialization of genetically modified organisms shall apply in order to prevent any risk to human health and the environment.

Article 41

Opposition to the grant of a plant variety right

1. Anyone may oppose the granting of a plant varieties right by filing a written protest with the Ministry of Agriculture, Fisheries and Food.
2. Opposition may be raised only on one of the following grounds:
 - (a) Failure to meet the conditions set in Articles 6 to 11 of the present Law. However, the opposition may not be based on matters of property and ownership which are matters for the ordinary courts.
 - (b) Breach of the norms governing plant varieties denomination set forth in this Law or in its development regulations.
3. Anyone filing an opposition shall be deemed interested parties for the purposes of Law 30/1992, of 26 November 1992, being the Public Administrations and Civil Service Procedures Law.

Article 42

Opposition procedure

1. The applicant shall be informed of the oppositions and shall have three months to comment thereon and to state whether he has the intention of maintaining, modifying or withdrawing the application.

The answer given by the applicant will be communicated to the opponent that shall have one month in which to comment thereon one and to confirm or withdraw its opposition.

2. Oppositions presented shall be examined and resolved separately and independently from the procedure for the granting of the plant variety right.
3. The Ministry of Agriculture, Fisheries and Food may, for the purpose of settling oppositions raised, require those who raised the opposition to provide additional information and documentation as well as any necessary plant material for the purposes of technical examination.

Article 43

Access to the information

1. Parties involved in a procedure shall have access to the documents constituting the file at issue, including the results of the technical examination and the description of the variety, in all cases guaranteeing the secrecy of the plant variety.
2. For the purpose of ensuring the secrecy of the plant matter, only persons having a legitimate interest therein, for the purpose of consulting documents relative to the application and decision on the granting of a plant variety right shall have access to the files contained in the Official Register of Protected Plant Varieties and be entitled to visit the trials involved in the technical examination of the variety and the verification of its maintenance.
3. In the cases of varieties in which, to produce the material, the repeated use of material belonging to others is required, the applicant for the corresponding plant varieties right may, when presenting the application, request that the documents and trials relating thereto be treated in all due secrecy. In such cases, that part of the information or trials may be neither consulted nor visited, as appropriate.
4. The Ministry of Agriculture, Fisheries and Food shall be obliged to preserve the documentation contained in the files for five years from the expiry of the plant variety right or the withdrawal or refusal of the application for protection.

CHAPTER III

RESOLUTION OF THE PROCEDURE

Article 44

Resolution

1. The Ministry of Agriculture, Fisheries and Food, on the proposal of the of Protection of Plant Varieties Committee, shall grant a plant variety right to an applicant when, as a result of the technical examination of the variety, it is shown that that variety meets the conditions foreseen in Article 5 of the present Law and that it has fulfilled the other requirements foreseen therein.
2. The protection conferred by the plant variety right shall have retroactive effect from the moment of submission of the application.
3. The decision shall, however, not become effective until payment has been made of the fee provided for in Article 55.
4. The grant of the plant breeder's right to a plant variety shall be entered in the Register of Protected Plant Varieties.

Article 45

Duration of the procedure

1. If the maximum duration of the procedure expires without the Administration having handed down an express decision, the application for the plant variety right shall be deemed to have been rejected.
2. The maximum duration of the procedure shall be six months. The term shall be interrupted from the date of the communication to the applicant as envisaged in Article 42(4) of Law 30/1992, of 26 November 1992, being the Public Administrations and Civil Service Procedures Law. The interrupted term shall resume from the date on which the applicant is informed that the hearings procedure is open at which point the results of the trials referred to in Article 40 above will have been placed on the case file and the denomination been found suitable in accordance with the provisions Chapter IV below.
3. The duration of the said technical examination shall, where necessary, be set by regulation for individual species or groups of species.

Article 46

Expiry of the procedure

1. Should the procedure be paralyzed through some fault of the applicant, he shall be informed that, after three months, the procedure will expire. Once that period has elapsed without the requested party having performed the activities necessary for reviving the procedure, the procedure shall be declared lapsed and the filing of the documentation relating thereto shall be archived.
2. Notwithstanding the provisions of the previous paragraph, the procedure shall not be declared lapsed if the applicant properly justifies to the Ministry of Agriculture, Fisheries and Food that his failure to Law was the consequence of a fortuitous event or an Law of God or other exceptional circumstances.

