



Sviluppo

In concert with

il Ministro delle Politiche Agricole Alimentari e

Having regard to Legislative Decree No 30 of 10 February 2005 on the Industrial Property Code, pursuant to Article 15 of **Law** No 273 of 12 December 2002, and in particular Chapter II, Section VIII thereof, concerning ‘New plant varieties’;

Having regard to Legislative Decree No 131 of 13 August 2010 amending Legislative Decree No 30 of 10 February 2005 laying down the Industrial Property Code, pursuant to Article 19 of Law No 99 of 23 July 2009,

Having regard, in particular, to Article 86(5) of Legislative Decree No 131 of 13 August 2010, which adds to Article 170 of the Code paragraph 3-h, which provides that ‘by Decree of the Minister for Economic Development, in agreement with the Minister for Agricultural, Food and Forestry Policy, the implementing provisions of the Industrial Property Code concerning new plant varieties shall be laid down, including the provisions relating to the appointment and operation of the Advisory Committee on New Plant Varieties’;

Having regard to Decree No 33 of the Minister for Economic Development of 13 January 2010 laying down ‘Regulations implementing the Industrial Property Code’;

Having regard also to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights;

Having REGARD TO Legislative Decree No 224 of 8 July 2003 implementing Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms;

Having regard to Decree-Law No 7 of 31 January 2005, converted into Law No 43 of 31 March 2005, and in particular Annex 2-ter thereof;

Having REGARD TO the Decree of the Minister for Economic Development, in agreement with the Minister for Agricultural, Food and Forestry Policy of 16 May 2012, registered by the Court of Justice on 3 August 2012, which laid down the provisions implementing Decree No 131 of 13 August 2010 concerning plant variety rights;

Having regard to the Directorial Decree of 29 October 2015 on the rules governing the electronic filing of applications for supplementary certificates for medicinal products and plant protection products of new varieties

plants, topographies of semiconductor products, appeals to the Board of Appeals, acts of opposition to the registration of trade marks and applications relating to those applications;

In view of the need to update and amend the Interministerial Decree of 16 May 2012, also taking into account the new electronic filing system of the Italian Patent and Trademark Office;

Whereas, in addition, the procedures for assessing applications for plant variety rights should be streamlined and more efficient by establishing new methods of payment of the fees due for varietal tests;

DECREE

Article 1

(Application for plant variety rights)

1. The filing, in paper or electronic form, and the transmission of an application for a plant variety right, as referred to in Article 164(1) of Legislative Decree No 30 of 10 February 2005, laying down the Industrial Property Code, hereinafter referred to as the ‘Code’, shall take place within the terms and in accordance with the procedures laid down in Article 147 of the Code, and in Decree No 33 of 13 January 2010 laying down the “Regulation implementing the Industrial Property Code” and the Decree of the Director-General for Combating the Counterfeiting — Ufficio Italiano Brevetti e Marchi of 29 October 2015.
2. The documents referred to in Article 164(2)(a), (b), (c) and (d) must be lodged in duplicate if the application is lodged on paper.
3. Where the variety is to be considered a genetically modified organism, as defined in Article 2(2) of Directive 2001/18 of 12 March 2001, transposed by Legislative Decree No 224 of 2003, as amended, the applicant shall specify in the application the details of the Community decision to which the relevant event refers;
4. Where the variety is intended to be used as a food within the scope of Regulation (EC) No 1829/2003, the applicant shall specify in the application the references of the Community decision to which the relevant event refers.

Article 2

«Publication of the notice in the Register»

- 1 The Italian Patent and Trademark Office informs that applications for plant novelty rights have been filed by means of a notice published in its online register for sixty days from receipt of the documentation referred to in Article 164(3) of the Code.
2. From the date of publication of the notice, the Office shall make the documentation available to the public and, within the period referred to in paragraph 1, third parties may submit comments pursuant to Article 173(2) of the Code.

