

**Bulletin of Acts, Orders, and Decrees of the Kingdom of the Netherlands**

Year 2005

**184**

**Act of 19 February 2005, containing new regulations governing the approval of varieties of plants, the marketing of propagating material, and the granting of breeder's rights (Seeds and Planting Materials Act [*Zaai- en plantgoedwet*] 2005)**

We Beatrix, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

To all who shall see or hear these presents, greeting! Be it known:

Having regard to the necessity of imposing new regulations for the approval of varieties of plants, the marketing of propagating material, and the granting of breeder's rights; to the International Convention for the Protection of New Varieties of Plants, signed in Paris on 2 December 1961 (Treaty Series of the Kingdom of the Netherlands [*Tractatenblad*] 1962, 117), as most recently amended by an instrument of 19 March 1991 (Treaty Series 1992, 52); and to the various European directives on the marketing of propagating material of various species of plants;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed, as We hereby approve and decree, the following:

**CHAPTER 1. DEFINITION OF TERMS****Section 1**

For the purposes of this Act and the provisions based upon it, the following terms shall be understood to have the meanings assigned to them below:

- a. Our Minister: Our Minister of Agriculture, Nature, and Food Quality
- b. the Board: the Plant Varieties Board [*Raad voor plantenrassen*] referred to in Section 2;
- c. variety: a group of plants within a single botanical taxon of the lowest known rank, which group – regardless of whether it complies fully with the provisions of the present Act regarding the granting of a breeder's right – can be
  - defined on the basis of the expression of the characteristics resulting from a certain genotype or a combination of genotypes;
  - distinguished from all other plant groups on the basis of the expression of at least one of the said characteristics; and
  - considered as a unit with regard to its suitability for being propagated unchanged;

- d. the Register of Varieties: the Netherlands Register of Varieties referred to in Section 25;
- e. stand: a clearly delimited and, as regards composition, sufficiently uniform population of trees;
- f. propagating material: plants and plant parts intended for the cultivation or propagation of plants or that are used for such purposes;
- g. marketing: commercial provision or stocking, displaying or offering for sale, selling, possessing with a view to sale, and also providing, supplying or transferring to a third party free of charge;
- h. maintainer: a person who ensures that an approved variety is maintained;
- i. supplier: any natural person or legal entity who/that – other than for use on his/its own holding – professionally propagates, produces, holds, processes, treats, imports, or markets propagating material;
- j. breeder: a person who has propagated a variety through his own work or has discovered or developed that variety, or that person's legal successor;
- k. Union: the International Union for the Protection of New Varieties of Plants formed by the states that are party to the International Convention for the Protection of New Varieties of Plants, signed in Paris on 2 December 1961 (Treaty Series 1962, 117), as most recently amended by an instrument of 19 March 1991 (Treaty Series 1992, 52);
- l. Union State: a state that is a member of the Union;
- m. trade directive or regulation: a directive or regulation of the Council of the European Union, or of the European Parliament and the Council of the European Union jointly, that is wholly or partly based on Articles 37, 52, 95, 152, or 175 of the Treaty Establishing the European Community, that relates to the plants sector and that sets rules regarding economic activity in that sector, the interests of customers, the internal market, quality, production with a view to marketing and marketing of propagating material, the environment, public health, technical requirements, or the provision of information;
- n. delegated directive, delegated regulation, or delegated decision: a directive, regulation, or decision of the Commission of the European Communities based on a trade directive or regulation.

## **CHAPTER 2. PLANT VARIETIES BOARD**

### **Section 2**

There shall be a Plant Varieties Board, whose duties shall be:

- a. to register varieties and stands in the Register of Varieties pursuant to Chapter 4 of the present Act;
- b. to approve varieties and stands pursuant to Chapter 5 of the present Act;
- c. to grant breeders' rights pursuant to Chapter 7 of the present Act;
- d. to draw up and announce national lists of approved varieties and stands pursuant to

Section 26; and

e. to approve plant groups and register them in the Register of Varieties pursuant to Section 85.

### **Section 3**

1. The Board shall consist, including its President, of a minimum of seven and a maximum of eleven members, who shall be appointed and discharged by Our Minister. They shall be appointed on the basis of their expertise in the area of the duties with which the Board is charged. Persons who are subordinates of Our Minister shall not be appointed to the Board.

2. The Board may designate one or more Vice-Presidents from its midst.

3. A Secretary and one or more Assistant Secretaries, to be appointed by Our Minister, shall be attached to the Board.

4. In order to support it in its work, the Board shall have an office headed by the Secretary referred to in Subsection 3.

5. One or more departments may be appointed within the Board by means of a general administrative order [*algemene maatregel van bestuur*].

### **Section 4**

1. The appointment of the President and other members shall be for a period of five years.

2. Upon resigning their position, the persons referred to in Subsection 1 shall immediately be eligible for reappointment. They may be reappointed no more than twice.

3. Our Minister may suspend or prematurely discharge the persons referred to in Subsection 1 because of their being unsuitable or incompetent for the position they hold or for other serious reasons regarding their person. The persons concerned may also be discharged at their own request.

4. Any of the persons concerned may be suspended or discharged due to serious reasons regarding his person within the meaning of Subsection 3:

a. if he is convicted of a criminal offence by means of a judicial decision that has become final and conclusive or has been sentenced to a term of imprisonment by means of such decision;

b. if, by means of a judicial decision that has become final and conclusive, he has been placed under legal guardianship, has been declared bankrupt or subject to a debt rescheduling arrangement for natural persons, has been granted a suspension of payments, or has been imprisoned for debt;

c. if by his action or omission he causes serious harm to the activities of the Board or to confidence in the Board; or

d. if he contravenes the confidentiality obligation within the meaning of Section 2:5 of the General Administrative Law Act [*Algemene wet bestuursrecht*] or acts contrary to Section 5 of this Act.

5. A person appointed to replace a member of the Board whose position has fallen vacant shall resign at the point when the person he has replaced would be required to resign.
6. Our Minister shall allocate remuneration to the members of the Board.

## **Section 5**

1. The President of the Board, its other members, the Secretary, and the Assistant Secretaries shall not participate in the consideration of cases in which they are in any way personally involved.
2. The President and other members of the Board shall not hold any other additional positions if such is undesirable with a view to the proper fulfilment of their duties, the maintenance of their independence, or confidence in such independence.
3. The persons referred to in Subsection 2 shall inform Our Minister of their intention to accept an additional position.
4. Additional positions other than those arising from a Board member's position as such shall be published. Such publication shall be effectuated by a list of additional positions being submitted for perusal by the Board and by Our Minister.

## **Section 6**

1. The costs for the Board shall be borne by the national budget.
2. Our Minister shall set fees for:
  - a. processing requests for registration and entry in the Register of Varieties;
  - b. processing applications for the approval of varieties and stands;
  - c. processing applications for a breeder's right;
  - d. carrying out the technical investigation that is necessary to assess applications within the meaning of (b) and (c) above;
  - e. the provision of copies and extracts from the Register of Varieties;
  - f. each year that a variety or stand is included in the Register of Varieties in connection with its approval or in connection with the granting of a breeder's right;
  - g. the provision of advice within the meaning of Section 58(4); and
  - h. the processing of applications for approval of plant groups within the meaning of Section 85.
3. The fees referred to in Subsection 2:
  - a. shall be directly related to the activities referred to in (a) to (h) of Subsection 2 ;
  - b. shall not amount to more than is necessary to cover the costs incurred due to the various different activities; and
  - c. shall be set separately for each plant or for each category of plants to which the activities of the Board pertain.
4. Specific rules shall be set by ministerial regulation with respect to the imposition and

collection of the said fees and to their periodical revision to take account of trends in wages and prices.

5. If payment is not effectuated within the period set by the Board, the Board shall be empowered to collect the amount owing, plus the statutory interest and the costs relating to collection, by means of a writ of execution. The writ of execution shall be served by means of a bailiff's notification at the expense of the party that owes the said amount in accordance with Section 45 ff. of Book 1 of the Dutch Code of Civil Procedure [*Wetboek van Burgerlijke Rechtsvordering*] and shall constitute entitlement to enforcement within the meaning of Section 430 of Book 2 of the said Code.

6. For a period of six weeks after the date of service, it shall be possible to lodge an objection to the writ of execution by issuing a writ of summons against the State. The lodging of such objection shall suspend enforcement of the writ of execution. A court of law may lift the suspension of enforcement at the request of the State.