CHAPTER IV

DENOMINATION OF THE VARIETY

Article 47

Denomination requirements

1. The variety shall be designated by a single denomination whereby it can be identified without risk of confusion with any other and which shall be its generic designation.
2. Without prejudice to the provisions of Article 48(3) below, no right relative to the designation registered as the denomination of the variety can hinder the free use of the denomination in connection with the variety, even after expiry of the plant breeder's right.
3. The denomination may not comprise only digits, mislead or lead to confusion concerning the characteristics, value or identity of the variety or the identity of the plant breeder.

4. A composition of letters and digits will be admitted as denomination of a variety only when it is to be used exclusively for the production of material for propagating other varieties, that is to say an established practice for designating varieties.

5. The denomination must be different from all denominations designating an existing variety of the same plant species or of a closely related species in any State member of UPOV, or member of any of the intergovernmental organization members of UPOV.

Article 48

Registration of the denomination

1. The denomination of the variety shall be proposed by the applicant to the Ministry of Agriculture, Fisheries and Food.

2. It shall be registered at the same time as the plant breeder's right is granted. If it be found that the denomination does not comply with the requirements of Article 47(3), (4) and (5), the registration shall be refused and the plant breeder shall be required to propose another denomination within the deadlines set by the regulations. The rights previously acquired by third parties shall not be affected.

3. If, by virtue of a previous right, a person who is obliged to use the variety denomination is forbidden to do so, pursuant to the provisions of Article 49(3), the Ministry of Agriculture, Fisheries and Food will require that the plant breeder propose another denomination for the variety.

4. In particular, the applicant cannot deposit as denomination of a variety, a designation that already benefits from a mark right referring to identical or similar products, in Spain or in countries with which agreements have been concluded on the protection of plant varieties, or a denomination that can create confusion with such marks, unless the applicant undertakes to give up the rights to the marks as soon as plant varieties are granted in respect of the variety.

5. The applicant shall, together with the denomination, present a report issued by the Spanish Patent and Trademark Office indicating any possible points of identity and similarity with any marks already registered or pending registration that have been discovered, indicating the products in class 31 protected thereby according to the nomenclature established under the Nice Agreement of 15 June 1957.

The report request shall be filed with the Spanish Patent and Trademark Office, on payment of the corresponding fee and indicating the reason for the request.

Article 49

Use of the denomination

1. A variety may not be denominated in way differently from the way it was designated in the first country in which it was registered unless it can be proven to the Ministry of Agriculture,

Fisheries and Food that that denomination is inadequate in Spain in which case, the plant breeder will be required to propose another denomination.

2. The Ministry of Agriculture, Fisheries and Food shall communicate information relative to the denominations of varieties, and specifically their proposal, approval, registration and cancellation, to the corresponding authorities of the other countries members of the UPOV, to those of States members of the intergovernmental organizations members of the UPOV, and to the appropriate institutions in those States.

3. Anyone who, in Spain, proceeds to sell or commercialize plant reproduction or multiplication material of a protected variety shall be obliged to use the denomination of that variety, even after the plant breeder's right to that variety expires, provided that, pursuant to Article 48(3), no prior rights are raised opposing that use.

4. When a variety is offered for sale or is marketed, a manufacturing or trade mark, a trade name or a similar indication may be associated with the denomination of the registered variety. If such an indication is thus associated, the denomination shall, nevertheless, be easily recognisable.

CHAPTER V

MAINTENANCE OF THE PLANT BREEDER'S RIGHT

Article 50

Maintenance of the variety

1. The holder of the relative plant variety right shall be responsible for maintaining that right or, when appropriate, its successive components for as long as the protection remains effective.

2. The Ministry of Agriculture, Fisheries and Food may require the holder of a plant variety right to present to it or to any other authority it may designate, and on the terms determined by regulation, any such information, documents or material that be considered necessary for monitoring the maintenance of the variety, as well as for the renovation of the official samples that comprise the reference collection.

