

Frequently Asked Questions on Enlargement



Unofficial document compiled by the CPVO incorporating the questions received on the consequences of enlargement of the EU for the CPVR system and the CPVO with the answers given by the CPVO.

Table of contents

1. In which languages may I file an application from 01.07.2013?
2. Will Croatia need to implement the Basic Regulation in its national laws to apply the Community plant variety rights system?
3. From 01.07.2013, what will be the exact definition of 'Territory of the Community'?
4. What will happen to the CPVRs granted *after* accession?
5. What will happen to the CPVRs in force *prior* to accession?
6. What will happen to applications on-going on the date of accession?
7. Is there a possibility to apply for Community plant variety protection for varieties protected by the national system of Croatia?
8. Is there a possibility to apply for national protection when a Community plant variety protection has already been granted?
9. What about varieties which were rejected, withdrawn or surrendered in the Community but still are protected pursuant to Croatian law?
10. Will a breeder of a candidate variety which has already been rejected by a new member state pursuant to national provisions be permitted to apply for a CPVR?
11. When a national protection is granted to a variety in Croatia, can a third party of the present Community propagate this variety without the breeder's approval?
12. What will happen in case of conflict between Croatian rights and extended Community rights for the same variety?
13. What of the case where one variety is protected at national level in Croatia and another, separate but indistinct variety, is protected under the Community system, the scope of which is then extended to Croatia?
14. How will the novelty requirements apply to Croatia? Will there be a transitional regime?
15. The holder of a Community plant variety right may require payment of an equitable remuneration. Do growers of Croatia, who continue to use a protected variety, have to pay royalties if, before the date of accession, they have already used that variety freely?

16. Will the farmer's exemption referred to in article 14 of the basic regulation apply to farmers of Croatia if, before the date of accession, they have already used that variety for the purposes described in article 14(1) of the basic regulation without payment of remuneration?
17. How and when will the examination office of Croatia be implicated in the DUS testing for the purpose of granting CPVRs?
18. Will there be an increase of the fees to be paid as a consequence of enlargement?

Introduction

Following the completion of accession negotiations, the European Union looks forward to welcoming Croatia as a new Member State as from 1 July 2013.

The accession of Croatia will have an impact on the CPVR system and hence on the work of the CPVO. This part of the CPVO's web site deals with enlargement matters relating to the CPVR system and the CPVO.

Questions asked

1. In which languages may I file an application from 01.07.2013?

At present the CPVO is working in all 22 languages of the Community. Since the language of Croatia will acquire official status, the CPVO will accept applications in Croatian. From 01.07.2013, any application to the CPVO may be filed in one of the 23 languages. The CPVO will make the necessary forms available from early 2013 on.

2. Will Croatia need to implement the Basic Regulation in its national law to apply the Community plant variety rights system?

The Community plant variety rights system is enshrined in a directly applicable Council Regulation. Thus, in the absence of any derogation or transitional arrangements, the Basic Regulation will apply from the date of accession in the territories of Croatia without the need for implementation.

3. From 01.07.2013, what will be the exact definition of 'Territory of the Community'?

Article 2 of Council Regulation (EC) No 2100/94 (the "Basic Regulation") states that Community plant variety rights shall have uniform effect within the territory of "the Community". On accession the meaning of "Community" in relation to the "*acquis communautaire*", of which the Basic Regulation forms part, will be changed, so as to include the territories of Croatia. The term "Member State" (of the Community) will be construed accordingly.

4. What will happen to the CPVRs granted *after* accession?

Following the new definition of "Community", as mentioned in question 3., Community plant variety rights granted after accession will apply after the 01.07.2013 throughout the territories of both Croatia and current Member States.

All actions permitted under the CPVR system for the current Member States will apply in exactly the same way in the EU with extended borders from 01.07.2013. A Community rights title holder will be granted protection guarantying him exclusive exploitation rights for his variety throughout the EU with extended borders.