7. The Board shall not process any documents or issue any copies or extracts from the Register of Varieties until the amount owing pursuant to the present section has been paid.

## **Section 7**

1. The Board may examine witnesses and experts in connection with the approval of varieties and stands and the granting of a breeder's right.

2. Any person who is called by the Board as a witness shall be obliged to comply.

3. Sections 191 and 203(2) and (3) of the Code of Civil Procedure shall apply *mutatis mutandis* to witnesses.

4. The Board may order that witnesses who, though duly summoned, have failed to appear shall be brought before it by the public authorities.

5. Sections 197 to 199, 203, and 205 of the Code of Civil Procedure shall apply *mutatis mutandis* to the examination of witnesses.

6. Experts shall carry out their task impartially and make their reports to the best of their knowledge.

## **Section 8**

1. The Board shall adopt administrative regulations specifying in any case:

- a. the working methods of the Board and the division of duties between its members;
- b. the summoning of applicants, persons making a request, and other interested parties, as well as witnesses and experts;
- c. the monetary remuneration to be paid to witnesses and experts.

2. In the said administrative regulations, the Board may assign the authority to represent it, both at law and otherwise, to one or more of its members or to the Secretary. The Board may provide that such authority to represent it shall apply solely to certain specific matters.

3. In the administrative regulations referred to in Subsection 1, the Board may assign duties and powers to one or more of its members or to the Secretary.
4. The said administrative regulations shall require the approval of Our Minister. Our Minister may refuse such approval if he considers that there is a conflict with the law or on the grounds that he believes that the said regulations impede the proper fulfilment of the tasks of the Board.

### **Section 9**

1. Before 1 July of each year, the Board shall draw up an annual report on its work and general policy, and specifically on the efficiency and effectiveness of its work and working methods during the previous calendar year.
2. The said annual report shall be submitted to Our Minister and to both houses of the States General and shall be made public.

### **Section 10**

1. As regards the exercise of its tasks and powers, the Board shall ensure:
  - a. timely preparation and implementation;
  - b. the quality of the procedures adopted;
  - c. the careful treatment of persons and institutions coming into contact with it;
  - d. the careful treatment of any objections or complaints that it may receive.
2. The Board shall make provisions allowing persons and institutions coming into contact with it to make proposals for improvements in its working methods and procedures.
3. In the annual report referred to in Section 9, the Board shall report on what it has undertaken to implement Subsections 1 and 2.

### **Section 11**

1. The Board shall provide Our Minister, on request, with the information required for him to perform his task. Our Minister may require that he be enabled to inspect business data and records insofar as such is necessary for him to perform his task.
2. In providing the information referred to in Subsection 1, the Board shall if necessary indicate which information is of a confidential nature. The confidentiality of the said information may arise from the nature of the information or from the fact that natural persons or legal entities provided that information to the relevant body on condition that it should be classed as confidential.

### **Section 12**

1. Our Minister may adopt guidelines regarding the fulfilment of the Board's tasks.
2. The said guidelines shall be published in the Government Gazette [*Staatscourant*].

### **Section 13**

1. Our Minister shall be empowered to nullify a decision adopted by the Board.
2. Such nullification shall be announced in the Government Gazette.

### **Section 14**

1. Should Our Minister consider that the Board is seriously neglecting its task, he shall be empowered to take the necessary measures.
2. Except for urgent cases, the said measures shall not be taken until the Board has been given the opportunity to carry out its task properly within a period to be determined by Our Minister.
3. Our Minister shall immediately inform both houses of the States General of measures he has taken within the meaning of Subsection 1.

### **Section 15**

Before 1 April of each year, the Board shall submit an annual draft budget for the following year to Our Minister.

### **Section 16**

If significant differences arise or seem likely to arise in the course of the year between the actual and budgeted revenue and charges, or income and expenditure, the Board shall immediately inform Our Minister, stating the reasons for the said differences.

### **Section 17**

Pursuant to the relevant civil service regulations, the Board shall ensure that the necessary technical and organisational facilities are in place to ensure the security of its data against loss or damage, and against unauthorised perusal, alteration, or disclosure.

### **Section 18**

Within four years of this Act entering into force, and subsequently every four years, Our Minister shall provide both houses of the States General with a report regarding the efficiency and effectiveness of the manner in which the Board operates.

## **CHAPTER 3. TESTING INSTITUTIONS**

### **Section 19**

1. By means of a general administrative order, one or more legal entities under private law, with full statutory powers, shall be charged with the task of testing propagating material and issuing supporting documentation or distinguishing marks to implement the provisions of or pursuant to Chapter 6 of the present Act.
2. The testing referred to in Subsection 1 shall be intended to determine whether propagating material complies with the rules of or pursuant to Chapter 6 of the present Act, including by studying the propagating material or its origin by means of sampling and the performance of tests.
3. By means of a general administrative order within the meaning of Subsection 1, a testing institution appointed pursuant to that subsection may also be charged with the task of recognising or registering suppliers, as referred to in Section 42.

### **Section 20**

1. A testing institution designated pursuant to Section 19 shall not operate in the pursuit of profit.
2. The said testing institution shall adopt regulations specifying the manner in which testing will be carried out and the manner in which it will issue supporting documentation and distinguishing marks. The said regulations shall require the approval of Our Minister. Our Minister may refuse such approval if he considers that there is a conflict with the law or on the grounds that he believes that the said regulations impede the proper fulfilment of the tasks of the testing institution.

### **Section 21**

1. Insofar as the costs incurred by a testing institution relate to the statutory tasks within the meaning of Section 19, they shall be covered by the fees to be determined and charged by the testing institution for:
  - a. granting consent within the meaning of Section 39(6);
  - b. carrying out testing within the meaning of Section 40;
  - c. issuing supporting documentation and distinguishing marks within the meaning of Section 41;
  - d. processing applications for recognition or registration of suppliers within the meaning of Section 42, or processing applications for renewal or alteration of such recognition or registration;



- e. maintaining a recognition or registration within the meaning of (d); and
  - f. the provision of information within the meaning of Section 64.
2. The fees referred to in Subsection 1 shall require the prior approval of Our Minister. Our Minister may refuse such approval if he considers that there is a conflict with the law or the public interest.
  3. The fees referred to in Subsection 1:
    - a. shall relate directly to the activities referred to in that subsection;
    - b. shall not amount to more than is necessary to cover the costs incurred due to the various different activities; and
    - c. shall be set separately for each plant or for each category of plants to which the activities of the testing institution pertain.
  4. Specific rules shall be set by ministerial regulation with respect to the imposition and collection of the said fees and to their periodical revision to take account of trends in wages and prices.
  5. If payment is not effectuated within the period set by the testing institution, the testing institution shall be empowered to collect the amount owing, plus the statutory interest and the costs relating to collection, by means of a writ of execution. The writ of execution shall be served by means of a bailiff's notification at the expense of the party that owes the said amount in accordance with Section 45 ff. of Book 1 of the Code of Civil Procedure and shall constitute entitlement to enforcement within the meaning of Section 430 of Book 2 of the said Code.
  6. For a period of six weeks after the date of service, it shall be possible to lodge an objection to the writ of execution by issuing a writ of summons against the legal entity to which the testing institution belongs. The lodging of such objection shall suspend enforcement of the writ of execution. The court may lift the suspension of enforcement at the request of the said legal entity.
  7. The testing institution shall not carry out activities within the meaning of Subsection 1, or shall cease such activities, if the fee payable pursuant to this section is not paid.

## **Section 22**

1. Amendments to the articles of a testing institution designated pursuant to Section 19 shall require the consent of Our Minister before taking effect. Our Minister shall ensure that the said articles are published in the Government Gazette.
2. The appointment and discharge of the President of a testing institution shall require the prior consent of Our Minister.

## **Section 23**

The testing institution shall keep separate accounts in respect of the tasks assigned to it by or

pursuant to the present Act and in respect of work arising directly from those tasks, and shall account separately for those tasks and that work in its annual accounts.

#### **Section 24**

Sections 9 to 14 and Sections 17 and 18 shall apply *mutatis mutandis*.

