

## POLAND

**ACT OF 26 JUNE 2003  
ON THE LEGAL PROTECTION OF PLANT VARIETIES,  
AS AMENDED BY THE ACT OF 9 JUNE 2006 AND THE ACT OF 9 MAY 2007\***

(O. J. of 6 August 2003 No 137, item 1300)

CHAPTER 1  
GENERAL PROVISIONS

Article 1

The issues of the legal protection of plant varieties shall be regulated in this Act, and in particular:

1) the mode and way of granting and cancellation of the right to legal protection of the variety bred, or discovered and developed by the breeder, and also making commercial use thereof;

2) scope of the protection of that right.

Article 2

1. For the purpose of this Act:

1) <sup>(1)</sup> variety – shall be taken to mean a grouping of plants within a single botanical taxon of the lowest known rank, which, whether it fully complies or not with the conditions of granting exclusive right:

a) is defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

b) is distinguished from any other plant grouping by the expression of at least one of those characteristics,

c) remains unchanged after propagation;

2) <sup>(2)</sup> hybrid variety – shall be taken to mean a variety produced each time by crossing of specified plant groupings, in accordance with the method and sequence given by the breeder of this variety;

3) hybrid variety component – shall be taken to mean a variety or a plant line used in the process of production of a hybrid variety;

4) protected variety – shall be taken to mean a variety, the breeder has the right of legal protection thereto and making commercial use thereof;

5) plant breeding – shall be taken to mean the activity aimed at developing and maintenance of varieties;

6) variety maintenance– shall be taken to mean the activity aimed at production of propagating material of this variety, which shall assure preservation of its characteristics, uniformity and stability;

7) breeder – shall be taken to mean a person who:

a) bred, or discovered and developed a variety, or

b) <sup>(3)</sup> is or was employer of the person referred to in (a) or has concluded an agreement under which other party to the agreement has bred or discovered and developed a variety, or

c) is successor in title of persons referred to in intends a and b;

8) propagating material – shall be taken to mean plants or their parts intended for sowing, planting, grafting, budding or other method of propagation of plants, including the application of biotechnology;

9) harvested material – shall be taken to mean the plants or their parts produced as a result of the cultivation of a specified variety not intended to be used as propagating material;

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\* English translation of consolidated text provided by the Polish Authorities. Act of 9 June 2006 amending the Act on the legal protection of plant varieties and the Seed Act (O.J. of 14 July 2006 No 126, item 877 – article 1) and Act of 9 May 2007 amending the Act on copyright and related rights and certain other Acts (O.J. of 5 June 2007 No 99, item 662 – article 5).

10)<sup>(4)</sup> variety examination – shall be taken to mean the testing of distinctness, uniformity and stability and assessment of a variety in order to grant its breeder the exclusive right to this variety;

11) associated states – shall be taken to mean the states that are the members of the International Union for the Protection of New Varieties of Plants (UPOV);

12) member states – shall be taken to mean the states being the members of the European Union;

13)<sup>(5)</sup> (repealed);

14)<sup>(6)</sup> conditioning - shall be taken to mean cleaning, drying, calibration, dressing or pelleting of harvested material;

15)<sup>(7)</sup> processor - shall be taken to mean an entrepreneur providing services in the scope of conditioning of harvested material to be used as propagating material;

16)<sup>(8)</sup> exclusive breeder's right - shall be taken to mean the right of the breeder to protect the bred or discovered and developed variety as well as commercialization of such variety.

2. The provision of paragraph 1 subparagraph 7 intend 'a' shall not be applicable to the persons who bred, or discovered and developed the variety on the basis of an employment contract or other contract, unless otherwise provided for in that contract.

3.<sup>(9)</sup> Persons who have jointly bred or discovered and developed a variety as well as their successors in title and successors in title of the person referred to in Paragraph 1 (7) (b) shall jointly execute the rights of breeder.

#### Article 3

For the procedures in cases of the issues regulated by this Law, the provisions of the Code of Administrative Procedure are applicable, unless otherwise provided for by this Law.

## CHAPTER 2

### EXCLUSIVE BREEDER'S RIGHT TO THE VARIETY

#### Article 4

1.<sup>(10)</sup> The breeder may apply for the grant of breeder's right to the variety, if the variety is distinct, uniform, stable and new, and its denomination complies with the requirements referred to in Article 9 paragraph 1.

2. For the grant of the exclusive right may also apply a person who has acquired from the breeder, on the basis of a written contract, the right to the variety bred or discovered and developed by that breeder.

3. The exclusive right shall be granted by the director of the Research Centre for Cultivar Testing.

4. The exclusive right shall apply to the varieties of all plant genera and species.

5. The exclusive right shall be hereditary and may be sold or otherwise disposed of to others by written contract.

6.<sup>(11)</sup> The exclusive right shall not be granted if the variety was applied for the protection or is protected by the Community Plant Variety Office (CPVO).

#### Article 4a<sup>(12)</sup>

Person who has bred or discovered and developed a variety under the work contract or under any another contract concluded with the breeder shall have the right to remuneration for any commercialization of the variety, unless the contract concluded with the breeder provides otherwise.

#### Article 5

1. A variety shall be deemed to be distinct if, at the date of an application for the grant of an exclusive right, it is clearly distinguishable by at least one characteristic, from any other variety whose existence is a matter of common knowledge.