Article 51

Verification of the variety

1. The Ministry of Agriculture, Fisheries and Food or, as necessary, the corresponding service of the Autonomous Communities, shall determine whether the varieties covered by a plant varieties right remain unalterable, by conducting the corresponding technical verifications.

2. When there are reasons to believe that the holder of the plant varieties right is not maintaining the variety appropriately, the Ministry of Agriculture, Fisheries and Food shall order that a check be conducted on the maintenance of the variety and shall determine the conditions attendant thereon by means of field trials or other trials in which the material submitted by the holder is to be compared with the description or the official sample of the variety.

When this check indicates that the holder has not maintained the conditions of the variety he shall be duly informed.

3. In cases in which it is proven that the variety is not homogeneous or stable, the Ministry of Agriculture, Fisheries and Food may decide to withdraw the right after hearing the interested party and, if appropriate, after receiving a report from the corresponding services of the Autonomous Communities which conducted the relevant checks.

PART V

FEES

Article 52

Passive subjects

1. The applicant for the plant variety right and any individuals or bodies corporate on whose behalf services are rendered on which fees may be levied shall be passively liable to the fees set in this Part of the present Law.

2. The fees set in this Part shall be governed by the present Law and by the other legal sources established with respect to the levying of fees in Article 9 of Law 8/1989, of 13 April 1989, being the Public Fees and Levies Law and especially with respect to subjects obliged to pay fees as parties liable for such levies.

Article 53

Fee due in respect of procedure and decision

1. The administrative procedure and handing down of a decision shall constitute the Laws in respect of which this fee shall be due.

2. This fee shall fall due at the moment of presentation of the application for the plant variety right.

3. The amount of the fee due in respect of procedure and decision on the application shall be 50,000 pesetas.

Article 54

Fee for conduct of the technical examination

1. The trials and any other activity included in the technical examination to which Article 40 of the present Law refers shall constitute the Laws in respect of which this fee shall be due.

For the purpose of this Article, the species or groups of species to which belong the plant varieties whose material is to be subjected to the technical test shall be classified in the groups listed in Annex 2.

2. This fee shall fall due at the moment the plant material to be subjected to the technical examination is delivered to the competent authority for its realization.

3. The fees for conducting the trials that constitute the technical examination for the purpose of granting the "plant variety right" shall be as follows:

For each year of examination:

First group:	125,000 pesetas
Second group:	90,000 pesetas
Third group:	75,000 pesetas
Fourth group:	60,000 pesetas.

In the case of a hybrid variety of any species whatsoever, and where it is necessary to conduct a study of the genealogical components, the fee shall be double the amount indicated for the corresponding species.

When the technical examination is carried out in a foreign body or institution on behalf of the Ministry of Agriculture, Fisheries and Food because it was so agreed, the fee shall be the amount in pesetas of the sum necessary to pay for the said service. In a case where results of a previously conducted technical examination of the variety are used by a foreign body or institution, the fee shall be the amount in pesetas of the sum necessary to pay for the said service.

Article 55

Maintenance fee

1. Any periodical work and verifications required to ensure that the conditions necessary for the variety to continue being protected shall constitute the Laws in respect of which this fee shall be due.

For the purpose of this Article, the species or groups of species to which belong the plant varieties whose conditions are to be confirmed are classified in groups as listed in Annex 2.

2. This fee shall fall due annually, on the same day of the same month as that on which the decision was taken to grant the plant variety right to the holder.

3. The amounts of the fees for the annual maintenance of the plant breeder's rights shall be as follows:

For the first year:

First group:	15,000 pesetas.
Second group:	10,000 pesetas.
Third group:	8,000 pesetas.
Fourth group:	6,000 pesetas.

For the second year:

First group:	20,000 pesetas.
Second group:	15,000 pesetas.
Third group:	12,000 pesetas.
Fourth group:	10,000 pesetas.

For the third year:

First group:	27,000 pesetas.
Second group:	22,000 pesetas.
Third group:	17,000 pesetas.
Fourth group:	15,000 pesetas.