### **CHAPTER 4. THE REGISTER OF VARIETIES**

#### **Section 25**

1. There shall be a Netherlands Register of Varieties for the registration of varieties and stands. The said register shall be public.
2. The following shall be registered in the Register of Varieties:
  - a. varieties and stands that have been approved pursuant to Chapter 5 of the present Act;
  - b. varieties for which a breeder's right has been granted pursuant to Chapter 7 of the present Act;
  - c. plant groups within the meaning of Section 85.
3. Registration shall be effectuated by the Board recording the description characterising the variety adopted by the Board and, insofar as a variety is concerned, the denomination adopted by the Board.
4. The registered denomination shall be deemed to be the generic designation.
5. By or pursuant to a general administrative order, rules shall be laid down regarding the structure of the Register of Varieties and the information to be given when varieties, stands, and plant groups within the meaning of Subsection 2 are registered. The information referred to in the first sentence of this Subsection shall in any case comprise:
  - a. a record of the technical investigation carried out in order for a variety or stand to be approved or for a breeder's right to be granted, within the meaning of Section 35(1)(a, b, and c) or Section 49(7);
  - b. where approved varieties are concerned: a record of the maintainer or maintainers;
  - c. where stands are concerned: a record of the owner or manager and the growing location of the stand.

#### **Section 26**

1. In order to implement binding decisions of the Council of the European Union, of the European Parliament and the Council of the European Union jointly, or of the Commission of the European Communities, the Board shall draw up national lists of the varieties and stands of a plant that have been approved in the Netherlands, doing so on the basis of the information contained in the Register of Varieties.

2. The establishment of a national list within the meaning of Subsection 1 shall be announced in the Government Gazette.

### **Section 27**

1. The denomination referred to in Section 25(3) shall be suitable to identify the variety to which it applies.
2. The denomination shall differ, specifically:
  - a. if a variety is concerned for which a breeder's right has been granted: from any denomination used in any Union State to refer to an existing variety of the same or a related plant;
  - b. where other varieties are concerned: from any denomination used in any Member State of the European Union, or in another state that is a party to the Agreement on the European Economic Area, to refer to an existing variety of the same or a related plant.
3. The denomination shall not be contrary to public order or be offensive.
4. The denomination shall be the same as that already registered for the variety in any Union State, or in any Member State or other state that is a party to the Agreement on the European Economic Area, provided that that denomination is suitable for use in the Netherlands.
5. No denomination shall be adopted that so closely resembles a trade name or trademark that using it might give rise to confusion regarding the nature or origin of goods.
6. More detailed rules regarding denominations shall be laid down by ministerial regulation in order to implement a binding decision of the Council of the European Union, of the European Parliament and the Council jointly, or of the Commission of the European Communities. In drawing up the rules referred to in the first sentence of this subsection, account shall also be taken of the recommendations adopted by the Council of the European Union regarding the nomenclature for varieties for which a breeder's right has been granted.

### **Section 28**

1. Before adopting a denomination, the Board shall announce its intention to do so in the Government Gazette.
2. Within eight weeks after the announcement referred to in Subsection 1, an interested party may submit objections to the denomination pursuant to Section 27(5).
3. The Board shall not adopt a denomination before it has decided on the objections referred to in Subsection 2.
4. The Netherlands Industrial Property Office [*Bureau voor de Industriële Eigendom*] shall provide the Board, on request, with information regarding trademarks that are registered with it.

### **Section 29**

1. When applying for the granting of a breeder's right or for the approval of a variety, the applicant shall also submit a proposal for the denomination of the variety.
2. The applicant may also restrict itself to proposing a provisional denomination. In that case, the applicant shall be obliged to submit a proposal for a definitive denomination at a time to be specified by the Board.
3. The proposal for the denomination shall be accompanied by a deed stating that if the proposed denomination is registered, the applicant relinquishes the rights that may accrue to him in any Union State or in any Member State of the European Union, or another state that is a party to the Agreement on the European Economic Area, in respect of the same or similar goods.
4. The Board shall adopt the proposed denomination, or the denomination within the meaning of Section 27(4), unless it considers that doing so would be contrary to the provisions of Section 27. In that event, the Board shall give the applicant the opportunity to propose a different denomination.
5. The Board shall provide the Netherlands Industrial Property Office and the Office of the Union, on request, with information regarding the denominations that are registered with it.

### **Section 30**

1. If the use of a registered denomination for propagating material of the variety for which this has been registered is prohibited by a judicial decision on the grounds of a right accruing to another party in respect of that denomination, the Board, at the request of any of the parties concerned, shall delete the registered denomination and register a provisional denomination, doing so in consultation with the party that has an interest in the approval of a variety or with the holder of the breeder's right.
2. The Board shall adopt an amended denomination after giving the party that has an interest in the approval of a variety or the holder of the breeder's right the opportunity to propose a different denomination within a set period of time, and shall then register the amended denomination. Section 28 shall apply *mutatis mutandis*.
3. Should it be established that a variety cannot be included under the registered denomination in a common list of varieties for the plant to which the variety belongs that has been adopted by the Commission of the European Communities, the Board, upon receiving a request to that effect from the holder of the breeder's right or from the party that requested that the variety be approved, shall delete a registered denomination and register a provisional denomination. Subsection 2 shall apply *mutatis mutandis*.

### **Section 31**

1. The Board may establish and register a provisional description characterising the variety.

2. The Board may add to the description referred to in Subsection 1 and shall register such addition:

- a. at the request of the applicant;
- b. *ex officio*, if such is necessary in connection with the description of another variety, in which case the party that has an interest in the approval of a variety or the holder of the breeder's right shall be heard, or for other reasons, but then only in agreement with the persons referred to above.

### **Section 32**

Subject to the provisions of Section 3:41 of the General Administrative Law Act, decisions of the Board pursuant to the present chapter shall be announced to the interested party referred to in Section 28, to the party that has an interest in the approval of a variety pursuant to Sections 30 and 31, and to the holder of the breeder's right referred to in Sections 30 and 31.

### **Section 33**

The applications and requests referred to in this chapter and in Chapters 5 and 7, and the withdrawal or refusal of such applications and requests, shall be recorded in the Register of Varieties, with an announcement being made in the Government Gazette.

### **Section 34**

Registrations and entries within the meaning of the present chapter and Chapters 5 and 7 pursuant to decisions that are the subject of an appeal shall be effectuated as soon as a ruling has been given on any appeal or the period for lodging an appeal has expired without such appeal being lodged, or as soon as the appeal has been withdrawn by means of written notification to that effect submitted to the Board.

## **CHAPTER 5. APPROVAL OF VARIETIES AND STANDS**

### **Section 35**

1. Rules may be set by or pursuant to a general administrative order regarding the approval of varieties and stands; the said rules may differ from one plant to another. The said rules may in any case concern:

- a. the requirement that it be established, on the basis of a technical investigation, whether a variety is distinct, uniform, and stable;
- b. the requirement that it be established, on the basis of a technical investigation, whether a variety has sufficient cultivation and utility value;

- c. the requirement that it be established, on the basis of a technical investigation, whether a stand for silvicultural purposes complies with conditions to be set by or pursuant to the general administrative order referred to in the opening words of this section regarding the production of categories of propagating material as designated by the said order;
  - d. the features covered by the technical investigation within the meaning of (a), (b), and (c) and the requirements for that investigation; and
  - e. further requirements for approval and the conditions under which, and cases in which, approval can be amended or withdrawn by the Board.
2. A variety shall be considered distinct if it can be clearly distinguished from any other variety whose existence is a matter of common knowledge at the point when the application is submitted. A variety shall be considered to be a matter of common knowledge if, at the point when application is made for approval of a variety that is to be assessed, it is included either in a common list of varieties adopted on the instructions of the Commission of the European Communities or has been approved, or is the subject of an application for approval, in a Member State of the European Union.
  3. A variety shall be considered uniform if, disregarding the variation that may be expected from the particular features of its propagation, it is sufficiently uniform as regards its significant characteristics.
  4. A variety shall be considered stable if its significant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.
  5. A variety shall be deemed to have sufficient cultivation and utility value if, when compared to other varieties approved in the Netherlands, the sum total of its qualities, at least as regards production in a particular area, constitutes a clear improvement for either the propagation or the valorisation of the harvest or of the products derived from it. A lower level of certain characteristics may be compensated for by other favourable characteristics.
  6. The technical investigation referred to in (a), (b), and (c) of Subsection 1 shall be carried out at the responsibility of the Board. By or pursuant to the order referred to in Subsection 1, rules may be set for cases in which the conditions under which the Board, for the purposes of the technical investigation of a variety, may make use of existing investigation reports regarding that variety or of the results of investigations carried out by the applicant itself and practical experience gained during cultivation.