2. The Research Centre for Cultivar Testing, hereinafter referred to as the "Centre", shall make available to the breeder, upon his request, written information on the characteristics of the variety, which shall be considered on the assessment of its distinctness.

3. A variety shall be deemed to be commonly known, if:

1) an application has been lodged for the grant of an exclusive right or for the entry into a register of varieties in the Republic of Poland, in other member, associated or third state;

2) has been protected or entered into a register of varieties in the Republic of Poland, in other member, associated or third state;

3) its propagating material or harvested material have been placed on the market;

4) its description has been published in a publication issued in a member, associated or third state;

5) its propagating material is available in commonly accessible variety collections.

#### Article 6

A variety shall be deemed to be uniform if, taking account of the method of the reproduction specific for that variety, it is sufficiently uniform in its relevant characteristics which are taken into account in the examination of distinctness, as well as any other characteristics used for the variety description.

#### Article 7

A variety shall be deemed to be stable if its relevant characteristics which are taken into account in the examination of distinctness, as well as any other characteristics used for the variety description, remain unchanged after its propagation.

#### Article 8

1. A variety shall be deemed new if, at the date of application for the grant of an exclusive right its breeder has not sold or otherwise disposed of to

others, for commercial purposes, of its propagating material or harvested material or has not given written consent to it:

1) within the territory of the Republic of Poland – earlier than one year before the abovementioned date;

2) in other states:

a) earlier than six years – in the case of trees or of vines,

b) earlier than four years – in the case of other varieties - before the date of application for the grant of an exclusive right.

2. A variety shall be also deemed to be new if the breeder at the date of application for the grant of an exclusive right:

1) has sold or otherwise disposed of to others:

a) variety propagating material to official bodies subordinated to or supervised by the minister competent for agriculture, which in the framework of their statutory activities, perform the variety examinations, or

b) parts of plants produced as a result of breeding, propagation, or experimental work, other than propagating material,

c) propagating material at an international exhibition organised in accordance with the Convention on International Exhibitions of 22 November 1928 (Journal of Laws of 1961 No 14, item 76 and of 1968 No 42, item 293);

2) has disposed of the propagating material to entities for the continuation of breeding or for performing examinations, or for experiments, provided that the propagating material produced from them shall remain the property of this breeder.

3. The components of a hybrid variety shall be deemed to be new if, at the date of application for the grant of an exclusive right, the hybrid propagating material produced thereof have not been sold by the breeder or otherwise disposed of to others for commercial purposes:

1) within the territory of the Republic of Poland – earlier than one year;

2) in other states – earlier than four years - before the date of application for the grant of an exclusive right.

#### Article 9

1. The variety denomination must not:

1) be identical as or similar to the denominations of the varieties in the member, associated or third states, which are or were given to the varieties belonging to the same or another species of this genus, as well as the names protected with an exclusive right or entered in an appropriate variety registers, unless the variety is no longer protected or is not present on the market, and its denomination has not been commonly known;

2) evoke public objection;

3) mislead as to the identity of its breeder, its characteristics or the value for use;

4) be identical as or similar to other designations which are commonly used for the marketing of goods;

5) violate the rights of third parties to trade-marks;

6) contain the words “variety ” or “hybrid variety”;

7) compose exclusively of digits nor start with a digit.

2. In cases where the denomination is inadequate, the Centre shall give the breeder a 14-day period for the submission of a written proposal of another denomination.

3. <sup>(13)</sup> If the variety is protected by the breeder’s right under the specific denomination in another associated state, it shall be protected only under the same denomination in the Republic of Poland.

4. The duty of using the variety denomination shall apply to any person who performs the assessments, offers for sale, sales, disposes of to others, advertises or gives information on its propagating material or harvested material.

5. The variety denomination shall be protected starting from the date of the grant of an exclusive right, and in the case of removal of its entry in the register of protection of exclusive right – so long as the propagating material remains on the market.

#### Article 10

1. An exclusive right shall be granted at a request of the breeder or its representative.

2. The breeder’s representative may be private or legal person, or an organisational unit without legal personality that has its domicile or registered seat in the territory of the Republic of Poland, other member, or associated states.

3. <sup>(14)</sup> If the breeder has its domicile or registered seat in a state not being the member state or the associated state, the application for the grant of an exclusive right shall be filed by his/her representative.

#### Article 11

1. The application for the grant of an exclusive right shall be lodged at the Centre.

2. The application for the grant of an exclusive right shall include:

1) the name, address and domicile of the breeder or the seat address;

2) Polish and Latin name of the plant genus or species;

3) designation of the variety on the stage of breeding;

4) the proposed denomination of the variety;

5) indication of the country of breeding, or the discovery and development of the variety;

6) declaration of the breeder that the variety is new in accordance with the requirements referred to in Art. 8;

7) declaration of the breeder that the variety has been or has not been genetically modified;

8) information on lodging an application for the protection of an exclusive right in other states.

3. The application referred to in paragraph 2 shall be accompanied by:

1) in cases where the application is filed by the breeder's representative, the authorisation for the representation of the breeder in all issues relating to the grant of an exclusive right;

2) description of the variety or the hybrid variety components (technical questionnaire);

3) <sup>(15)</sup> (repealed);

4) copy of the receipt for payment of fees for submitting the application for the grant of an exclusive right to the variety;

5) <sup>(16)</sup> declaration of the breeder whether he/she intends to exercise the right of priority referred to in Article 12 (1) in the Republic of Poland.

