

Council Regulation (EC) No 2100/94 of 27  
July 1994 on Community plant variety rights

PART EIGHT

**TRANSITIONAL AND FINAL PROVISIONS**

*Article 116*

**Derogations**

1 Notwithstanding Article 10 (1) (a) and without prejudice to the provisions of Article 10 (2) and (3), a variety shall be deemed to be new also in cases where variety constituents or harvested material thereof have not been sold or otherwise disposed of to others, by or with the consent of the breeder, within the territory of the Community for purposes of exploitation of the variety, earlier than four years, in the case of trees or of vines earlier than six years, before the entry into force of this Regulation, if the date of application is within one year of that date.

2 The provision of paragraph 1 shall apply to such varieties also in cases where a national plant variety right was granted in one or more Member States before the entry into force of this Regulation.

3 Notwithstanding Articles 55 and 56, the technical examination of these varieties shall be carried out to the extent possible by the Office on the basis of the available findings resulting from any proceedings for the grant of a national plant variety right, in agreement with the authority before which these proceedings were held.

4 In the case of a Community plant variety right granted pursuant to paragraphs 1 or 2:  
— Article 13 (5) (a) shall not apply in relation to essentially derived varieties, the existence of which was a matter of common knowledge in the Community before the date of entry into force of this Regulation.

— Article 14 (3), fourth indent shall not apply to farmers who continue to use an established variety in accordance with the authorization of Article 14 (1) if, before the entry into force of this Regulation, they have already used the variety for the purposes described in Article 14 (1) without payment of a remuneration; this provision shall apply until 30 June of the seventh year following that of the entry into force of this Regulation. Before that date the Commission shall submit a report on the situation of the established varieties dealing with each variety individually. That period may be extended, in the implementing provisions adopted pursuant to Article 114, in so far as the Commission's report justifies it.

— without prejudice to the rights conferred by national protection, the provisions of Article 16 shall apply *mutatis mutandis* to acts concerning material disposed of to others by the breeder or with his consent prior to the date of entry into force of this Regulation, and effected by person who, prior to that date, have already effected such acts or have made effective and genuine arrangements to do so.

If such earlier acts have involved further propagation which was intended within the meaning of Article 16 (a), the authorization of the holder shall be required for any further propagation after the expiry of the second year, in the case of varieties of vine and tree species after the expiry of the fourth year, following the date of entry into force of this Regulation.

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*Status: Point in time view as at 31/01/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, PART EIGHT. (See end of Document for details)*

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- Notwithstanding Article 19, the duration of the Community plant variety right shall be reduced by the longest period:
  - during which variety constituents or harvested material thereof have been sold or otherwise disposed of to others, by or with the consent of the breeder, within the territory of the Community for purposes of exploitation of the variety, as established in the findings resulting from the procedure for the grant of the Community plant variety right, in the case of paragraph 1,
  - during which any national plant variety right or rights have been effective, in the case of paragraph 2,

but not more than by five years.

#### *Article 117*

#### **Transitional provisions**

The Office shall be set up in good time to assume fully the tasks incumbent upon it pursuant to this Regulation as from 27 April 1995.

#### *Article 118*

#### **Entry into force**

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

2 Articles 1, 2, 3, 5 to 29 and 49 to 106 shall apply from 27 April 1995.

**Status:**

Point in time view as at 31/01/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, PART EIGHT.