

## AC GENERAL GUIDELINES ON ARTICLE 10 OF COUNCIL REGULATION (EC) 2100/94 OF 27 JULY 1994 ON CPVR REGARDING THE NOVELTY REQUIREMENT

THE ADMINISTRATIVE COUNCIL OF THE COMMUNITY PLANT VARIETY OFFICE,

Having regard to the need to promote a uniform interpretation of the concept of sale to which reference is made under Article 10 of the Basic Regulation.

Acting pursuant to Article 36(1)(a) of the Basic Regulation, which empowers the said Administrative Council to adopt general guidelines on matters for which the CPVO is responsible such as with regards to the formal and substantial examination of applications for CPVRs,

HAS ADOPTED THE FOLLOWING GUIDELINES

1. Upon receipt of an application for a CPVR, the CPVO carries out a formal and a substantial examination pursuant to Article 53 and 54 of the Basic Regulation with the aim to verify, among others, whether the applied-for variety is new within the meaning of Article 10 thereof.
2. Pursuant to Article 19(2)(j) of the Proceedings Regulation, the CPVO shall verify whether the applicant has filled in point 9 of the application form providing details of date/s and country/s of any first disposal. For the purpose of the conduct of the substantial examination of applications for CPVRs to establish whether the variety is new, the CPVO will not proceed of its own volition to assess the correctness of the date and country of any first disposal as provided by the applicant, except where the accuracy of the information provided is considered doubtful. In such cases the CPVO may call for any necessary information and documentation pursuant to Article 19(3) of the Proceedings Regulation.
3. Notwithstanding the aforementioned, if the applicant requests the CPVO to change the date of first disposal of the applied-for variety, as indicated in the application, the applicant must provide the CPVO with convincing evidence substantiating the request and shall thus bear the burden of proof to that effect.
4. When assessing the date of first disposal of the applied-for variety or the evidence provided by the applicant to substantiate the request to change that date, the CPVO will check on what date the physical transfer by means of delivery of the variety constituents or of the harvested material has taken place for the purpose of commercial exploitation.

5. As a general principle, the date of the physical delivery of variety constituents or of the harvested material will determine the first date of exploitation for the purposes of commercial exploitation of the variety under Article 10 of the Basic Regulation. However, in case the applicant requests for a different date, any documentary evidence in the possession of the CPVO will be taken into account, such as contracts entered into for the purpose of transferring ownership of the plant material in question.



**Andrew Mitchell**

Chairman of the CPVO Administrative Council

Tuesday, 04 October 2016