

Registration of EDVs in the CPVO register

The aim of this document is to lay down the conditions under which EDVs will be registered in the Register of Community Plant Variety Rights.

Applicable legal provision

1. Art. 87(2)(h) of Regulation (EC) N° 2100/94 (hereinafter referred as "BR"):

Article 87

Establishment of the Registers

(...)

The Office shall keep a Register of Community Plant Variety Rights wherein, after grant of a Community plant right, the following particulars shall be entered:

(...)

(h) where the holder of an initial variety and the breeder of a variety essentially derived from the initial variety both so request, the identification of the varieties as initial and essentially derived including the variety denominations and the names of the parties concerned. A request from one of the parties concerned only shall suffice if he has obtained either a non-contentious acknowledgement by the other party pursuant to Article 99 or a final decision or a final judgment pursuant to the provisions of this Regulation which contain an identification of the varieties concerned as initial and essentially derived.

2. Art. 81.3 of Commission Regulation (EC) N° 874/2009, after being amended by Commission Regulation (EU) 2016/1448:

Article 81.3

Where varieties are identified respectively as initial and essentially derived, a request for entry by all the parties to proceedings may be made jointly or separately. In the event of a request from only one party to proceedings, the request shall be accompanied by documentary evidence of the elements referred to in Article 87(2)(h) of the basic Regulation to replace the request of the other party. Such documentary evidence shall include the identification of the varieties concerned as initial and essentially derived, and the non-contentious acknowledgement by the other party or the final judgement".

Procedure

3. EDVs which are not protected or for which no application for registration is pending can be entered into the CPVO register provided the initial variety is registered with the CPVO. If the EDV is protected itself, information that it is an EDV of a protected initial variety can also be registered.
4. Information to be provided:
 - Pursuant to Art. 87(2)(h) BR, the identification of the varieties as initial and essentially derived should be entered into the register. The EDV shall have a suitable denomination pursuant to Article 63 BR, distinct from that of the initial variety. If the EDV is not protected at the CPVO, it is likely that no official description established by an entrusted examination office exists. However, if such a description exists, it should be submitted to the CPVO.

- Taking the above into account, the applicant must accompany a request for the registration of an EDV with the following:
 - The act of derivation from the initial variety.
 - The characteristics in which the EDV is distinct from the initial variety.
 - A declaration that the EDV is a variety within the meaning of Article 5 BR.
 - A proposal for a variety denomination.
 - If it exists, an official description of the variety.

5. Signatures:

- In case the request is made by the titleholder of the initial variety and the breeder of the EDV, such request shall show signatures of both parties.
- In case the request was made by only one person, the non-contentious acknowledgement signed by the other party pursuant to Art. 99 BR or the final decision or the final judgment (for instance from a national court) which contains an identification of the varieties concerned.
- Where the holder of the initial variety and the breeder of the EDV are the same (natural or legal) person, the EDV will not be registered.

6. A **disclaimer should be included** in the part of the register concerned with the registration of EDVs, stating that the accuracy of the information entered into the register supporting the claim that a variety is essentially derived from a variety protected by Community plant variety rights is not verified by the CPVO and that the CPVO assumes no liability whatsoever in relation to such information and claim.