4. The minister competent for agriculture shall lay down, by Regulation, a specimen application form for the grant of an exclusive right, specimen technical questionnaire, having regard to the unification of the proceedings related to the grant of an exclusive right.

5. <sup>(17)</sup> The data referred to in paragraph 3 intends 2 and 3, must not be made available without a written consent of the breeder.

6. Where the applications for the grant of an exclusive right for the same variety have the same date of application, the priority has the application which was received by the Centre earlier, which is confirmed by the consecutive receipt number given to each of the applications.

#### Article 12

1. A breeder who lodged an application for the grant of an exclusive right in an associated state may apply, within twelve months of the date of that submission, for the grant in the Republic of Poland of an exclusive right as well as for the admission of his right of priority to the variety, hereinafter referred to as "the right of priority".

2. A breeder who submitted in the Republic of Poland an application for the grant of an exclusive right along with the right of priority shall deliver, without prejudice to paragraph 4, within three months of the date of lodging that application, a copy of the application lodged in the associated state along with the copy of the documents attached to that application.

3. In cases where a breeder has not delivered on time the copy of the application along with the copy of the attached documents lodged in an associated state, the application referred to in paragraph 2 shall not be examined in the framework of the right of priority.

4. In cases where an application for the grant of an exclusive right filed in an associated state has been withdrawn by the breeder, or has not been positively considered by a competent authority, the breeder shall be obliged to notify in writing of this fact to the Centre within three months of the date of the withdrawal of the application or receipt of the decision on the refusal of an exclusive right.

#### Article 13

1. <sup>(18)</sup> The Centre shall publish every two months in its publication, referred to later as the "Polish Gazette", information on the applications for the grant of an exclusive right and meeting the requirements specified in Article 11, giving the following data:

1) the name, address and domicile of the breeder or the seat address;

2) Polish and Latin names of the plant genus or species;

3) the variety denomination as proposed in the application;

4) the date of submission of the application;

5) the consecutive number of the application;

6) data on:

a) applications for the grant of an exclusive right withdrawn,

b) decisions issued in the cases of:

- granting the exclusive right,
  - refusal to grant the exclusive right,
  - cancellation of the exclusive right,
  - nullity of the exclusive right,
- c) changes of breeders and their representatives,

d) settlement of appeals against decisions of the Director of the Centre.

2. The Centre shall make available to breeders, with prejudice to Art. 11 paragraph 5, the documents attached to the application for the grant of an exclusive right and the documents relating to the examination for distinctness, uniformity and stability referred to in Art. 15 paragraph 1.

#### Article 14

1. <sup>(19)</sup> A breeder who lodged an application for the grant of an exclusive right shall enjoy a provisional exclusive right since the date of publication of information on that application in the Polish Gazette.

2. The provisions relating to an exclusive right shall be applicable accordingly to the provisional exclusive right.

3. The provisional exclusive right shall expire on the date of entry into force of the decision on the grant or on the refusal of the grant of an exclusive right.

#### Article 15

1. Before an exclusive right has been granted, the Centre shall perform the examinations for distinctness, uniformity and stability, hereinafter referred to as the "DUS testing", unless it deems the results of the examinations carried out by the authority performing official examinations in another associated state to be sufficient.

2. The DUS tests shall be carried out in accordance with the examination methodology established for a given species for a period necessary for completing of testing of the variety distinctness, uniformity and stability.

3. Before the beginning of the DUS tests, the Centre shall inform in writing the breeder of the date of starting and the expected time of completion of the examinations.

4. The breeder shall be obliged to deliver to the Centre, free of charge, variety propagating material for the purpose of the DUS testing.

5. The minister competent for agriculture shall lay down in Regulation the quantity of the variety propagating material necessary for carrying out of the DUS tests and the time limits for the delivery of those propagating material to the Centre, taking into account the biological characteristics of the plant species in question.

6. <sup>(20)</sup> (repealed).

#### Article 16

1. During the DUS testing, the breeder shall be obliged to:

1) make possible for the Centre to:

a) control the maintenance of the variety,

b) access to the documents relating to the variety maintenance;

2) provide, upon request of the Centre, written clarifications and information necessary for the performance of the DUS tests.

2. The breeder shall be given the possibility to get acquainted with the course and the results of the DUS tests for his variety, and, after the issue of the decision on the grant of an exclusive right, the breeder shall receive a final report of the DUS tests.

#### Article 17

1. If the Centre does not perform the DUS tests in given species, it may:

1) commission to carry out such tests or their parts to another testing authority, or

2) accept the results of those tests carried out abroad - at the breeder's expense, provided that he gives the written consent.

2. The Centre, before commissioning the performance of the DUS tests or before the acceptance of the DUS test results, shall forward to the breeder written information on costs relating to those tests.

3. <sup>(21)</sup> (repealed).

#### Article 18

1. Any person may lodge with the director of the Centre a written objection to the grant of an exclusive right, if he/she is in possession of documents or information confirming that:

1) the variety does not comply with the conditions referred to in Art. 4 paragraph 1, or

2) the breeder is not authorised for submitting an application for the grant of an exclusive right.

2. The Centre, within 14 days of the date of settlement of the objection to an exclusive right, send written information to the objector on the admittance or the refusal of the objection.

3. Written information referred to in paragraph 2 shall contain the justification indicating the reasons for the admittance or the refusal of the objections to an exclusive right.