### **Section 36**

1. The Board shall decide, on application, regarding the approval of a variety or stand.
2. An application for approval of a variety shall comprise the following information:
  - a. a proposal for the denomination of the variety within the meaning of Section 29;
  - b. a description characterising the variety; and
  - c. a precise account of the characteristics by which the variety is distinguished from other

varieties of the same plant.

3. If the Board so requires, a sufficient quantity of material of the variety to which the application relates shall be provided to the Board for the purposes of the technical investigation within the meaning of Section 35(1)(a and b), in accordance with requirements to be set by the Board.

4. The application for approval of a stand shall contain a record of the owner or manager of the stand, the location of the stand, and a description characterising the stand.

### **Section 37**

1. An approved variety or stand shall be registered in the Register of Varieties, with a record being made, simultaneously with the registration of the variety or stand, of the approval and of the maintainer/maintainers or the owner or manager of the stand designated pursuant to Section 39(3).

2. The said approval shall be dated and shall take effect on the day immediately following that on which the registration and entry in the Register of Varieties within the meaning of Subsection 1 took place.

3. The Board shall ensure that an approved variety that is not clearly distinguishable from:

- a variety previously approved in the Netherlands or another Member State; or
- another variety that has been assessed in respect of its distinctiveness, uniformity, and stability according to rules agreeing with those set pursuant to Section 35 but without being a variety that is a matter of common knowledge within the meaning of Section 35(2), shall bear the denomination of the variety concerned.

4. Subsection 3 shall not apply if the denomination referred to in that subsection is misleading or may be confusing as regards the variety or if other facts prevent its use, or if a third-party right prevents the free use of that denomination for the variety concerned.

### **Section 38**

1. The approval of a variety or stand shall lapse by operation of law if the fee referred to in Section 6(2)(f) remains unpaid six months after it became due. Such lapse of approval shall be recorded in the Register of Varieties.

2. If payment has not been effectuated within fourteen days after the date on which the approval lapsed, the party that is the maintainer of the variety according to the Register of Varieties, or the applicant for approval of a stand, shall receive a reminder of its obligation to pay from the Board by registered letter.

## **CHAPTER 6. MARKETING OF PROPAGATING MATERIAL**

### **Section 39**

1. Rules may be set by or pursuant to a general administrative order in respect of plants designated by such order regarding the marketing of propagating material of the varieties or stands that belong to those plants. Such rules may include, for example:
  - a. the condition that propagating material may only be marketed if it derives from a variety or a stand that has been approved and has been registered in the Register of Varieties or is included in a common list of varieties or stands adopted on the instructions of the Commission of the European Communities;
  - b. the condition that only certain categories of propagating material may be marketed;
  - c. the condition that certain categories of propagating material may only be marketed by the holder of the breeder's right to the variety concerned or, if no breeder's right exists in respect of the variety, by the maintainers of the variety registered with the Board.
2. By or pursuant to the order referred to in Subsection 1, rules may also be set regarding:
  - a. supervision of the maintenance and marketing of propagating material of a variety that is no longer maintained;
  - b. marketing with a view to export beyond the territory of the European Union of propagating material of varieties and stands that do not comply with the conditions set out in Subsection 1(a).
3. The registration of maintainers within the meaning of Subsection 1(c) shall be carried out by the Board on the instructions of the testing institution. If this is necessary for reasons of propagation technology, the Board shall designate a single maintainer. The latter shall be obliged, on conditions set by the Board, to provide other parties that have requested it with material suitable for producing propagating material.
4. In respect of plants for the marketing of which rules have been drawn up by a binding decision of the Council of the European Union, of the European Parliament and the Council jointly, or of the Commission of the European Communities, that apply, pursuant to the Agreement on the European Economic Area, to the whole territory of the European Economic Area, Subsection 1(a) and Subsection 2(b) shall apply *mutatis mutandis* to the territory of the European Economic Area.
5. In deviation from the rules pursuant to Subsection 1, it shall be permissible to market small quantities of propagating material for scientific or breeding purposes.
6. In deviation from the rules pursuant to Subsection 1, a testing institution, on request, may grant consent either for the marketing of propagating material for a given period or for the marketing of quantities of propagating material suitable for research and testing purposes or for maintaining genetic diversity, insofar as the propagating material concerned is of a variety or stand for which an application for approval has been submitted in at least one Member State of the European Union.
7. The conditions under which consent within the meaning of Subsection 6 may be granted and the quantities within the meaning of that subsection shall be set by ministerial regulation.



**Section 40**

1. Propagating material shall not be marketed if it has not been determined on the basis of testing that it complies with the rules regarding the quality of propagating material set by or pursuant to a general administrative order.
2. The rules referred to in Subsection 1 may relate to:
  - a. the trueness to type, health, viability, dimensions, and purity of the propagating material;
  - b. the sorting, classification, treatment, packaging, shipping, and designation or labelling of the propagating material insofar as these relate to the matters referred to in (a);
  - c. the technical organisation and administration of the enterprise and its technical operations;and
  - d. the manner of testing the propagating material.

**Section 41**

1. If rules have been set by or pursuant to a general administrative order within the meaning of Section 40 regarding the testing of propagating material, supporting documentation and distinguishing marks may be specified as being exclusively intended for attachment, by or on behalf of the authorised party, to the propagating material or its packaging, or for inclusion with the propagating material.
2. Rules may also be set by or pursuant to an order within the meaning of Section 40 regarding the issuing, preparation, having available, stocking, and using supporting documentation and distinguishing marks as well as printing plates, stamps, and other tools for creating or applying supporting documentation and distinguishing marks.

**Section 42**

1. Suppliers shall be prohibited from marketing propagating material of plants designated by Our Minister without the relevant recognition or registration by a testing institution.
2. Recognition or registration shall only be valid for a period set when it is effectuated for the specified activities in respect of propagating material of specified plants.
3. The testing institution may attach conditions or regulations to recognition or registration. Recognition or registration may be granted or be effectuated subject to restrictions.
4. Subsection 1 shall not apply to suppliers who only sell or supply to persons who do not concern themselves professionally with the production of plants or the marketing of propagating material.

**Section 43**

1. Recognition or registration within the meaning of Section 42 shall be granted or effectuated

on request if the requirements set by or pursuant to a general administrative order have been met.

2. The requirements referred to in Subsection 1 may, for example, relate to:
  - a. the technical organisation of the enterprise;
  - b. the production process and storage;
  - c. documentation regarding the production process, storage, and delivery; and
  - d. arrangements regarding supervision of compliance with the provisions of or pursuant to the present Act.

#### **Section 44**

Rules shall be set by ministerial regulation regarding the submission of an application for recognition or registration, or for the renewal or alteration of such recognition or registration and regarding the manner of dealing with such. The following may, for example, be specified:

- a. the data and documents that must be submitted before an application can be dealt with;
- b. the period within which application can be made for an amendment to the recognition or registration after alteration of the information within the meaning of (a) above.

#### **Section 45**

Recognition or registration within the meaning of Section 42 may be suspended, withdrawn, or cancelled by the testing institution if:

- a. the activities for which the recognition was granted or registration was effectuated are no longer carried out; or
- b. the requirements within the meaning of Section 43 are no longer complied with, even though the holder of the recognition or registration has been given a reasonable period in which to make the necessary changes.

#### **Section 46**

1. Without prejudice to the right to use a trade name or a trademark, propagating material of a variety included in the Register of Varieties by or pursuant to the provisions of the present Act shall be marketed solely under the registered denomination.

2. If the denomination prescribed for a variety in a different country differs from that registered in the Netherlands, propagating material of that variety shall only be exported to that country under the denomination prescribed in that country.

3. In deviation from Subsection 1, propagating material of a registered variety shall be exported under a denomination that is usual in the country to which it is imported:

- a. to other Union States, insofar as a breeder's right has been granted for the variety concerned; or

b. to states other than one of the Member States of the European Union or another state that is a party to the Agreement on the European Economic Area, insofar as no breeder's right has been granted for the variety concerned.

4. The registered denomination or a similar word shall not be used for other propagating material of the same or a related plant.

#### **Section 47**

1. The testing institution shall ensure that propagating material that fails to comply with the rules set out in the present chapter is withdrawn from the market. To that end, the testing institution shall oblige the offender, in writing, to withdraw the defective propagating material from the market within a period set by the testing institution, or to store or destroy it.

