



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.03.1996  
COM(96) 95 final

Proposal for a

COUNCIL REGULATION (EC)

providing for an extension of the duration of a Community plant variety  
right in respect of potatoes

(presented by the Commission)



EXPLANATORY MEMORANDUM

Council Regulation (EC) No 2100/94 on Community plant variety rights<sup>1</sup> has established a new Community regime which provides for the grant, at Community level, of plant variety rights, a specific form of industrial property rights system for new plant varieties. These rights will have a direct and uniform effect throughout the Community.

For the purpose of the implementation of a Regulation, a Community Plant Variety Office, hereinafter referred to as "the Office", has legally been established on 01.09.1994, the date of entry into force of the Regulation.

If granted by the Office, the term of a Community plant variety right shall, in principle, 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. The Regulation provides for the possibility of extending these terms up to a further five years. To this end, an implementing regulation may be adopted by the Council, acting by qualified majority on proposal from the Commission.

The attached Commission proposal aims at providing for an extension in the case of plant varieties of potatoes. The need for such proposal at this moment results from the following:

1. It is a recognised principle that breeding of new potato varieties entails specific technical difficulties and promises equitable benefit at a fairly late stage. Both, the research expenses and the successful establishment of even the best potato varieties on the market can hence not be compared with other agricultural crops.

This recognised principle is reflected in the national legislation of most of the Member States of the European Union being also Member of the International Union for the Protection of New Varieties of Plants (UPOV), which provide for an extension of the duration of a national property right in the case of potatoes by a further 5 years in comparison with the other agricultural species. As the European Community also envisages accession to UPOV by ratifying the convention of 1991, it is appropriate to align the policy on the duration of protection for potato varieties.

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<sup>1</sup> OJ No L 227, 1.9.1994, p. 1, as last amended by Council Regulation (EC) No 2506/95 of 25.10.1995, OJ No L 258, 28.10.1995, p. 3

2. The Office has been operational since 1995 and has received more than 3200 applications for Community plant variety rights amongst which about 200 applications relate to potato varieties (state as at 1.2.1996).

It is probable that the first Community plant variety rights will be granted in 1996 by the Office.

In consequence, expectations of potato breeders the legitimacy of which is explained above will soon have found shape in Community plant variety rights. Immediate action by the European Community is hence required in order to allow an appropriate planning for potato breeders in future.

#### Subsidiarity

- a) What are the objectives of the measure in relation to obligations with which the Community is charged?

The measure pursues the same objective as the Regulation No 2100/94, i.e. to ensure compatibility with the requirements of the single market concept; the proposal does not affect the co-existence of national regimes with the Community system.

- b) Does the measure arise from an area where there is exclusive Community competence or where competence is shared with Member States?

Exclusive Community competence in respect of the Community systems of industrial property rights.

- c) What forms of actions are at the disposal of the Community?

Legislation implementing an already adopted regulation, exclusively.

- d) Is uniform regulation necessary or would a directive imposing general objectives suffice, leaving execution to be carried out at Member State's level?

Uniform regulation is necessary.

The proposal would have no impact on small or medium-sized enterprises and no financial implications for the budget for the European Union.

**PROPOSAL FOR**

COUNCIL REGULATION (EC) ..... providing for an extension of the terms of a  
Community plant variety right in respect of potatoes

THE COUNCIL OF THE EUROPEAN UNION,

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<sup>1</sup>, as amended by Regulation (EC) No 2506/95  
of 25 October 1995<sup>2</sup>, and in particular Article 19 (2) thereof,

Having regard to the proposal from the Commission,

Whereas it is recognised that technical difficulties in potato breeding  
require expenditure of research activities for a long period in comparison  
with the overwhelming majority of all the other agricultural crops;  
whereas, in addition, experience on the market has shown that a new potato  
variety reveals its commercial value only in long terms in comparison with  
those agricultural species requiring also long term research activities;  
whereas, for these reasons, an equitable refunding of the research  
activities is only possible at a fairly late stage of the protection in  
comparison with the other agricultural crops;

Whereas in order to establish a legal environment conducive to achieve such  
equitable refunding, an extension of the initial duration of a Community  
plant variety right by further five years in the case of potatoes is the  
most appropriate measure;

Whereas such extension should apply to all valid Community plant variety  
rights which were granted prior to the entry into force of this Regulation  
or which will be granted in future unless such a right is duly surrendered  
by the holder or terminated by a decision of the Community Plant Variety  
Office;

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<sup>1</sup> OJ No L 227, 1.9.1994, p.1

<sup>2</sup> OJ No L 258, 28.10.1995, p.3

Whereas the period of extension should be reduced if a national property right or rights in respect of the same variety have been effective in a Member State prior to the grant of a Community plant variety right and accordingly, would have allowed a breeder to take already advantages of his variety; whereas a comparable principle was already laid down under the transitional regime of Article 116 of the Basic Regulation;

HAS ADOPTED THIS REGULATION:

Article 1

1. The duration of a Community plant variety right in respect of varieties of potatoes shall be extended until the end of the 5th calendar year, following the last calendar year of the duration provided for in Article 19(1) of the Basic Regulation.
2. In the case of varieties to which Article 116(4) 4th indent of the Basic Regulation does not apply, the extension referred to in paragraph 1 shall be reduced by the longest period in full years during which any national property right or rights have been effective in a Member State in respect of the same variety prior to the grant of the Community plant variety right.

Article 2

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

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



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