In this respect, there will be no derogation and no transitional period.



5. What will happen to the CPVRs in force *prior* to accession?

The automatic consequence of the new definition of "Community" will be that Community plant variety rights in force prior to the date of accession will extend, as of that date, to the territories of Croatia (at no extra cost to the holders of those rights and with no formalities). In this respect, there will be no derogation and no transitional period.

6. What will happen to applications on-going on the date of accession?

For *on-going* applications, the CPVO will need to consider the following possible effects from the date of accession:

(a) the stipulation in article 82 of the Basic Regulation that an applicant from outside the territory of the Community must use a procedural representative who is based in that territory will cease to apply to applicants in Croatia;

(b) the provisional protection conferred (from the date of publication of the application) by article 95 of the Regulation will extend to the territories of Croatia and apply as from 1.07.2013.

7. Is there a possibility to apply for Community plant variety protection for varieties protected by the national system of Croatia?

The holder of a variety protected in one or more national system(s) of the EU 28 with extended borders may apply for a CPVR. If his candidate variety fulfils the Distinctness, Uniformity, Stability criteria and is novel according to article 10 of the Basic Regulation, it will be granted a CPVR. This possibility already exists today for applicants coming from a new Member State being also a member of UPOV. See also the last paragraph of section 17.

From the date of grant, and since cumulative protection is prohibited according to article 92 of the Basic Regulation, the holder of the national right will be unable to invoke the rights conferred by such national protection for the variety for as long as the CPVR remains effective. The national protection right will become a 'sleeping right' for the duration the Community right.

8. Is there a possibility to apply for national protection when a Community plant variety protection has already been granted?

Since Article 92 of the Basic Regulation prohibits the cumulation of national rights or patents with Community plant variety rights, when a Community plant variety right is granted, no national right should be granted. Nevertheless, if it is granted, it is ineffective.

9. What about varieties which were withdrawn or surrendered in the Community but still are protected pursuant to Croatian law?

As soon as this CPVR is surrendered/withdrawn, the holder of the Croatian right will be able to invoke his national right again if this right is still in force.

10. Will a breeder of a candidate variety which has already been rejected by the Croatian plant variety rights authorities pursuant to Croatian provisions be permitted to apply for a CPVR?

If the CPVO would receive an application regarding a candidate variety that has already been rejected by the Croatian plant variety rights authorities, the CPVO would nevertheless review the application. The CPVO would however only grant CPVR if the application would comply with the novelty requirement and the DUS requirements.



11. When a national protection is granted to a variety in Croatia, can a third party of the present Community propagate this variety without the breeder's approval?

Since the protection is granted under Croatian legislation on plant breeder's rights, the national law of Croatia will apply. Enforcement of the national right will be dealt with by the Croatian court.

12. What will happen in case of conflict between Croatian rights and extended Community rights for the same variety?

Since Article 92 of the Basic Regulation prohibits the cumulation of national rights or patents with Community plant variety rights, conflict could arise between national rights granted in Croatia prior to accession and an extended Community right relating to the same variety.

One holder has assigned his entitlement to apply for CPVR to a third party who was granted a Croatian right.

The breeder of a new plant variety has the entitlement to apply for plant variety rights in many different systems throughout the world. Rather than applying for a Community plant variety right, the breeder may have assigned his entitlement to do so, whilst retaining (and exercising) the right to apply under the national systems in Croatia (or vice versa). This case is not regulated in the Basic Regulation or in any accession treaty. A solution must be found between the holders. If no agreement is reached, the case may need to be decided by a court.

13. What if one variety is protected at national level in Croatia and another, separate but indistinct variety is protected under the Community system, the scope of which is then extended to Croatia?