2. If an offender fails to take the measures referred to in Subsection 1 within the period referred to in that subsection, the testing institution shall be empowered to take any necessary measures itself at the expense of the offender.

3. The testing institution shall be empowered to collect the amount owed by the offender, plus the statutory interest and the costs relating to collection, by means of a writ of execution. The provisions of Section 21(5)(second sentence) and (6), shall apply *mutatis mutandis*.

#### **Section 48**

1. Our Minister may grant dispensation or exemption in respect of the provisions of or pursuant to the present chapter.

2. Such dispensation or exemption shall only be granted:

a. in order to provide the market with sufficient propagating material of plants whose propagation is important; or

b. to enable temporary experiments to be carried out.

3. Such dispensation or exemption may be subject to conditions.

### **CHAPTER 7. BREEDER'S RIGHT**

#### *Part 1. Entitlement to the granting of a breeder's right*

#### **Section 49**

1. A breeder's right may be granted for varieties of all plants belonging to the plant kingdom insofar as the varieties concerned are new, distinguishable, uniform, and stable.

2. A variety shall be deemed to be new if, at the date of submission of the application for a breeder's right, no propagating material or harvested material of the variety has been sold or

otherwise provided to others by or with the consent of the breeder, for purposes of exploitation of the variety for a period:

a. in the Netherlands: no more than one year prior to the point referred to in the opening words;

b. outside the Netherlands: either no more than four years or, in the case of trees or vines, no more than six years before the point referred to in the opening words.

3. For the application of Subsection 2, the fact that material of a variety has already been provided to other parties for testing shall not be relied upon against the breeder of that variety or his legal successors.

4. A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the submission of the application. A variety shall in any case be considered to be a matter of common knowledge if an application for the granting of a breeder's right or for the entering of that variety in an official register of varieties has been submitted, in any country, from the date of the application, provided that the application leads or has led to the granting of a breeder's right or to the registering of the said other variety in the said register of varieties.

5. A variety shall be deemed to be uniform if it complies with the provisions of Section 35(3).

6. A variety shall be deemed to be stable if it complies with the provisions of Section 35(4).

7. In order to determine whether a variety complies with the conditions set out in Subsections 4 to 6, a technical investigation shall be carried out at the responsibility of the Board. The features that the said investigation covers and the requirements with which it must comply shall be set by ministerial regulation. In the said ministerial regulation, rules may be set for the cases in which, and the conditions under which, the Board, for the purposes of the technical investigation of a variety, may make use of existing investigation reports regarding that variety or of the results of investigations carried out by the applicant itself and practical experience gained during cultivation.

## **Section 50**

1. Entitlement to the granting of a breeder's right shall accrue solely to the breeder.

2. If the variety was bred, or discovered and developed, outside the Netherlands, either by a natural person who does not hold Dutch nationality or by a legal entity without a registered office in the Netherlands, there shall only be an equivalent entitlement to the granting of a breeder's right insofar as the Netherlands is obliged by an international agreement to grant a breeder's right.

3. If a variety has been bred, or discovered and developed, outside the Netherlands but the Netherlands is not subject to an obligation within the meaning of Subsection 2, a breeder's right may be granted for the variety if it is a variety for which a breeder's right may be granted both in the country where the variety was bred and in the Netherlands.

## **Section 51**

1. If the breeder has bred a variety, or has discovered and developed it, in the context of an employment relationship or in the context of an agreement to provide services for another party otherwise than in return for wages and that employment relationship or agreement provides that the breeder perform breeding or development work in respect of the plant to which the variety belongs, the entitlement to the granting of a breeder's right shall accrue, in deviation from Section 50, to the employer or the client or to the employer's or client's legal successor.
2. In a case within the meaning of Subsection 1, the breeder shall be entitled to reasonable remuneration unless such remuneration can already be deemed to be included in his wages or in the benefits he enjoys.
3. Any stipulation that provides for a departure from Subsection 2 shall be null and void.

## **Section 52**

If two or more persons, otherwise than in the case referred to in Section 53, have collaborated in breeding or discovering and developing a new variety, they shall be jointly entitled to the granting of a breeder's right.

## **Section 53**

If, pursuant to Section 52, two or more persons may be individually entitled to the granting of a breeder's right for the same new variety, the entitlement to the granting of the breeder's right shall accrue to the person who first submitted the relevant application.

## **Section 54**

1. A breeder who has submitted an application for the granting of a breeder's right in another Union State in accordance with the provisions in force in that State, shall have a priority right in respect of the acquisition of a breeder's right in the Netherlands for the same variety if:
  - a. within twelve months of the submission of the application in the Union State concerned, excluding the day on which the application was submitted, a provisional application is submitted in the Netherlands invoking, in writing, the said priority right;
  - b. within three months of the submission of the provisional application, a copy of the documents submitted in the other Union State is presented, such copy being certified by the competent authority in the Union State concerned; and
  - c. within two years of the end of the period referred to in (a) above, a full application within the meaning of Section 55 is submitted.
2. The priority right shall mean that, in deviation to that extent from the provisions of Sections

49 to 53, events occurring in the period between the submission of the application in the other country and the submission of the provisional application shall not affect an application submitted in the Netherlands in accordance with Subsection 2(c); in particular, such events shall not affect the submission of an application by another party or the marketing of propagating material of the variety concerned.

*Part 2. The granting of a breeder's right*

**Section 55**

1. An application for the granting of a breeder's right shall be submitted to the Board.
2. The said application shall comprise the following information:
  - a. a proposal for the denomination of the variety in accordance with the rules set out in Chapter 4;
  - b. a description characterising the variety; and
  - c. a precise account of the characteristics by which the variety can be distinguished from other varieties of the same plant.
3. If the Board so requires, a sufficient quantity of material of the variety to which the application relates shall be provided to the Board for the purposes of the technical investigation within the meaning of Section 49(7) in accordance with requirements to be set by the Board.
4. If an applicant is not resident or does not have a registered office within the territory of the European Union, he shall be obliged to elect domicile within the Netherlands at the address of a legal representative, with such election of domicile being deemed, for the application of this Act, to continue until the Board has been informed in writing of a change of domicile.

**Section 56**

1. The Board shall decide on an application for the granting of a breeder's right and shall adopt the description characterising the variety and denomination of the variety.
2. When the variety is registered in the Register of Varieties, a record shall simultaneously be made of the granting of the breeder's right.
3. The breeder's right shall be dated and shall take effect on the day immediately following that on which the registration and entry in the Register of Varieties within the meaning of Subsection 2 took place.

*Part 3. Rights and obligations of the holder of a breeder's right*

**Section 57**

1. The holder of a breeder's right to a variety shall have the exclusive right to produce propagating material of that variety or to further propagate it, to treat it for the purposes of propagation, to market it, export it, import it, stock it for one of these purposes, or to cause these activities to be carried out by another party or parties.
2. Parties other than the holder of the breeder's right shall be prohibited from carrying out the activities referred to in Subsection 1. This prohibition shall not apply if consent has been given by or pursuant to the present Act or by the holder of the breeder's right.
3. The prohibition shall not apply to:
  - a. activities engaged in for private purposes and not commercially;
  - b. activities engaged in solely for the purpose of scientific research;
  - c. activities engaged in in order to breed new varieties.
4. The exclusive right shall also apply to activities in respect of harvested material of the variety, including plants and parts of plants, that is acquired through the use of propagating material for which no consent has been granted, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in respect of the said propagating material.
5. The exclusive right shall also apply to activities in respect of products that have been directly produced using harvested material of the variety for which no consent has been granted, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in respect of the said harvested material.

## **Section 58**

1. The exclusive right within the meaning of Section 57(1) shall also apply to activities within the meaning of that subsection in respect of material of:
  - a. varieties derived from the protected variety within the meaning of Section 57(1), unless the protected variety is itself derived from a different variety;
  - b. varieties which are not clearly distinguishable, in accordance with Section 49(4), from the protected variety;
  - c. varieties whose propagation requires the repeated use of the protected variety.
2. For the application of Subsection 1(a), a variety shall be deemed to be derived from another variety if the former variety:
  - a. is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety;
  - b. is clearly distinguishable, pursuant to Section 49(4), from the initial variety; and
  - c. except for the differences which result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
3. Subsection 1(a) shall not apply to varieties which were a matter of common knowledge at the point when the Act Implementing the 1991 UPOV Convention [*Uitvoeringswet UPOV 1991*] came into force. Section 49(3) shall apply *mutatis mutandis*.

