COUNCIL REGULATION (EC) No 2470/96

of 17 December 1996

providing for an extension of the terms of a Community plant variety right in respect of potatoes

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights [1], and in particular Article 19 (2) thereof,

Having regard to the proposal from the Commission,

Whereas it is recognized that technical difficulties in potato breeding require expenditure of research activities for a long period in comparison with the overwhelming majority of all the other agricultural crops; whereas, in addition, experience on the market has shown that a new potato variety reveals its commercial value only in the long term in comparison with those agricultural species requiring also long-term research activities; whereas, for these reasons, an equitable refunding of the research activities is only possible at a fairly late stage of the protection in comparison with the other agricultural crops;

Whereas, in order to establish a legal environment conducive to achieving such equitable refunding, an extension of the initial duration of a Community plant variety right by a further five years in the case of potatoes is the most appropriate measure;

Whereas such extension should apply to all valid Community plant variety rights which were granted prior to the entry into force of this Regulation or which will be granted in future unless such a right is duly surrendered by the holder or terminated by a decision of the Community Plant Variety Office;

Whereas the period of extension should be reduced if a national property right or rights in respect of the same variety has or have been effective in a Member State prior to the grant of a Community plant variety right and, accordingly, would have allowed a breeder already to take advantage of his variety; whereas a comparable principle was already laid down under the transitional provisions of Article 116 of Regulation (EC) No 2100/94,

HAS ADOPTED THIS REGULATION:

Article 1

1. The duration of the Community plant variety right, as provided for in Article 19 (1) of Regulation (EC) No 2100/94 shall in respect of varieties of potatoes, be extended by a further five years, without prejudice to the provisions of Article 116 (4) indent of the said Regulation.

2. In the case of varieties for which a national plant variety right was granted prior to the grant of the Community plant variety right, but to which Article 116 (4) 4th indent of the said Regulation does not apply, the extension referred to in paragraph 1 shall be reduced by the longest period in full years during which any national property right or rights granted have been effective in a Member State in respect of the same variety prior to the grant of the Community plant variety right.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 December 1996.

For the Council

The President

I. YATES

[1] OJ No L 227, 1. 9. 1994, p. 1. Regulation as amended by Regulation (EC) No 2506/95 (OJ No L 258, 28. 10. 1995, p. 3).