4. Notwithstanding the admittance of the objections for the reason referred to in paragraph 1 intend 2, and filing an application for the grant of an exclusive right by an authorised breeder, the results of the DUS tests concerning a given variety shall be acknowledged.

#### Article 19

1. The Centre shall charge fees for submission an application for the grant of the exclusive right, for the DUS tests as well as for the grant and the maintenance of the exclusive right.

2. The fees for the DUS tests shall not be charged, if the breeder bore the costs referred to in Art. 17 paragraph 1.

3. The minister competent for agriculture, in consultation with the minister competent for public finance, shall lay down in a Regulation the rates of fees referred to in paragraph 1, the way and the time

limits of payment thereof, taking into account the costs relating to carrying out of the examinations and to the grant of an exclusive right.

#### Article 20

1. After completion of the DUS tests, the director of the Centre shall make a decision concerning the grant of an exclusive right.

2. If two or more persons bred, or discovered and developed the variety jointly, the exclusive right shall be granted jointly to them.

3. <sup>(22)</sup> The director of the Centre shall refuse, by way of a decision, to grant an exclusive right, if:

1) the variety fails to meet the conditions referred to in Article 4 (1), or

2) the breeder applying for the exclusive right:

a) has failed to submit propagating material to the Centre in order to carry out the DUS tests within the period specified in the provisions issued pursuant to Article 15 (5) or

b) fails to pay the fees due for the DUS tests.

4. An appeal to the minister competent for agriculture shall lie from decisions relating the grant of the exclusive right.

#### Article 21

The exclusive right shall include:

1) production or reproduction (multiplication);

2) conditioning for the purpose of propagation;

3) offering for sale;

4) selling or other marketing;

5) exporting;

6) importing;

7) stocking

- of the protected variety propagating material.

## Article 22

1. The exclusive right shall also cover:

1) <sup>(23)</sup> harvested material or products produced directly from that material, if the breeder had no possibility of exercising of the exclusive right to the protected variety propagating material;

2) propagating material of ornamental and horticulture plants, if they are reused for commercial purposes as:

a) reproduction material for the propagation of ornamental plants, or

b) cut flower, or

c) propagating material of trees, bushes and perennials;

3) varieties:

a) derived, discovered or produced from a protected initial variety which is not a derived variety,

b) which are not clearly distinct from the protected variety,

c) in those cases where the production of propagating material requires repeated use of a protected variety.

2. A variety shall be regarded as derived from the initial variety, if it is distinct from the initial variety and if:

1) is predominantly derived from initial variety or other derived variety from the same initial variety while retaining the essential characteristics resulting from the genotype or a combination of genotypes of the initial variety;

2) its characteristics are consistent with essential characteristics of the initial variety resulting from its genotype or a combination of genotypes, except for differences resulting from the use of the following breeding techniques:

a) selection of natural or induced mutants,

b) selection of new forms from initial varieties,

c) using backcrossings,

d) genetic engineering.

3. The provisions of paragraph 1 and Art. 21 shall not apply to propagating material and harvested material intended for:

1) private, non-commercial purposes;

2) experimental purposes;

3) breeding of new varieties, excluding the varieties referred to in paragraph 1 intend 3, if these varieties are to be used for commercial purposes.

Article 23 <sup>(24)</sup>

1. A holder of agricultural land may, against payment for the breeder, use the harvested material as propagating material of the variety protected by the exclusive right, notwithstanding Paragraph 3.

2. The right to use the harvested material as material referred to in paragraph 1:

1) shall apply to variety propagating material of the following plants:

a) wheat,

b) rye,

c) barley,

d) triticale,

e) oats,

f) maize,

g) winter oilseed rape,

h) potato;

2) shall not apply to hybrid varieties and varieties bred from free crossing of specified lines of allogamous species (synthetic varieties).

3. A holder of agricultural land of up to 10 ha may use the harvested material of variety protected by

the exclusive right, being a plant variety referred to in Paragraph 2 (1) as propagating material, without the necessity to pay the remuneration to the breeder.

4. The amount of remuneration referred to in Paragraph 1, method and date of payment shall be decided in the agreement concluded between:

- 1) a breeder and a holder of agricultural land, or
- 2) a breeder and an organisation representing holders of agricultural land, or
- 3) an organisation of breeders and a holder of agricultural land, or
- 4) an organisation of breeders and an organisation representing holders of agricultural land

- and should be lower than the rate of royalty paid for a given category of certified propagating material, set by the breeder of that variety.

5. If the agreement referred to in Paragraph 4, has not been reached, the remuneration for the breeder:

- 1) amounts to 50% of the royalty for a given category of propagating material, set in a given year by the breeder of the variety;
- 2) should be paid within 30 days from the day of use of the harvested material referred to in Paragraph 2 (1) as propagating material of the variety protected by the exclusive right.

6. If the holder of agricultural land fails to pay the remuneration referred to in Paragraph 1, the breeder may request payment of statutory interests for each day of the delay.

#### Article 23a <sup>(25)</sup>

1. A holder of agricultural land, excluding a holder of agricultural land specified in Article 23 (3), or an organisation representing the holders of agricultural land, shall provide the breeders or breeders' organisations, on their request, with written information about the use of harvested material referred to in Article 23 (2) (1) as propagating material.