4. The Board may advise, on request, regarding whether a variety referred to in the request is derived from a variety for which the Board has granted a breeder's right.
5. The advice provided by the Board within the meaning of Subsection 4 shall state the grounds on which it is based.

### **Section 59**

1. It may be provided by means of a general administrative order that the exclusive right within the meaning of Section 57(1) in respect of a variety belonging to plants designated in the said general administrative order shall not apply to a breeder's use for propagation purposes, on his own holding, of material of that variety or a variety within the meaning of Section 58(1)(a or b) that he has harvested.
2. The use of harvested material for propagation purposes on a breeder's own holding may be made subject to restrictions or conditions by or pursuant to the general administrative order referred to in Subsection 1, with such restrictions or conditions relating, *inter alia*, to the maximum quantity of harvested material that may be used for propagation purposes, the information and supporting documentation to be provided to the holder of the breeder's right by the breeder, and the payment to be made to the holder of the breeder's right.

### **Section 60**

The exclusive right within the meaning of Section 57(1) shall not apply to activities involving material of the protected variety or a variety within the meaning of Section 58(1) that has been marketed by or with the consent of the holder of the breeder's right in the Netherlands or in one of the Member States of the European Union or in another state which is a party to the Agreement on the European Economic Area, or that has been derived from such material, with the exception of activities:

- a. that involve further propagation of the variety to which the material belongs;
- b. that involve export, other than for consumption purposes, of the material to a country where the plant to which the variety belongs is not subject to protection comparable to the protection that may be afforded pursuant to the provisions of the present Act.

### **Section 61**

1. The holder of a breeder's right shall be obliged to grant such licences as are in the public interest.
2. The obligation within the meaning of Subsection 1 shall also mean that the holder of the breeder's right, in return for reasonable payment, shall provide the propagating material necessary for the exercise of the licence.
3. The holder of a breeder's right shall be obliged to grant a licence to a patent holder, in



return for reasonable payment, if the patent holder is unable to exploit a patent for a biotechnological discovery without infringing the breeder's right predating the patent and the said biotechnological discovery constitutes important technical progress of significant economic significance in respect of the protected variety.

4. If the holder of a breeder's right has been granted a licence under Section 57(5) of the Dutch Patents Act 1995 [*Rijksoctrooiwet*] 1995, the holder of the breeder's right shall be obliged to grant a reciprocal licence to the patent holder, at the latter's request, for use of the protected variety.

## **Section 62**

1. If the holder of the breeder's right fails to comply with his obligations within the meaning of Section 61, the Board shall issue the licence at the request of the interested party.
2. Before reaching a decision, the Board shall give the parties the opportunity to reach agreement within a period set by the Board.
3. In the event of a failure to reach agreement, the Board shall decide, having heard the parties. The Board's decision shall specify the following: the scope of the licence, the amount of the fee to be paid to the holder of the breeder's right, and the quantity of propagating material to be provided, together with the fee to be paid for that material. In giving its decision, the Board may impose a requirement on the party acquiring the licence that it furnish security within a stated period.
4. After the licence has been issued by the Board and, if such obligation has been imposed, the obligation to furnish security has been complied with, the licence shall be registered in the Register of Varieties. The licence shall not take effect until it has been registered, including as regards those who acquired rights to the breeder's right after the registration of the request within the meaning of Subsection 1.

## **Section 63**

1. A licence shall authorise the licensee to engage in the activities specified therein that parties other than the holder of the breeder's right are not permitted to engage in pursuant to Section 57(1).
2. If no provisions are made to the contrary, a licence shall apply for the whole duration of the breeder's right and shall relate to all activities that are subject to the consent of the holder of the breeder's right pursuant to this Act.
3. A licence issued otherwise than pursuant to Sections 61 and 62 shall be registered in the Register of Varieties at the request of the licensee. It shall become valid vis-à-vis third parties after such registration.

## **Section 64**

A testing institution designated pursuant to Section 19 and a supervisory body designated pursuant to Section 8 of the Agricultural Quality Act [*Landbouwkwaliteitswet*], insofar as that body is charged by or pursuant to that Act with the testing of propagating material, shall provide, at the request of the holder of a breeder's right that is valid in the Netherlands in respect of propagating material tested by the said testing institution or supervisory body, with a list of the persons or enterprises that have produced propagating material of the variety for which the breeder's right has been granted and, as far as possible, of the quantities they have produced.

#### *Part 4. The breeder's right as a component of property*

### **Section 65**

1. A breeder's right and an entitlement to the granting of a breeder's right, both as regards the entire right or a part of it, shall be assignable or otherwise transferable.
2. The transfer required to assign a breeder's right or the right arising from an application for the granting of a breeder's right shall be effectuated by means of a deed.
3. Any proviso regarding the assignment shall be specified in the said deed; should no proviso be made, the assignment shall be deemed to be unrestricted.
4. The transfer shall not take effect in respect of third parties until the deed has been registered in the Register of Varieties.
5. Either party shall be equally entitled to have the Board carry out such registration.

### **Section 66**

1. If a breeder's right accrues to more than one person jointly, the relationship between them and vis-à-vis third parties shall be governed by what has been agreed between them; however, their relationship vis-à-vis third parties shall only be so governed insofar as such is shown by the Register of Varieties.
2. If there is no agreement, or if the agreement does not provide otherwise, each co-titleholder shall be entitled to exercise the breeder's right and to take action against any infringement of that right; however, a licence, or consent within the meaning of Section 57(2) and 60, shall only be granted by the co-titleholders with their joint approval.
3. Before disposing of his rights to a third party, each co-titleholder shall be obliged to offer them for sale at a reasonable price to his co-titleholders.

### **Section 67**

1. Any pledge of a breeder's right shall be established by means of a deed and shall not take

effect in respect of third parties until the said deed has been registered in the Register of Varieties.

2. The pledgee shall be obliged to elect domicile in The Hague, doing so by means of a signed declaration submitted to the Board. If the pledgee fails to elect domicile in that way, the registered office of the Board shall be deemed to be his elected domicile.
3. Stipulations in the deed establishing the pledge regarding licences to be issued after registration shall apply, including in respect of third parties, from the point when they are registered in the Register of Varieties. Stipulations within the meaning of the first sentence regarding fees for licences that had already been issued at the point of registration shall take effect in respect of the licensee after a bailiff's notification has been served on the latter.
4. Deeds showing that the pledge has ceased to exist or has ceased to have effect shall be entered registered in the Register of Varieties.

### **Section 68**

1. Any attachment of a breeder's right shall be levied, and the report of attachment entered in the Register of Varieties, with the provisions of the Code of Civil Procedure regarding the attachment of immovable property under a writ of execution and pre-judgment attachment applying *mutatis mutandis*, on the understanding that the record of attachment shall specify the breeder's right rather than the location of the immovable property.
2. Any disposal, encumbering, administration order, or issuing of a licence effectuated after registration of the report of attachment shall not be relied upon against the party levying the attachment.
3. Licence fees not yet paid prior to the registration of the record of attachment shall also be included in any attachment levied on the breeder's right, after notice of the registered attachment has been served on the licensee. The said fees shall be paid to the civil-law notary [*notaris*] before whom the execution is effectuated if the licensee is explicitly informed of this when service takes place and without prejudice to any third-party rights that the execution creditor is required to respect. The amounts paid to the civil-law notary shall be counted as part of the proceeds within the meaning of Section 69(2). Sections 475(c), 476, and 478 of the Code of Civil Procedure shall apply *mutatis mutandis*.
4. The registration of the report of attachment can be cancelled:
  - a. pursuant to a written statement by the bailiff, submitted for registration, to the effect that the bailiff lifted the attachment at the behest of the party levying the attachment or that the attachment has lapsed;
  - b. pursuant to a judicial judgment, submitted for registration, that orders the lifting of the attachment or brings about the lapse of the attachment.
5. Sections 504(a), 538 to 541, 726(2), and 727 of the Code of Civil Procedure shall apply *mutatis mutandis* in the event of a breeder's right being attached.

