

Via e-mail: paivi.mannerkorpi@ec.europa.eu

Ms Päivi Mannerkorpi  
Team Leader  
Unit G1, Plant Reproductive Material  
DG for Health and Food Safety  
European Commission  
Brussels

April 7, 2020

**Subject: Applicability of Penal Provisions to CPVR under Polish PBR Legislation**

Dear Ms Mannerkorpi,

I hope you, your colleagues in the Commission and your families are well and healthy.

Today I write to you in respect of the applicability of penal provisions under the Polish Plant Breeder's Rights Act to Community Plant Variety Rights (CPVR).

**Article 37** of the Polish Law of June 26, 2003 on the **Legal Protection of Plant Varieties** reads:

*“Any person who:*

- 1) Violates a variety exclusive right;*
- 2) Designate propagating material or harvested material of other or unknown variety with the denomination of a variety protected with the exclusive right*  
*- shall be liable to a fine, detention order or deprivation of liberty up to one year.”*

On a prima facie reading, article 37 only penalizes the infringement of a Polish plant breeder's right, thus, it excludes infringements of a CPVR. There is no other provision under Polish law which provides for the same penal consequences to the infringement of a CPVR.

Whereas prior jurisprudence has applied Article 37 of the Polish Plant Breeder's Rights Act in the event of an infringement of a CPVR<sup>1</sup>, this has been a unique case. On the contrary, to our

---

<sup>1</sup> See “TIBEN“ Case (2012) [http://www.inhort.pl/files/hodowla\\_prawa/wyrokisadu/Wyrok%20Sad%20Rawa.pdf](http://www.inhort.pl/files/hodowla_prawa/wyrokisadu/Wyrok%20Sad%20Rawa.pdf)

knowledge most criminal proceedings against infringements of CPVRs had been rejected by Polish Courts in view of the restricted interpretation of Art 37, as presented above.

Such limitation of the penal provision would violate **Article 107** of the Council Regulation (EC) No 2100/94 on Community Plant Variety Rights (the “**Basic Regulation**”), which provides:

*“Member States shall take all appropriate measures to ensure that the same provisions are made applicable to penalize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national rights”*

We kindly encourage you to verify this and, in case the situation is confirmed, ask the Polish government to undertake the necessary legislative steps to bring the Polish Plant Breeder’s Rights Act in line with the Basic Regulation.

We look forward to hearing from you.

Kind regards,

**SIGNED**

Dr. Edgar Krieger  
Secretary General