COUNCIL REGULATION (EC) No 873/2004
of 29 April 2004
amending Regulation (EC) No 2100/94 on Community plant variety rights

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights [2] creates a Community regime for plant varieties, co-existing with national regimes, which allows for the grant of industrial property rights, valid throughout the Community (Community plant variety rights).

(2) The implementation and application of this regime are carried out by a Community office with legal personality, known as the Community Plant Variety Office (the Office).

(3) The term 'compulsory licence' should have the same meaning and content as the current term 'compulsory exploitation right'.

(4) Only the Office is entitled to grant a compulsory licence for a plant variety which is protected by a Community plant variety right.

(5) The Community's legal framework for the protection of biotechnological inventions, established in Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions [3] lays down in Article 12 rules for the grant of non-exclusive compulsory licences where protected plant varieties, including Community plant varieties, incorporate patented inventions, and vice versa.

(6) Article 29 of Regulation (EC) No 2100/94, while providing in general for the grant of compulsory licences for Community plant varieties on grounds of public interest, does not expressly refer to the licences to be provided in accordance with Article 12 of Directive 98/44/EC.

(7) Considering the need to ensure transparency and coherence of the system of compulsory cross-licensing it is appropriate to amend the rules established by Regulation (EC) No 2100/94, making express reference and setting out the specific conditions relating to compulsory licences provided for in Directive 98/44/EC.

(8) Considering the national scope of the protection for biotechnological inventions according to Directive 98/44/EC it is necessary to ensure that the national patent holder be granted a cross-licence for a plant variety right only in the Member State(s) where he/she can claim a patent for a biotechnological invention.

(9) The Treaty provides for no powers, other than those in Article 308 thereof, for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 29 of Regulation (EC) No 2100/94 shall be replaced by the following:

'*Article 29*

Compulsory licensing

1. Compulsory licences shall be granted to one or more persons by the Office, on application by that person or those persons, but only on grounds of public interest and after consulting the Administrative Council referred to in Article 36.

2. On application by a Member State, by the Commission or by an organisation set up at Community level and registered by the Commission, a compulsory licence may be granted, either to a category of persons satisfying specific requirements, or to anyone in one or more Member States or throughout the Community. It may be granted only on grounds of public interest and with the approval of the Administrative Council.

[1] Opinion of 13 January 2004 (not yet published in the Official Journal).
[2] OJ L 227, 1.9.1994, p. 1. Regulation as last amended by Regulation (EC) No 1650/2003 (OJ L 245, 29.9.2003, p. 28).
[3] OJ L 213, 30.7.1998, p. 13.