**Section 69**

1. The sale of a breeder's right by a pledgee or party levying an attachment in order to enforce a claim shall take place in public before a competent civil-law notary. Sections 508, 509, 513(1), 514(2) and (3), 515-519, and 521-529 of the Code of Civil Procedure shall apply *mutatis mutandis*, on the understanding that the provisions of those sections regarding mortgages and mortgagees shall apply to pledges on the breeder's right and pledgees.
2. Sections 551 to 552 of the Code of Civil Procedure shall apply *mutatis mutandis* to the division of the proceeds.

*Part 5. Enforcement of the breeder's right***Section 70**

1. The holder of a breeder's right may enforce that right against any person who engages in one of the activities within the meaning of Section 57 without being entitled to do so.
2. Compensation may only be claimed from a party that engages in such activities intentionally. An intentional act shall in any case be deemed to have taken place if the infringement was perpetrated after the party concerned was informed, by means of a bailiff's notification, of the fact that the activities concerned constitute an infringement of the breeder's right.
3. In place of compensation, it shall be possible to request that the defendant be ordered to surrender the profits enjoyed due to the infringement and to provide a documented account; should a court find, however, that the circumstances of the case do not justify such an order, it may order the defendant to pay damages.
4. The holder of a breeder's right may also bring an action for compensation or the surrender of profits on behalf of, or also on behalf of, licensees or pledgees, without prejudice to the entitlement of pledgees to intervene in an action brought by the holder of the breeder's right, whether or not on their behalf, in order to claim compensation directly for the damage they have sustained or to have it ordered that the defendant surrender a proportionate share of the profits to them. Licensees and pledgees shall only bring an independent action or effectuate service of a bailiff's notification within the meaning of Subsection 2 with a view to such if they have gained the consent of the holder of the breeder's right.
5. The holder of the breeder's right shall be entitled to request an order that the movable property that infringes his right be withdrawn from use, destroyed, or rendered unfit for use, and to demand that materials and tools that are primarily used to produce that property should be withdrawn from use. When the claim is assessed, the court shall consider the seriousness of the infringement and the measures requested, together with the interests of third parties.
6. At the request of the holder of the breeder's right, the court may order that the party that

has infringed that right should inform the holder of the breeder's right, at the latter's request, of everything that it knows regarding the origin of the property used in perpetrating the infringement, together with all data relating to it .

### **Section 71**

1. The holder of a breeder's right shall be entitled to claim reasonable payment from a party that engages in activities within the meaning of Section 57 in respect of a variety for which a breeder's right has been requested in the period between application being made for a breeder's right and the granting of such right.
2. Such payment shall only be due for activities engaged in from thirty days after the party concerned was notified, by means of a bailiff's notification, of the entitlement accruing to the holder of the breeder's right pursuant to the present section.
3. The said bailiff's notification shall be accompanied by a copy, certified as such by the Board, of the documentation submitted in respect of the application or excerpts from that documentation insofar as these relate solely to the features of the variety for which the application was submitted and to the account of the characteristics that distinguish that variety from other varieties. This shall not include specifying the actual breeding process for the variety or the genealogical components.
4. Section 1 shall not apply to activities carried out by a party entitled to do so pursuant to an agreement with the party entitled to the granting of a breeder's right in accordance with Sections 50 and 51.

#### *Part 6. The duration and claiming of the breeder's right*

### **Section 72**

The duration of the breeder's right shall be twenty-five (25) years from the date it is granted, with the exception of plants designated by Our Minister, for which the duration of the breeder's right shall be thirty (30) years.

### **Section 73**

1. The holder of the breeder's right may relinquish it.
2. Such relinquishment may only be effectuated by means of a deed, which shall be recorded in the Register of Varieties.
3. Such registration shall not be effectuated if there are persons who, as evidenced by documents recorded in the said Register, have acquired rights or licences in respect of the breeder's right or who have instituted legal action in respect of the breeder's right, and if the said persons have not given their consent for relinquishment.

4. The breeder's right shall lapse at the point when the said deed is registered in the Register of Varieties.

#### **Section 74**

1. A breeder's right shall expire by operation of law if the fee referred to in Section 6(2)(f) remains unpaid six months after it became due. Such expiry shall be recorded in the Register of Varieties.
2. If payment has not been effectuated within fourteen days after the due date, the party that is the holder of the breeder's right according to the Register of Varieties shall receive a reminder from the Board, by registered letter, of its obligation to pay.
3. If payment has not been effectuated within one month of the due date, written notification to that effect shall be sent to all parties that, as evidenced by the documents recorded in the Register of Varieties, have acquired rights or licences in respect of the breeder's right or who have instituted legal action in respect of the breeder's right.

#### **Section 75**

1. A breeder's right shall be declared null and void by a court of law:
  - a. if it becomes apparent that the variety was not a new one at the point when the breeder's right was granted;
  - b. if it becomes apparent that the variety was not a distinct one within the meaning of Section 49(4) at the point when the breeder's right was granted;
  - c. if – in the event that the breeder's right was granted primarily on the basis of information and documentation provided by the breeder – it becomes apparent that the variety was not uniform or stable within the meaning of Section 49(5) and (6);
  - d. if the breeder's right was granted to a person not entitled to hold it in accordance with the provisions of or pursuant to the present Act, unless the breeder's right is transferred to the person who is in fact so entitled.
2. Action may be instituted to bring about nullification at any time by any interested party or by or on the instructions of Our Minister.
3. At the request of the claimant, the summons shall be recorded in the Register of Varieties.
4. Nullification of a breeder's right shall remove all further legal consequences from the breeder's right and the rights arising from it.

#### **Section 76**

1. A breeder's right may be claimed, either wholly or in part, if it has been granted to a party that had no entitlement or no exclusive entitlement to it pursuant to Sections 50, 51, or 52.
2. At the request of the claimant, the summons shall be recorded in the Register of Varieties.

3. The right to claim the breeder's right shall accrue to the party that, pursuant to the above-mentioned sections, is entitled or jointly entitled to the granting of the breeder's right.
4. The right to claim the breeder's right shall expire five years after the date of the breeder's right.
5. Licences acquired in good faith before the entry within the meaning of Section 77(1) was made shall remain valid vis-à-vis the new holder of the breeder's right, who shall acquire a right to the fee owing for the licences.

### **Section 77**

1. An entry shall be made in the Register of Varieties of the upholding or dismissal of legal action to claim a breeder's right or to have it declared null and void.
2. The dismissal or upholding of such claim shall have retroactive effect back to the date of the entry in the Register of Varieties referred to in Subsection 1.

### *Part 7. Disputes in respect of breeder's rights*

### **Section 78**

1. The District Court in The Hague shall have exclusive jurisdiction in the first instance in respect of legal action to claim a breeder's right or to have it declared null and void within the meaning of Sections 75 and 76.
2. The District Court in The Hague and the preliminary relief judge of that court shall have exclusive jurisdiction in the first instance in respect of:
  - a. claims within the meaning of Sections 70 and 71;
  - b. claims instituted by a party other than the holder of a breeder's right for a ruling that certain activities do not infringe a breeder's right.
3. Judgments and injunctions rendered or issued by the said District Court shall be open to appeal at the Court of Appeal in The Hague.

### **Section 79**

1. The expert members within the meaning of Sections 55(a)(2) and 70(2) of the Judiciary (Organisation) Act [*Wet op de rechterlijke organisatie*] shall be appointed by Royal Decree. They shall be appointed as members, or as deputy members, to the District Court in The Hague or as advisers, or deputy advisers, at the Court of Appeal in The Hague, depending on the particular case.
2. The members and deputy members, or the advisers and deputy advisers, shall be appointed for a period of five years. Upon resigning their position, they shall immediately be eligible for reappointment. They may be discharged, at their request, by Royal Decree.

3. The members and deputy members, or the advisers and deputy advisers, shall be granted discharge by Royal Decree with effect from the first day of the month following that in which they reach the age of seventy.

#### **Section 80**

Sections 46(c), 46(d), 46(f), 46(g)(1 and 2), 46(i, with the exception of (c) of the first paragraph), 46(j), 46(l)(1 and 3), 46(m), 46(o), and 46(p)(1 to 5) of the Judicial Officers (Legal Status) Act [*Wet rechtspositie rechterlijke ambtenaren*] shall apply *mutatis mutandis* in respect of the members and deputy members or the advisers and deputy advisers.

#### **Section 81**

Our Minister shall set rules regarding the allocation of an allowance to cover travel and accommodation costs and further reimbursement to the members and deputy members or the advisers and deputy advisers.