2. The application referred to in Paragraph 1 shall include, in particular:

1) the breeder's name and address of domicile or name and address of the breeder's seat;

2) indication of:

a) variety/varieties, with respect to which the breeder or breeders' organisation applies for information,

b) amount of royalty paid for the respective plant varieties, referred to in (a).

3. Method and scope of providing information referred to in Paragraph 1 shall be laid down in the agreement referred to in Article 23 (4).

4. If the agreement referred to in Article 23 (4) is not concluded, information referred to in Paragraph 1 shall include:

1) the name and address of domicile or name and address of the seat of the holder of agricultural land;

2) data allowing identification of agricultural parcels within the meaning of the provisions on the national register of producers, agricultural holdings and register of aid applications, included in the agricultural holding of the holder of agricultural land;

3) declaration of a holder of agricultural land on the use of or failure to use the harvested material referred to in Article 23 (2) (1) as propagating material with reference made to the denominations of varieties with respect to which the breeder has the exclusive right;

4) indication of the quantity of harvested material referred to in Article 23 (2) (1) used as propagating material:

5) name and address of domicile or name and address of the seat of the processor who provided a service to the holder of agricultural land, consisting in the conditioning of harvested material referred to in Article 23 (2) (1) to be used as propagating material;

6) name and address of domicile or name and address of the seat of the entity from which the holder of agricultural land purchased the certified propagating material of variety or varieties referred to in Paragraph 2 (2) (a), including the quantity of this material.

5. The provisions of Paragraph 1, Paragraph 2 (1) and (2) (a) as well as Paragraph 4 in the scope of obligation to provide the breeder or breeders' organisation with written information is applicable to the State Plant Health and Seed Inspection, if it has such information.

#### Article 23b <sup>(26)</sup>

1. The processor or processors' organisation shall provide the breeder or breeders' organisation, on their request, with written information about the service provided to the holder of agricultural land, consisting in conditioning the harvested material referred to in Article 23 (2) (1) to be used as propagating material.

2. The provisions of Article 23a (2) shall apply accordingly to the request referred to in Paragraph 1.

3. The method and scope of providing information referred to in Paragraph 1 shall be decided in the agreement concluded by the processor or processors' organisation and the breeder or breeders' organisation.

4. If the agreement specified in Paragraph 3 is not concluded, information referred to in Paragraph 1 shall include:

1) name and address of domicile or the name and address of the seat of the processor;

2) declaration of a processor about performance of the service of conditioning the harvested material referred to in Article 23 (2) (1) to be used as propagating material with respect to the variety or varieties to which the breeder has the exclusive right, including the date of service performance;

3) quantity of harvested material referred to in Article 23 (2) (1) with respect to which the processor performed the service of conditioning the harvested material, as well as the quantity of propagating material obtained;

4) name and address of domicile or name and address of the seat of the holder of agricultural land, to whom the processor provided a service consisting in the conditioning of harvested material referred to in Article 23 (2) (1) to be used as propagating material.

#### Article 23c <sup>(27)</sup>

1. Breeders or breeders' organisations shall be entitled to check compliance of information referred to in Article 23a (1) and Article 23b (1) with the actual state.

2. The method and scope of the check referred to in Paragraph 1 shall be laid down in the agreement concluded between the breeder or breeders' organisation and:

1) holder of agricultural land;

2) organisation representing holders of agricultural land;

3) processor;

4) processors' organisation.

3. If the agreement referred to in Paragraph 2 is not concluded, inspection shall be carried out by the breeder or breeders' organisation or the person authorised pursuant to the breeder's or breeders' organisation authorisation.

4. In order to carry out the check:

1) holder of agricultural land:

a) shall ensure access, on the request of the inspecting entity, to the documents confirming compliance of information provided to the breeder pursuant to Article 23a (1) and the actual state,

b) shall ensure access to agricultural land, farm buildings, working facilities and other utility facilities as well as the means of transport;

2) processor:

a) shall provide access, to the following documents on the request of the inspecting entity:

- documents concerning services consisting in conditioning of harvested material referred to in Article 23 (2) (1) to be used as propagating material,

- documents with information on the quantity of harvested material referred to in Article 23 (2) (1) with respect to which the processor carried out conditioning of the harvested material as well as on the quantity of propagating material obtained,

b) shall ensure access to the processing or storing facilities and devices for the inspecting entity.

5. The inspecting entity shall draw up inspection report.

6. The report shall be signed by the inspecting entity and the holder of agricultural land or the processor.

7. Should the holder of agricultural land or the processor refuse or be unable to sign the report, it shall be signed by the inspecting entity with a reference made in the report on refusal or the reasons preventing from signing of the report.

#### Article 24

After the grant of the exclusive right the breeder shall be obliged to:

1) maintain the variety;

2) deliver to the Centre, free of charge, variety propagating material, as well as propagating material of the components used for production of the hybrid variety, in quantities essential for the performance of the DUS tests;

3) provide, upon request of the Centre, information and explanations concerning the variety;

4) enable the Centre to access to the documents related to the variety.

#### Article 25

Any person who makes use of the propagating material of the protected variety is obliged to, upon request of the breeder holding the exclusive right to this variety, provide him with written information concerning the quantity of propagating material of the protected variety and make a payment for the breeder equivalent to the royalty for exploitation of the exclusive right to this variety.

#### Article 26

1. If the breeder has been changed, the new breeder shall be obliged to notify of this fact in writing to the Centre within 30 days of the date, on which this change has taken place.