For the fourth year:

First group:	30,000 pesetas.
Second group:	26,000 pesetas.
Third group:	20,000 pesetas.
Fourth group:	15,000 pesetas.

For the fifth and subsequent years (until protection lapses):

First group:	36,000 pesetas.
Second group:	30,000 pesetas.
Third group:	25,000 pesetas.
Fourth group:	20,000 pesetas.

Article 56

Fees for administrative services rendered

1. The performance of some of the administrative services deriving from the applications procedure as listed below constitute the Laws in respect of which this fee shall be due:

- (a) Claiming a priority right.
- (b) Changing denomination in a right granted or pending.
- (c) Issuing copies, certificates and duplicates of any document.
- (d) Granting a compulsory licence.
- (e) Entering exploitation licences in the Registration of Protected Plant Varieties, as well as amending entries already made.

2. This fee shall fall due at the moment the corresponding applications are presented to a Registry.

3. The fee per request that an application be given priority; application for a change of denomination in an already granted or pending right; issue of copies, certificates and duplicates of any document; grant of a compulsory licence; registration of exploitation licences and amendments to already implemented licences, shall be 5,000 pesetas.

Article 57

Administration and collection

1. The services and activities for which the fees envisaged in Articles 53 and 56 are due will not be rendered or performed until the payment of the amount due has been made by the applicant and has become effective.

2. The services and activities for which the fees envisaged in Articles 53 and 56 are due, even when rendered or performed, shall not become effective until such time as payment has been made in the amount demanded. Notwithstanding the above, payment of the said amounts shall be enforceable by legal constraint.

3. The ordinary administration and collection of these fees shall fall to the Ministry of Agriculture, Fisheries and Food.

First additional provision

Revision of the amount of the penalties

The Government shall be authorized to amend the amount of the penalties contained in the present Law in accordance with variations in the consumer price index.

Second additional provision

Interpretation criteria

This Law shall be interpreted in accordance with the international Treaties and Conventions on such matters applicable in Spain.

Third additional provision

Limitation of the plant breeder's right

No limit may be placed on the free exercise of a plant breeder's right except for that stipulated in Article 17(1) or by virtue of an express provision to that effect in the Treaties and Conventions mentioned in the previous provision.

Fourth additional provision

Respect for international Treaties and Conventions

The measures adopted by the State to regulate the production, control and commercialization of the material of the varieties, or of the import and export of that material, shall in no way hinder the application of the provisions of the Treaties and Conventions mentioned in the third additional provision.

Fifth additional provision

Community protection]

Should Community protection be granted a plant variety to which a plant variety right was previously granted, the holder of such [previous] right may not invoke that plant variety right as long as the Community plant variety protection remains effective for that variety.

On termination of the validity of the Community protection, the holder of the [previous] plant variety right shall be entitled again to invoke the rights deriving therefrom, provided that the periods from the granting of that plant variety right as set in Article 18 have not lapsed.

During the time the Community plant variety protection lasts, the plant variety right holder shall be exonerated from the obligation to pay 70 percent of the initial and annual maintenance fees for the plant breeder's rights envisaged in Part V of this Law.

First transitory provision

Procedures initiated before the application of the present Law

Applications for plant variety rights filed prior to the entry into force of the present Law shall be processed and resolved according to the legal situation effective on the date of filing.

Second transitory provision

Regime applicable to rights granted prior to the adoption of this Law

1. The plant variety rights granted under the provisions of Law 12/1975, of 12 March 1975, on the Protection of Plant Varieties shall be governed by the provisions of that Law.
2. Notwithstanding the provisions of the previous paragraph, the following Articles of the present Law shall apply:
 - (a) Part I, Chapter III: Article 12; Article 13 except for paragraphs 2 and 3; Article 15; Article 16, and Article 17.
 - (b) Part I, Chapter IV, concerning the plant breeder's right as a property right.
 - (c) Part I, Chapter V, on exploitation licences.
 - (d) Part II, on administrative offences.
 - (e) Part IV, Chapter V, on maintenance of the plant breeder's right.

Third transitory provision

Current court actions

Court actions that had begun before the entry into force of the present Law shall continue under the same procedure as that under which they were filed.