In UPOV countries, such as Croatia, no such conflict should arise between extended Community rights and Croatian rights. This is because, in order to obtain protection for a variety at national level, the variety must be distinct from all other varieties in common knowledge at the date of application. Once a variety acquires plant variety rights it is deemed to be in common knowledge. Accordingly, it should not be possible to obtain national protection in Croatia for a variety already protected under the Community system – and vice versa. If double protection has occurred, the error can and should be sorted out under existing rules, such as rules on priority and the possibility to declare a variety null and void if it did not fulfil the conditions for protection when it was granted.

14. How will the novelty requirements apply to Croatia? Will there be a transitional regime?

According to the 'period of grace'- the period during which the candidate variety may still be considered as 'novel'- referred to in article 10(1) of the Basic Regulation and since the term "Community" will acquire its new meaning only with effect from the date of accession, the CPVO has made the following interpretation:

- a) A breeder from Croatia will be able to apply for a CPVR if the candidate variety has not been commercialised more than 1 year within the present territory of the Community;
- b) During the first year following the accession of Croatia – i.e. from 01.07.2013 to 30.06.2014 - a breeder may apply for a CPVR if, on the date of application, the candidate variety has not been commercialised for more than one year inside the present 27 Member State territory of the Community and/or more than 4 years (6 years for trees and vines) outside the present 27 Member State territory of the Community.

This reading of Article 10 is not evident but can be explained as follows. On 01.07.2013, the territory of the Croatia will be incorporated in the territory of the Community. Accordingly, it is clear that commercialisation in Croatia after the accession will be regarded as commercialisation within the territory of the Community. However, it is not until 01.07.2013 that commercialisation in Croatia can be regarded as exploitation "earlier than one year" before the date of application within the territory of the Community. The reference to "territory of the Community" in Article 10(1)(a) can thus not be applied to the territory of Croatia until such territory has been part of the Community for one year. In other words, there is no retroactive effect of the Community territory to Croatia as a result of the accession.



- c) After 01.07.2014, the same will apply to candidate varieties commercialised within the present territory of the 27 Member State Community as within the extended borders of the Community (28 Member States), namely the 1 year rule under article 10(1)(a) of the Basic Regulation.

15. The holder of a Community plant variety right may require payment of an equitable remuneration. Do growers of Croatia, who continue to use a protected variety, have to pay royalties if, before the date of accession, they have already used that variety freely?

Certain plant varieties protected under the Community system are no doubt currently under cultivation in Croatia. At present, there is no requirement for persons growing these EU protected varieties to pay royalties. However, when the territorial scope of Community plant variety rights granted prior to accession is extended to Croatia, these varieties will no longer be freely available. Royalties would have to be paid.

16. Will the farmer's exemption referred to in article 14 of the basic regulation apply to farmers of Croatia if, before the date of accession, they have already used that variety for the purposes described in article 14(1) of the basic regulation without payment of remuneration?

The 'farmer's exemption' referred to in Article 14 of the Basic Regulation will apply directly in Croatia from the date of accession, i.e. 01.07.2013.

17. How and when will the examination office of Croatia be implicated in the DUS testing for the purpose of granting CPVRs?

From a qualitative and quantitative point of view, immediately following enlargement, the CPVO will be able to cover its technical examination needs using the present network of Examination Offices.

Since 2006, the Croatian plant breeder's rights authorities as well as the Croatian examination office have been preparing for Croatia's accession to the EU. Focus of that preparation was to ensure that the conduct of technical examinations meets the quality requirements as laid down by the Administrative Council of the CPVO.

Following accession, the Croatian examination office may notify the CPVO on the species for which it considers itself competent to perform technical examinations. The Croatian examination office will then be audited by the Quality Audit Service of the CPVO. Provided that the outcome of that quality audit is positive the Administrative Council of the CPVO will then entrust the Croatian examination office with responsibility to conduct technical examinations for the species applied for. The entrustment means that reports of technical examinations carried out for Community plant variety rights applications as well as reports following listing applications can be used as a basis for the CPVO to take decisions.

18. Will there be an increase of the fees to be paid as a consequence of enlargement?

There will be no increase of the fees to be paid to the CPVO as a consequence of enlargement.