2. The breeder referred to in paragraph 1 shall attach a copy of the documents confirming his right to the variety.

#### Article 27

1. The exclusive right shall be effective starting from the date of making a decision on grant and shall last for:

1) 30 years – in the case of vine, trees and potato varieties;

2) 25 years – in the case of other varieties.

2. <sup>(28)</sup> In cases where a breeder of the variety protected by the exclusive right in the Republic of Poland shall be granted the Community plant variety right, the exclusive right granted in the Republic of Poland shall be suspended for the period, throughout which the breeder shall enjoy the Community plant variety right.

#### Article 28

1. The exclusive right, without prejudice to paragraph 2, shall expire if:

1) propagating material;

2) harvested material;

3) products produced directly from the harvested material;

4) varieties referred to in Art. 22 paragraph 1, intend 3

- shall be sold or otherwise disposed of to others by the breeder or with his written consent.

2. The exclusive right shall not expire if the purchaser of the variety propagating material:

1) shall use it for renewed propagation;

2) shall export it to a country, which do not provide any protection of the exclusive right to the variety of the plant species in question, unless the harvested material shall be used for consumption purposes in that country.

#### Article 29

1. The director of the Centre shall cancel, in an administrative decision, the exclusive right of the breeder:

- 1) upon his own request;
- 2) if the variety does not comply with the conditions of uniformity or stability;
- 3) if the breeder:
  - a) does not maintain the variety,
  - b) is delayed over 6 months with the payment of fees referred to in Art. 19 paragraph 1,
  - c) renders impossible carrying out of a control of the maintenance of the variety and examination of the documents relating to the variety maintenance,
  - d) does not provide the information and explanations essential for carrying out of the DUS tests,
  - e) has not delivered, free of charge, the variety propagating material in quantities indispensable for carrying out of the DUS tests,
  - f) does not submit a new denomination to the variety in case where the denomination of the variety entered into the register of granted titles of exclusive rights referred to in Art. 36 paragraph 1, does not comply with the conditions listed in Art. 9 paragraph 1.

2. An appeal to the minister competent for agriculture shall lie from decision on the cancellation of the exclusive right of the breeder.

#### Article 30

1. The breeder holding an exclusive right may, on the basis of an exploitation right agreement, grant

another person the authorisation licence for exploitation of the exclusive right.

2. The exploitation right agreement requires written form under clause of nullity.

3. Exploitation of the exclusive right may be restricted in the exploitation right agreement (limited licence); if in the exploitation right contract the scope of using the exclusive right has not been limited, the holder of an exploitation right has a right to exploit the exclusive right in the same scope as the licensor (unlimited licence).

4. In cases where the exclusive exploitation of the exclusive right has not been reserved in the exploitation right agreement, the grant of an exploitation right to one entity does not preclude the possibility of granting the exploitation right to other entities, and also simultaneous exploitation of the exclusive right by the breeder (non-exclusive licence).

5. The party enjoying the exploitation right may grant another exploitation right (sub-licence) only with a written consent of the breeder; the grant of another one sub-licence shall be prohibited.

#### Article 31

1. If the breeder holding the exclusive right to a given variety does not place its propagating material or harvested material on the market, and this is demanded by important national economy interest, the minister competent for agriculture may grant, in a decision, a compulsory licence to another entity, unless the breeder has not placed the propagating material or harvested material on the market due to force majeure.

2. The compulsory licence right may also be granted if the applicant demonstrates that:

1) he applied for the exploitation right from the breeder, who has not introduced the variety propagating material on the market, or

2) the royalty demanded by the breeder is disproportional to the value of the propagating material, or

3) the proposed by the breeder quantity of propagating material is insufficient for the propagation of a given variety in order to place it on the market.

3. The compulsory licence shall be granted upon request of the interested party.

4. The compulsory licence shall be a non-exclusive one.

#### Article 32

1. Application for the grant of compulsory licence shall be filed to the minister competent for agriculture via the director of the Centre.

2. The director of the Centre shall forward the application referred to in paragraph 1 along with an opinion on the necessity of placing on the market of a specified quantity of propagating material or harvested material.

3. The application for the grant of compulsory licence shall include:

1) name, address and domicile of the applicant, or the site address;

2) name, address and domicile of the breeder referred to in Art. 31 paragraph 1, or the site address;

3) specification of the species in the Polish language and in Latin and the denomination of the variety, the applicant applies for;

4) specification of the proposed quantity of variety propagating material necessary for the multiplication;

5) specification of the proposed duration of the compulsory licence;

6) specification of the proposed remuneration to the breeder;

7) indication of an important national economy interest.

4. The application for the grant of a compulsory licence shall be accompanied by the declaration on fixed assets and equipment used for the propagation of the variety, along with description thereof.

#### Article 33

A compulsory licence right shall include:

1) the name, address and domicile of a person who has been granted the compulsory licence and his site address;

2) the name, address and domicile of the breeder or his site address;

3) specification of the species in Polish language and in Latin and the denomination of the variety;

4) specification of the duration of an the licence;

5) specification of the amount of the remuneration to the breeder;

6) specification of the quantity of propagating material needed for the multiplication of the variety in order to place it on the market.

#### Article 34

1. The minister competent for agriculture shall notify in writing to the director of the Centre on issuing of the decision on the grant of a compulsory licence.