Single derogatory provision

Repeals

1. All provisions contrary to the present Law shall be repealed and, in particular, Law 12/1975, of 12 March 1975, governing the Protection of Plant Varieties.
2. Until such time as the necessary regulations have been adopted for the implementation of this Law, the principles of Decree 1674/1977, of 10 June 1977 by which the General Rules and Regulations on the Protection of Plant Varieties were approved shall be maintained, provided they do not run counter to this Law.

First final provision
Amendment to Law 11/1986 of 20 March 1986 – the Patent Law

1. Article 5(1(b)) of Law 11/1986, of 20 March 1986, the Patent Law, shall be amended to read:

"(b) Plant varieties."

2. Article 143(3) of Law 11/1986, of 20 March 1986, the Patent Law, shall be amended to read:

"3. Inventions of procedures and plant varieties cannot be protected as utility models."

Second final provision
Additional application legislation

Where the present Law lacks a provision specifically applicable to plant breeder's rights, the Law governing the legal protection of inventions shall also apply.

Third final provision
Development of the Law

The Government shall be authorized to dictate such provisions for the application and development of the present Law may be necessary as well as to amend the annexes. Within a maximum of six months from the entry into effect of this Law, the Government shall approve the Rules and Regulations for its application.

Fourth final provision
Entry into force

The present Law shall come into effect three months after its publication in the Official State Gazette.

And so saying,

I require all Spaniards, individuals and authorities to observe this Law and ensure that it be observed.

Madrid, 7 January 2000.

JUAN CARLOS REX

Prime Minister
JOSÉ MARÍA AZNAR LÓPEZ

ANNEX 1

Plant species in respect of which an exception may be admitted to Article 14 of the Law

(a) Fodder species:

Cicer arietinum L. (*partim*)- chickpea.
Hedysarum coronarium L. – "zulla".
Lathyrus sp. – pea.
Lupinus albus L. - white lupine.
Lupinus angustifolius L. - blue lupine.
Lupinus luteus L. - yellow lupine.
Medicago sativa L. – medic (clover)
Onobrychis sativa (L) Lamk. – sainfoin cock's-head clover.
Pisum sativum L. (*partim*) - peas.
Trifolium alexandrinum L. – berseem / Egyptian clover.
Trifolium resupinatum L. - Persian clover.
Trigonella foenum-graecum L. - Fenugreek.
Vicia ssp. - Vetch, beans, tare and carob beans.

(b) Cereals:

Avena sativa - common oat.
Hordeum vulgare L. - common barley.
Oryza sativa L. - rice.
Phalaris canariensis L. - bird seed.
Secale cereale L. - rye.
Triticosecale Wittm. - wheat.
Triticum aestivum L. *emend frori et paol.* - soft wheat.
Triticum durum Desf. - hard wheat.
Triticum spelta L. – awned wheat.

(c) Potatoes:

Solanum tuberosum - potato.

(d) oleaginous and textile species:

Brassica napus L. (*partim*) - colza.
Brassica rapa L. (*partim*) – common turnip.
Linum usitatissimum - linseed, excluding textile linen.

(e) Horticultural species:

Lens culinaris L. - lentil.

Cicer arietinum L. (*partim*) - chickpea.

Phaseolus ssp. - beans.

Pisum sativum L. (*partim*)- peas.

ANNEX 2

Classification of plant species for the purpose of determining the amount of the fees in Articles 54 and 56

First Group: cotton, strawberry, bean, lettuce, melon, potato, cucumber, pepper, tomato, sugar beet, and fodder and prairie grasses not mentioned in another group.

Second group: garlic, artichoke, rice, oats, barley, rye, colza, asparagus, sunflower, pea, beans, maize, water-melon, sorghum, wheat, wheaten products, vetch and species of the genus tare not mentioned in another group.

Third group: egg-plant, marrow, safflower, onion, carnation(clove), fruit-bearing plants, leguminous for human consumption not mentioned in another group, rose, soy, tare and carrot, and other species for horticultural exploitation not mentioned in another group.

Fourth Group: vine and other species not included in the previous groups.