Commission Regulation (EC) No 1831/2004 of 21 October 2004 amending Commission Regulation (EC) No 930/2000 establishing implementing rules as to the suitability of the denomination of varieties of agricultural plant species and vegetable species

COMMISSION REGULATION (EC) No 1831/2004

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amending Commission Regulation (EC) No 930/2000 establishing implementing rules as to the suitability of the denomination of varieties of agricultural plant species and vegetable species

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species[(1)], and in particular Article 9(6) thereof,

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed[(2)], and in particular Article 9(6) thereof,

Whereas:

(1) Directives 2002/53/EC and 2002/55/EC lay down general rules in relation to the suitability of variety denominations, by means of a reference to Article 63 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights[(3)].

(2) Commission Regulation (EC) No 930/2000[(4)] established detailed rules for the application of certain criteria set out by Article 63 of Regulation (EC) No 2100/94, in particular in respect of the impediments to the designation of a variety denomination.

(3) Due to developments in the area of protection of geographical indications and designation of origin for agriculture products, as laid down in Council Regulation (EEC) No 2081/92[(5)], and to changes in the proceedings before the Community Plant Variety Office as laid down in Commission Regulation (EC) No 1239/95[(6)], the detailed rules established by Regulation (EC) No 930/2000 should be updated accordingly.

(4) Regulation (EC) No 930/2000 should therefore be amended.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 930/2000 is amended as follows:

1. In Article 2, the following paragraphs are inserted:

2. In the case of a geographical indication or a designation of origin for agricultural products and foodstuffs as a prior right of a third party, a variety denomination in the territory of the Community shall be considered to be precluded where the variety denomination would breach Article 13 of Council Regulation (EEC) No 2081/92[7] with respect to the geographical indication or the designation of origin protected in a Member State or in the Community under Articles 5(5), 6 or the former Article 17 of that Regulation for goods which are identical or comparable to the plant variety concerned.

3 An impediment to the suitability of a denomination due to a prior right referred to in paragraph 2 may be removed where a written consent of the holder of the prior right to the use of the denomination in relation to the variety has been obtained, provided that such a consent is not liable to mislead the public as to the true origin of the product.

2. In Article 2, point 2 becomes point 4.

3. Article 3(1) is amended as follows:

(a) Point (a) is replaced by the following:

(a) where it is in the form of a "fancy name":

(i) it consists of a single letter,

(ii) it consists of, or contains as a separate element, a series of letters not forming a word pronounceable in an official language of the Community; however, where this series is an established abbreviation, such an established abbreviation shall be limited to a maximum of two sets of up to three characters each, located at each end of the denomination,

(iii) it contains a number, except where this is an integral part of the name, or where this indicates that the variety is or will be one of a numbered series of varieties related through their breeding history,

(iv) it consists of more than three words or elements, unless the flow of the wording makes it easily recognizable or reproducible,

(v) it consists of or contains an excessively long word or element,

(vi) it contains a punctuation mark or other symbol, an upper and lower case mixture (save where the first letter is in upper case and the rest of the denomination in lower case), subscript, superscript or a design.

(b) In point (b), point (v) is replaced by the following:

(v) it contains a punctuation mark or other symbol, subscript, superscript or a design.

4. In Article 4, point (a) is replaced by the following:

(a) "may be confused with" shall be considered to cover *inter alia* a variety denomination, containing a difference of only one letter, or of accents on letters, in relation to the variety denomination of a variety of a closely related species, which has been officially accepted for marketing in the Community, the European Economic Area or in a contracting party to the International Convention for the Protection of New Varieties of Plants (UPOV), or is the subject of a plant variety right in such territories. However, a difference of only one letter in an established abbreviation as a separate entity of the varieties denomination shall not be regarded as confusing. Also, where the different letter is prominent in a way that makes the denomination clearly distinct from already registered variety denominations, it shall not be regarded as confusing. Differences of two or more letters shall not be regarded as confusing except where two letters simply change places. A difference of one digit between numbers (where a number is permissible in a fancy name) is not to be regarded as confusing.

Without prejudice to Article 6, this provision shall not apply to a variety denomination in the form of a code, if the reference variety denomination is equally in the form of a code. In the case of a code a difference of only one character, letter or number shall be deemed to enable two codes to be satisfactorily distinguished. Blank spaces are to be ignored when comparing denominations in code form.

5. In Article 5, point (b) is deleted.

6. Article 6 is amended as follows:

(a) In point (e), point (ii) is replaced by the following:

(ii) the botanical or common names of species, within the group either of agricultural plant species or of vegetable plant species, to which the variety belongs.

(b) In point (e), point (iii) is deleted.

(c) The following point (f) is added:

(f) it includes a geographical name that would be likely to deceive the public as to the characteristics or the value of the variety.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall not apply to variety denominations which have been proposed by the applicant to the competent authority for their approval before the entry into force of this Regulation.

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