2. The Centre shall publish in its Gazette information on compulsory licences granted.

3. The breeder referred to in Art. 31 paragraph 1 shall be obliged, within 30 days of the date of receipt of written information on issuing of the decision on the grant of a compulsory licence, provide to the holder of a compulsory licence the variety propagating material in quantities indispensable for the propagation of this variety in order to place it on the market.

#### Article 35

1. The minister competent for agriculture:

1) shall cancel a compulsory licence if the holder of the compulsory licence has not placed on the market the variety propagating material covered by the compulsory licence in the nearest growing period following the grant of the compulsory licence;

2) may cancel the compulsory licence on the request of the breeder referred to in Art. 31 paragraph 1, if the breeder placed on the market variety propagating material or harvested material of a variety covered by the granted compulsory licence.

2. The request referred to in paragraph 1 intend 2 shall be accompanied by a copy of documents evidencing that the breeder placed the propagating material on the market.

3. The minister competent for agriculture may cancel the compulsory licence in the case referred to paragraph 1 intend 2, if since the day of issuing of the decision, elapsed:

- 1) 2 years – in the case of annual varieties, or
- 2) 3 years – in the case of biennial varieties, or
- 3) 5 years – in the case of perennial varieties.

#### Article 36

1. The Centre shall keep a register of granted titles of exclusive rights, hereinafter referred to as the "register", and a list of varieties, for which applications for the grant of an exclusive right have been filed, hereinafter referred to as the "list".

2. The register shall contain specification of the protected varieties and their breeders as well as the licensees, who were granted a compulsory licence.

3. The list is a specification of the varieties for which applications for the grant of the exclusive right have been filed as well as the breeders who were granted the provisional exclusive rights.

4. A variety entered into the list or the register shall receive a number, which consists of the consecutive number taken from the list or from the register and a capital letter standing for a given group of plants.

5. The variety number on the list shall be preceded additionally by capital letter T, which means that the variety has been granted the provisional exclusive right.

6. The following letter designations shall be used for individual plant groups:

- 1) R – agricultural plants;
  - 2) W – vegetables;
  - 3) S – fruit plants;
  - 4) L – forest plants;
  - 5) O – ornamental plants;
  - 6) P – other plants.
7. The register shall contain:
- 1) the name, address and domicile of the breeder, or the site address;
  - 2) the species name in Polish and in Latin and the variety denomination;
  - 3) the date of the grant and expiry of an exclusive right;
  - 4) the designation of the breeder's country;
  - 5) information indicating whether or not the variety has been genetically modified.
8. The list shall contain:
- 1) the name and address and domicile of the breeder, or the site address;
  - 2) the species name in Polish and in Latin and the variety denomination;
  - 3) the date of the grant and expiry of a provisional exclusive right;
  - 4) the designation of the breeder's country;
  - 5) information indicating whether or not the variety has been genetically modified.

#### CHAPTER 2a<sup>(29)</sup>

#### PURSUIT OF CLAIMS UNDER CIVIL LAW PROCEDURE

#### Article 36a

- 1 The breeder, whose exclusive right has been

infringed, may demand from the person who infringed such right:

- 1) to cease infringing the right;
- 2) to eliminate the results of the infringement;
- 3) to compensate for the damages:

a) in line with general principles, or

b) by paying a certain amount of money corresponding to the license fee that would be due for granting the license by the breeder on the date of the claim; in the case of culpable infringement the amount would be a multiple of the remuneration, yet not higher than the multiple of three;

4) to return the benefits received.

2. Regardless of the claims referred to in Paragraph 1 the breeder may demand a one-time or a repeated announcement in the press, suitable in its form and content, or making the court ruling issued in this case publicly known in part or in full, in the manner and extent established by the court.

3. On the request of infringer and with the consent of the breeder, the court may order the infringer to pay an appropriate amount to the breeder, when the infringement was accidental, if discontinuance of infringement or elimination of its effects would be disproportionately severe for the infringer.

4. When ruling on the right infringement, upon the request of the breeder, the court may rule on the illegally produced seed or the harvest material as well as means and materials used to produce them, in particular the court may rule to withdraw them from the market and furnish the breeder on account of the due compensation, or to destroy them. While ruling, the court shall take into account the gravity of the infringement and the interest of third parties.

5. It is conjectured that the means and materials referred to in Paragraph 4 belong to the person that infringed the exclusive right.

#### Article 36b

1. The court competent for cases of infringement of the exclusive right of the place where the perpetrator

is carrying his/her activities, or in which his/her property is located, shall also try the request of the person having a legal interest in it within 3 days following submission of the request to the court before the action is brought on:

1) for securing evidence and securing related claims;

2) for obliging the infringer to deliver information and documentation identified by the court and significant for the claims, referred to in Article 36a (1);

3) for obliging a person other than the infringer to deliver information significant for the claims, referred to in Article 36a (1) on the origin, distribution networks, quantities and the price of goods or services infringing the exclusive right, if:

a) it has been found that the person is in hold of goods infringing the exclusive right, or

b) it has been found that the person uses the services infringing the exclusive right, or

c) it has been found that the person provides services used in activities infringing the exclusive right, or

d) such person has been pointed out by the person referred to under letters (a), (b) or

c) as a person participating in production, manufacturing or distribution of goods or providing services infringing the exclusive right, and the above-mentioned activities are intended to obtain profit or other economic benefit directly or indirectly, yet they do not include activities of consumers acting in good faith.

2. While accepting evidence or trying the requests referred to in Paragraph 1, the court shall ensure confidentiality of the entrepreneur and other statutory secrets.

