

Brussels, Angers, 25 June 2020
REV1 – replaces the notice
dated 23 January 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF COMMUNITY PLANT VARIETY RIGHTS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that date, EU law in its entirety applies to and in the United Kingdom.⁴

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁵ in the EU Customs Union, and in the VAT and excise duty area.

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation after the end of the transition period (Part A below). This notice also

¹ A third country is a country not member of the EU.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁵ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

explains certain relevant separation provisions of the Withdrawal Agreement (Part B below).

Advice to stakeholders:

To address the consequences set out in this notice, stakeholders are in particular advised the following:

Breeders who are currently domiciled or have a seat in the United Kingdom only should consider the need to designate in a timely manner a procedural representative who is domiciled or has his seat or an establishment within the EU territory in order to participate as party to proceedings before the Community Plant Variety Office.

Please note:

This notice does not address EU rules on:

- other intellectual property rights, such as trademarks;
- exhaustion of intellectual property rights, including plant varieties;
- plant reproductive material;
- plant health;
- genetically modified organisms.

For these aspects, other notices are in preparation or have been published.⁶

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules in the field of plant variety rights, in particular Regulation (EC) No 2100/94 on Community plant variety rights,⁷ no longer apply to the United Kingdom. This has in particular the following consequences:

1. COMMUNITY PLANT VARIETY RIGHTS GRANTED BEFORE THE END OF THE TRANSITION PERIOD

All Community Plant Variety Rights granted pursuant to Regulation (EC) No 2100/94 will remain valid in the Union territory, regardless of the origin of the breeder or the location of the Examination Offices.

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ L 227, 1.9.1994, p. 1.

2. DUS (DISTINCTIVENESS, UNIFORMITY AND STABILITY) REPORTS ESTABLISHED BY THE UK EXAMINATION OFFICES

DUS (distinctiveness, uniformity and stability) reports established by the UK examination offices since the withdrawal of the United Kingdom, i.e. already during the transition period,⁸ cannot be used by the Community Plant Variety Office as basis for granting a Community plant variety right.

3. PROCEEDINGS BEFORE THE OFFICE

According to Article 82 of Regulation (EC) No 2100/94, persons who are not domiciled or do not have a seat or an establishment within the EU territory may participate as party to proceedings before the Office only if they have designated a procedural representative who is domiciled or has his seat or an establishment within the EU territory.

All interested breeders who are currently domiciled or have a seat in the United Kingdom only should consider the need to designate in a timely manner a procedural representative to comply with the provisions of that Article after the end of the transition period.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

1. CONTINUED PROTECTION IN THE UNITED KINGDOM OF GRANTED RIGHTS

Article 54(1)(c) of the Withdrawal Agreement provides for the continued protection of Community plant variety rights in the United Kingdom.

After the end of the transition period, the holder of a Community plant variety right granted pursuant to Council Regulation (EC) No 2100/94 before the end of the transition period will, without any re-examination, become the holder of a comparable registered and enforceable plant variety right in the United Kingdom under the law of the United Kingdom for the same plant variety, with the following characteristics:

- the term of protection of such plant variety right under the law of the United Kingdom will be at least equal to the remaining period of protection under Union law of the corresponding Community plant variety right;
- the date of filing or date of priority of such plant variety right under the law of the United Kingdom will be that of the corresponding Community plant variety right.⁹

However, pursuant to Article 54(3) of the Withdrawal Agreement, if a Community plant variety right is declared null and void or is cancelled in the Union as the result of an administrative or judicial procedure which was ongoing on the last day of the transition period, the corresponding right in the United Kingdom shall also be

⁸ Article 128(6) of the Withdrawal Agreement, and Annex VII thereto.

⁹ Article 54(6) of the Withdrawal Agreement.

declared null and void or be cancelled. The date of effect of the declaration or revocation or cancellation in the United Kingdom shall be the same as in the Union.

Article 55 of the Withdrawal Agreement provides for the procedure in view of the grant of the plant variety right referred to in Article 54(1)(c) of the same agreement:

- the grant of the plant variety right is to be carried out free of charge by the relevant entity in the United Kingdom¹⁰, using the data available in the registries of the Community Plant Variety Office;
- holders of Community plant variety rights concerned are not to be required to introduce an application or to undertake any particular administrative procedure in the United Kingdom;
- holders of the resulting plant variety right in the United Kingdom are not to be required to have a correspondence address in the United Kingdom in the 3 years following the end of the transition period.

Holders of the resulting plant variety right in the United Kingdom are not prevented from surrendering such right in the United Kingdom in accordance with the relevant procedure under the law of the United Kingdom.¹¹

2. RIGHT OF PRIORITY WITH RESPECT TO PENDING APPLICATIONS FOR COMMUNITY PLANT VARIETY RIGHTS

Article 59(2) of the Withdrawal Agreement provides that, where a person has filed an application for a Community plant variety right in accordance with Union law before the end of the transition period, that person will have, for the purpose of filing an application for the same plant variety right in the United Kingdom, an ad hoc right of priority in the United Kingdom during a period of 6 months from the end of the transition period.

The right of priority will cause the date of priority of the application for the Community plant variety right to be deemed to be the date of application for a plant variety right in the United Kingdom for the purpose of determining distinctness, novelty and entitlement to the right.

3. JURISDICTION IN RESPECT OF LEGAL PROCEEDINGS INSTITUTED BEFORE THE END OF THE TRANSITION PERIOD

Article 67(1)(b) of the Withdrawal Agreement provides that, after the end of the transition period, the provisions regarding jurisdiction of Regulation (EC) No

¹⁰ Without prejudice to renewal fees that may apply at the time of renewal of the relevant plant variety right (Article 55(4) of the Withdrawal Agreement).

¹¹ Article 55(4) of the Withdrawal Agreement.

2100/94¹² apply in the United Kingdom, as well as in the Member States in situations involving the United Kingdom, in respect of:

- legal proceedings instituted before the end of the transition period; and
- proceedings or actions that are related to such legal proceedings pursuant to Articles 29, 30 and 31 (on lis pendens) of Regulation (EU) No 1215/2012.¹³

The website of the Commission on EU rules on plants (https://ec.europa.eu/food/plant/plant_property_rights_en) provides general information concerning plant variety rights. These pages will be updated with further information, where necessary.

European Commission
Community Plant Variety Office
Directorate-General for Health and Food Safety

¹² See Articles 101 and 102 of Regulation (EC) No 2100/94 in respect of jurisdiction in legal actions relating to civil law claims as referred to in Articles 94 to 100 of that Regulation.

¹³ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1.