# Commission Regulation (EC) No 1002/2005 of 30 June 2005 amending Regulation (EC) No 1239/95 as regards the grant of compulsory licences and the rules on public inspection and access to documents held by the Community Plant Variety Office

## COMMISSION REGULATION (EC) No 1002/2005

## of 30 June 2005

## amending Regulation (EC) No 1239/95 as regards the grant of compulsory licences and the rules on public inspection and access to documents held by the Community Plant Variety Office

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)], and in particular Article 114 thereof,

Whereas:

(1) Article 29 of Regulation (EC) No 2100/94 has been amended in order to include a reference to compulsory licences provided for in 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[(2)] and to replace the term ‘compulsory exploitation right’ by ‘compulsory licence’.

(2) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[(3)], which lays down the general principles and limits governing the right of access to documents provided for in Article 255 of the Treaty, has been made applicable to documents held by the Community Plant Variety Office by way of insertion of a new Article 33a in Regulation (EC) No 2100/94.

(3) It is therefore appropriate to amend Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office[(4)] accordingly.

(4) The Administrative Council of the Community Plant Variety office has been consulted.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Community Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1239/95 is amended as follows:

1. Chapter IV of Title II is replaced by the following:

**Changes to legislation:** *Commission Regulation (EC) No 1002/2005 is up to date with all changes known to be in force on or before 25 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

# CHAPTER IV

# COMMUNITY LICENCES TO BE GRANTED BY THE OFFICE

## Section 1

## Compulsory licences pursuant to Article 29 of the Basic Regulation

### *Article 37*

### Applications for a compulsory licence

1 The application for a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain:

- a the designation of the applicant and the opposing holder of the variety concerned as parties to proceedings;
- b the variety denomination and the plant species of the variety or varieties concerned;
- c a proposal for the type of acts to be covered by the compulsory licence;
- d a statement setting out the public interest concerned, including details of facts, items of evidence and arguments presented in support of the public interest claimed;
- e in the case of an application referred to in Article 29(2) of the basic Regulation, a proposal for the category of persons to which the compulsory licence shall be granted, including, as the case may be, the specific requirements related to that category of persons.
- f a proposal for an equitable remuneration and the basis for calculating the remuneration.

2 The application for a compulsory licence referred to in Article 29(5a) of the basic Regulation shall contain:

- a the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;
- b the variety denomination and the plant species of the variety or varieties concerned;
- c a certified copy of the patent certificate showing the number and claims of the patent for a biotechnological invention and the granting authority of the patent;
- d a proposal for the type of acts to be covered by the compulsory licence;
- e a proposal for an equitable remuneration and the basis for calculating the remuneration;
- f a statement setting out why the biotechnological invention constitutes significant technical progress of considerable economic interest compared with the protected variety, including details of facts, items of evidence and arguments in support of the claim;
- g a proposal for the territorial scope of the licence, which may not exceed the territorial scope of the patent referred to in point (c).

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3 The application for a cross-licence referred to in Article 29(5a) of the basic Regulation shall contain:

- a the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;
- b the variety denomination and the plant species of the variety or varieties concerned;
- c a certified copy of the patent certificate showing the number and claims of the patent for a biotechnological invention and the granting authority of the patent;
- d an official document showing that a compulsory licence for a patented biotechnological invention has been granted to the holder of the plant variety right;
- e a proposal for the type of acts to be covered by the cross-licence;
- f a proposal for an equitable remuneration and the basis for calculating the remuneration;
- g a proposal for the territorial scope of the cross-licence, which may not exceed the territorial scope of the patent referred to in point (c).

4 The application for a compulsory licence shall be accompanied by documents evidencing that the applicant has applied unsuccessfully to obtain a contractual licence from the holder of the plant variety right. Should the Commission or a Member State be the applicant for a compulsory licence pursuant to Article 29(2) of the basic Regulation, the Office may waive this condition in the case of *force majeure*.