#### **Section 82**

Legal representatives of the holder of a breeder's right may address the court at the hearing of disputes within the meaning of Section 78, without prejudice to the responsibility of the local counsel [*procureur*].

#### **Section 83**

The court registrar shall send a copy of all judicial decisions in respect of a breeder's right to the Board within one month of such decision, this being at no charge.

### **CHAPTER 8. OTHER PROVISIONS**

#### **Section 84**

Specific rules shall be set by or pursuant to a general administrative order in respect of:

- a. applications and requests submitted to the Board pursuant to Chapters 4 to 7;
- b. the point at which applications and requests submitted pursuant to Chapters 4 to 7 must have been submitted to the Board;
- c. the hearing of interested parties by the Board.

#### **Section 85**



In order to implement decisions of the Council of the European Union, of the European Parliament and the Council of the European Union jointly, or of the Commission of the European Communities, rules shall be set by or pursuant to a general administrative order regarding the approval of plant groups that do not comply with the requirements of Section 35 and regarding the marketing of propagating material deriving from such plant groups.

### **Section 86**

An interested party may lodge an appeal against a decision arrived at pursuant to the present Act with the Trade and Industry Appeals Tribunal [*College van Beroep voor het bedrijfsleven*].

### **Section 87**

1. If matters regulated in this Act should require further regulation in the interests of proper implementation of the law, this may be done by means of a general administrative order.
2. Rules for implementing trade directives may be set by or pursuant to a general administrative order.
3. Rules may be set by or pursuant to a general administrative order to implement a binding agreement between the European Community and a third country or an international organisation that relates to a matter covered by a trade directive or regulation.
4. Rules may be set by ministerial regulation for the proper implementation of trade regulations.
5. Rules may be set by ministerial regulation for the implementation of delegated regulations and delegated orders.
6. The rules referred to in subsections 2 to 5 may:
  - a. assign tasks and powers to Our Minister, to the Board, or to a testing institution designated pursuant to Section 19;
  - b. designate provisions of a trade regulation that are to be subject to the supervision of officials or other persons appointed by Our Minister, or that Our Minister, the Board, or a testing institution designated pursuant to Section 19 may apply by taking relevant decisions.

### **Section 88**

1. It may be determined by or pursuant to a general administrative order that co-operation be required of the management board of a product board or industry board within the meaning of Section 66 of the Industrial Organisation Act [*Wet op de bedrijfsorganisatie*].
2. If the co-operation to be provided by the management board of an industrial association involves setting rules or detailed rules by means of regulations, such regulations shall require the approval of Our Minister. Insofar as such is determined by or pursuant to a general administrative order, decisions taken pursuant to the said regulations shall require the

approval of Our Minister.

### **Section 89**

1. Officials appointed pursuant to an order issued by Our Minister and persons appointed pursuant to an order issued by Our Minister working at a testing institution designated pursuant to Section 19 shall be charged with supervising compliance with the provisions of or pursuant to this Act.
2. An order within the meaning of Subsection 1 shall be published in the Government Gazette.

## **CHAPTER 9. TRANSITIONAL PROVISIONS AND FINAL PROVISIONS**

### **Section 90**

1. Should the decision in any civil or criminal proceedings depend on determining the variety to which a group of plants should be assigned, the Board shall be heard in respect of the matter. The advice provided by the Board shall state the grounds on which it is based.
2. The Board shall give priority to dealing with cases within the meaning of Subsection 1 over all other cases.

### **Section 91**

The Economic Offences Act [*Wet op de economische delicten*] shall be amended as follows:

- a. in (2°) of Section 1, the following shall be added within the alphabetical order: the Seeds and Planting Materials Act 2005, Sections 39, 40, 41, 42, 46, 48(3) 57 to 60, 85 and 87;
- b. (3°) of Section 1, the passage relating to Regulation (EC) No. 2100/94 of 27 July 1994 of the Council of the European Union on Community plant variety rights shall be deleted; it shall be inserted at (2°) of Section 1;
- c. in (3°) of Section 1, the passage relating to the Seeds and Planting Materials Act shall be deleted.

### **Section 92**

The Judiciary (Organisation) Act shall be amended as follows:

A

After Section 55, a section shall be inserted reading:

**Section 55(a)**

1. The board of the District Court in The Hague shall form divisions, to be known as “breeder’s rights divisions” to consider and rule on matters within the meaning of Section 78(1) and (2) of the Seeds and Planting Materials Act 2005. The board of the said District Court shall determine the membership of the said divisions.
2. A breeder’s rights division shall consist of two judicial officers charged with delivering judgments and a person who is not a judicial officer as an expert member. The provisions of Sections 7(3), 12, and 13 shall apply *mutatis mutandis*.

**B**

In Section 70, “cases within the meaning of Section 60 of the Seeds and Planting Materials Act” shall be replaced by “cases within the meaning of Section 78(3) of the Seeds and Planting Materials Act 2005”.

**Section 93**

Our Minister shall be empowered to apply administrative coercion to enforce the obligations imposed by or pursuant to the present Act.

**Section 94**

1. Varieties already entered in the Register of Varieties at the point when the present Act enters into force shall be reclassified by the Board in accordance with the rules set by or pursuant to Section 25.
2. The Board shall ensure that varieties that had been approved pursuant to Section 82 of the Seeds and Planting Materials Act on the day prior to the point referred to in Subsection 1 are registered in the Register of Varieties.
3. The Board shall ensure that the approval is registered in the Register of Varieties of varieties of agricultural or silvicultural plants that, on the day prior to the point referred to in Subsection 1, were included in the list of varieties of agricultural plants determined pursuant to Section 73 in conjunction with Sections 79 and 83(1) of the Seeds and Planting Materials Act or in the list of varieties of silvicultural plants determined pursuant to Section 73 in conjunction with Section 79 of the Seeds and Planting Materials Act.
4. Applications and requests that are pending before the Breeders’ Rights Board [*Raad voor het Kwekersrecht*] at the point when the present Act enters into force shall from that point become pending by operation of law before the Board in the state in which they are at that point, on the understanding that applications relating to a variety within the meaning of Section 18(1)(b) and (2) of the Seeds and Planting Materials Act shall be considered as an

application for the approval of a variety in accordance with Chapter 5 of the present Act.

5. Applications for the designation of plant groups within the meaning of Section 82 of the Seeds and Planting Materials Act that are pending at the point when the present Act enters into force shall from that point become pending by operation of law before the Board and shall from that point on be considered as an application for the approval of a variety in accordance with Chapter 5 of the present Act.

6. Cases that are pending before the Appeals Department of the Breeders' Rights Board, within the meaning of Section 5(1)(d) of the Seeds and Planting Materials Act, at the point when the present Act enters into force shall from that point become pending by operation of law before the Board and shall from that point on be considered as an objection.

7. Cases that are pending before the Appeals Board [*Raad van Beroep*] or Appeals Commission on Testing Matters [*Commissie van Beroep inzake Keuringen*] of a testing institution within the meaning of Section 88(2°)(e or g) of the Seeds and Planting Materials Act at the point when the present Act enters into force shall from that point become pending by operation of law before the relevant testing institution designated pursuant to Section 19 of the present Act and shall from that point on be considered as an objection.

8. Requests that are pending before the Breeders' Rights Board to claim a breeder's right or to have it declared null and void within the meaning of Sections 54 and 55 of the Seeds and Planting Materials Act at the point when the present Act enters into force shall be considered and ruled on in accordance with the provisions of the Seeds and Planting Materials Act.

9. Cases pending pursuant to Sections 25(2), 60, and 69 of the Seeds and Planting Materials Act before the Court of Appeal in The Hague or the Supreme Court of the Netherlands [*Hoge Raad*] shall be considered and ruled on in accordance with the provisions of the Seeds and Planting Materials Act.

## **Section 95**

The Seeds and Planting Materials Act is hereby repealed.

## **Section 96**

1. This Act may be referred to as the "Seeds and Planting Materials Act", with reference being made to the year of the Bulletin of Acts, Orders, and Decrees in which it is published.

2. This Act shall enter into force at a point to be determined by Royal Decree.

We hereby order and command that this Act be published in the Bulletin of Acts, Orders, and Decrees and that all ministries, authorities, boards, and civil servants to whom such applies shall take measures to implement it diligently.

Issued in The Hague on 19 February 2005

Beatrix

The Minister of Agriculture, Nature and Food Quality

C. P. Veerman

Published on 7 April 2005

The Minister of Justice

J.R H. Donner