3. The obligation referred to in Paragraph. 1 (1) and (2) may be evaded by any one who has the right to deny testimony or to refuse answering questions posed to him/her in line with the provisions of the Code of Civil Procedure.

4. In justified cases the court decision to secure evidence referred to in Paragraph 1 (1) may be conditional on payment of a bail.

5. Objections against the court rulings in the cases referred to in Paragraph 1 shall be examined by the court within 7 days.

6. Article 733, Article 742 and Articles 744-746 of the Code of Civil Procedure shall apply to the evidence securing.

### CHAPTER 3

#### PENAL PROVISIONS

##### Article 37 <sup>(30)</sup>

1. Any person who:

1) violates a variety exclusive right;

2) designates propagating material or harvested material of other or unknown variety with the denomination of a variety protected with the exclusive right

- shall be liable to a fine, detention order or deprivation of liberty up to one year.

##### Article 37a <sup>(31)</sup>

Whoever:

1) prevents the check of variety maintenance,

2) prevents access to documents concerning the variety maintenance,

3) fails to provide propagating material of the varieties to the Centre for DUS tests or to the entity

granted compulsory licence or provides it in an insufficient quantity or after the deadline set,

4) fails to provide, on the request of the breeder whose variety is covered by the exclusive right or the breeders' organisation, information referred to in Article 23 (6) and Article 23b (1), or provides false information,

5) prevents the check referred to in Article 23c (1), to be carried out by the breeder or breeders' organisation

- shall be punishable with fine.

##### Article 37b <sup>(32)</sup>

In the cases referred to in Article 37a judicial decisions shall be issued in accordance with the provisions of the Petty Offences Proceedings Code.

### CHAPTER 4

#### TRANSITIONAL AND FINAL PROVISIONS

##### Article 38

The compulsory licences issued on the basis of the provisions so far in force shall be valid until the end of the period for which they were issued.

##### Article 39

The register and the list, kept on the basis of the provisions so far in force, with the day of entry into force of this Law shall become accordingly the register and the list as understood in this Law.

##### Article 40

This Law shall enter into force on the day, on which the Republic of Poland shall receive the membership in the European Union.

**Footnotes:**

- <sup>(1)</sup> Article 2 (1) (1) as amended by Article 1 Subparagraph 1 (a) first indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(2)</sup> Article 2 (1) (2) as amended by Article 1 Subparagraph 1 (a) first indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(3)</sup> Article 2 (1) (7) B as amended by Article 1 Subparagraph 1 (a) second indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(4)</sup> Article 2 (1) (10) as amended by Article 1 Subparagraph 1 (a) third indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(5)</sup> Article 2 (1) (13) as repealed by Article 1 Subparagraph 1 (a) fourth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(6)</sup> Article 2 (1) (14) as added by Article 1 Subparagraph 1 (a) fifth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(7)</sup> Article 2 (1) (15) as added by Article 1 Subparagraph 1 (a) fifth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(8)</sup> Article 2 (1) (16) as added by Article 1 Subparagraph 1 (a) fifth indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(9)</sup> Article 2 (3) as added by Article 1 Subparagraph 1 (b) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(10)</sup> Article 4 (1) as amended by Article 1 Subparagraph 2 (a) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(11)</sup> Article 4 (6) as amended by Article 1 Subparagraph 2 (b) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(12)</sup> Article 4a as added by Article 1 Subparagraph 3 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(13)</sup> Article 9 (3) as amended by Article 1 Subparagraph 4 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(14)</sup> Article 10 (3) as amended by Article 1 Subparagraph 5 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(15)</sup> Article 11 (3) (3) as repealed by Article 1 Subparagraph 6 (a) first indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(16)</sup> Article 11 (3) (5) as added by Article 1 Subparagraph 6 (a) second indent of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(17)</sup> Article 11 (5) as amended by Article 1 Subparagraph 6 (b) of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(18)</sup> Article 13 (1) as amended by Article 1 Subparagraph 7 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(19)</sup> Article 14 (1) as amended by Article 1 Subparagraph 8 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(20)</sup> Article 15 (6) as repealed by Article 1 Subparagraph 9 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(21)</sup> Article 17 (3) as repealed by Article 1 Subparagraph 10 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(22)</sup> Article 20 (3) as amended by Article 1 Subparagraph 11 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(23)</sup> Article 22 (1) (1) as amended by Article 1 Subparagraph 12 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(24)</sup> Article 23 as amended by Article 1 Subparagraph 13 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(25)</sup> Article 23a as added by Article 1 Subparagraph 14 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(26)</sup> Article 23b as added by Article 1 Subparagraph 14 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.

- <sup>(27)</sup> Article 23c as added by Article 1 Subparagraph 14 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(28)</sup> Article 27 (2) as amended by Article 1 Subparagraph 15 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(29)</sup> Chapter 2a as added by Article 5 of the Act of 9 May 2007 amending the Act on copyrights and related rights and certain other acts (O.J.07.99.662) on 20 June 2007.
- <sup>(30)</sup> Article 37 as amended by Article 1 Subparagraph 16 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(31)</sup> Article 37a as added by Article 1 Subparagraph 17 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.
- <sup>(32)</sup> Article 37b as added by Article 1 Subparagraph 17 of the Act of 9 June 2006 (O.J.06.126.877) amending this Act on 13 September 2006.