5 A request for a contractual licence shall be considered unsuccessful within the meaning of paragraph 4 if:

- a the opposing holder has not given a final reply to the person seeking such right within a reasonable period, or
- b the opposing holder has refused to grant a contractual licence to the person seeking it, or
- c the opposing holder has offered a licence to the person seeking it, on obviously unreasonable fundamental terms including those relating to the royalty to be paid, or on terms which, seen as a whole, are obviously unreasonable.

*Article 38*

**Examination of the application for a compulsory licence**

1 Oral proceedings and the taking of evidence shall in principle be held together in one hearing.

2 Requests for further hearings shall be inadmissible except for those requests based on circumstances which have undergone change during or after the hearing.

3 Before taking a decision, the Office shall invite the parties concerned to come to an amicable settlement on a contractual licence. If appropriate, the Office shall make a proposal for such an amicable settlement.

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*Article 39*

**Tenure of a Community plant variety right during the proceedings**

1 If the commencement of an action in respect of a claim referred to in Article 98(1) of the basic Regulation against the holder has been entered in the Register of Community Plant Variety Rights, the Office may suspend the proceedings on the grant of a compulsory licence. It shall not resume them prior to the entry in the same Register of the final judgment upon, or any other termination of, such action.

2 If a transfer of the Community plant variety right is binding on the Office, the new holder shall enter the proceedings as party thereto, upon request of the applicant, if that applicant has unsuccessfully requested the new holder to grant him a licence within two months of receipt of communication from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights. A request from the applicant shall be accompanied by sufficient documentary evidence of his vain attempt and, if appropriate, of the conduct of the new holder.

3 In the case of an application referred to in Article 29(2) of the basic Regulation, the new holder shall enter the proceedings as party thereto. Paragraph 1 of this Article shall not apply.

*Article 40*

**Contents of the decision on the application**

The written decision shall be signed by the President of the Office. The decision shall contain:

(a) a statement that the decision is delivered by the Office;

(b) the date when the decision was taken;

(c) the names of the members of the committee having taken part in the proceedings;

(d) the names of the parties to proceedings and of their procedural representatives;

(e) the reference to the opinion of the Administrative Council;

(f) a statement of the issues to be decided;

(g) a summary of the facts;

(h) the grounds on which the decision is based;

(i) the order of the Office; if need be, the order shall include the stipulated acts covered by the compulsory licence, the specific conditions pertaining thereto and the category of persons, including where appropriate the specific requirements relating to that category.

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*Article 41*

**Grant of a compulsory licence**

The decision to grant a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain a statement setting out the public interest involved.

1. The following grounds may in particular constitute a public interest:

   (a) the protection of life or health of humans, animals or plants,

   (b) the need to supply the market with material offering specific features,

   (c) the need to maintain the incentive for continued breeding of improved varieties.

2. The decision to grant a compulsory licence pursuant to Article 29(5a) of the basic Regulation shall contain a statement setting out the reasons why the invention constitutes significant technical progress of considerable economic interest. The following grounds may in particular constitute reasons why the invention constitutes significant technical progress of considerable economic interest compared with the protected plant variety:

   (a) improvement of cultural techniques;

   (b) improvement of the environment;

   (c) improvement of techniques to facilitate the use of genetic biodiversity;

   (d) improvement of quality;

   (e) improvement of yield;

   (f) improvement of resistance;

   (g) improvement of adaptation to specific climatological and/or environmental conditions.

3. The compulsory licence shall be non-exclusive.

4. The compulsory licence may not be transferred, otherwise than together with that part of an enterprise which makes use of the compulsory licence, or, in the circumstances set out in Article 29(5) of the basic Regulation, together with the assignment of the rights of an essentially derived variety.

*Article 42*

**Conditions pertaining to the person to whom a compulsory licence is granted**

1 Without prejudice to the other conditions referred to in Article 29(3) of the basic Regulation, the person to whom the compulsory licence is granted shall have the appropriate financial and technical capacity to make use of the compulsory licence.