Article 3

(Transmission of documents to the Ministry of Agricultural, Food and Forestry Policy)

1. After the expiry of the 60-day period referred to in Article 2, the Italian Patent and Trade Marks Office, having established the admissibility of the application pursuant to Article 148(2)(b) of the Code and its formal regularity, in accordance with Articles 164 and 165 of the Code, shall, within the following 30 days, forward to the Ministry of Agricultural, Food and Forestry Policy a copy of the application together with the accompanying documentation, informing the applicant.

Article 4

(Payment of the fee for roadworthiness tests)

1. Upon receipt of the application, the Ministry of Agricultural, Food and Forestry Policy shall invite the applicant to pay, within sixty days of the date of receipt of the application, the fee due for the roadworthiness tests, to the extent provided for in the tariffs as defined in paragraphs 6 and 7 of this Article.

2. 30 days after the expiry of the period referred to in paragraph 1 without the applicant having provided proof of payment of the fee, the application shall be deemed to have been refused. The Ministry of Agricultural, Food and Forestry Policy informs UIBM, which will issue the decision rejecting the application, setting the time limit for appeals to the Complaints Board, pursuant to Article 135(1) of the Industrial Property Code.

3. The fees referred to in paragraph 1 shall be paid by the breeders of new plant varieties to the revenue chapter of the State budget No 3582 - Chapter XVII — Revenue from the payment of the fees due by the Plant Variety Constituents'; the payment must be made using the following IBAN code IT/37/I/0100003245/244/0/17358200 to Banca d'Italia — Tesoreria Provinciale dello Stato and with the charge "Chapter XVII — Cap. 3582 compensation payable by breeders of plant varieties';

4. The fees referred to in paragraph 1 shall not be payable if the roadworthiness tests are already carried out, with sufficient guarantees, in Italy and in another State belonging to the Union of Paris for the Protection of New Varieties of Vegetables (UPOV). The holder of the application must produce the documents proving the findings made.

5. The date of publication of the notice referred to in Article 2 shall be entered on the application register and the transcripts and annotations required by the laws on patents for industrial invention shall be made.

6. A subsequent decree of the Ministry of Agricultural, Food and Forestry Policy, to be issued within 90 days of the date of entry into force of this measure, will identify the bodies that carry out field tests and define the fees due for species and test cycle, as well as the quantities, the phytosanitary status of the reproductive material and the deadlines within which the applicant must deliver the propagating material to the bodies carrying out the field tests.

7. Until publication in the Official Gazette of the Italian Republic of the measure referred to in paragraph 6, the tariffs and technical provisions referred to in Annex 1 to the Decree of the Minister for Economic Development, in agreement with the Minister for Agricultural, Food and Forestry Policy, 16 May 2012.

Article 5

(Remarks and observations)

1. If observations have been submitted by third parties pursuant to Article 173(2) of the Code and within the period referred to in Article 2(2), the Italian Patent and Trademark Office shall forward a copy to the applicant and for information to the Ministry of Agricultural, Food and Forestry Policy. The applicant must submit any counter-arguments to the Italian Patent and Trademark Office and for information to the Ministry of Agricultural, Food and Forestry Policy for information.

Article 6

{Name of variety}

1. The variety for which an application for a plant variety right has been lodged must be designated by a name which complies with Article 63 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights and the related explanatory guidelines drawn up by the Community Plant Variety Office (CPVO).

2. If the name proposed by the applicant does not comply with the provisions of the Regulation and the guidelines referred to in paragraph 1, the Ministry of Agricultural, Food and Forestry Policy, pursuant to Article 173(2) of the Code, invites the applicant to propose a new variety denomination, also informing the Italian Patent and Trademark Office.

3. 30 days after the date of receipt of the notification without the applicant having given an appropriate name, the Ministry of Agricultural, Food and Forestry Policy informs the UIBM that it will issue the decision rejecting the application, setting the time limit for appeals to the Appeals Board, pursuant to Article 135(1) of the Code.

Article 7

(Appointment of members of the Advisory Commission)

1. The Advisory Commission referred to in Article 170(3-bis) of the Code shall have its seat at the Ministry of Agricultural, Food and Forestry Policy.

2. The Advisory Committee referred to in paragraph 1 shall be appointed by decree of the Minister for Agricultural, Food and Forestry Policy following the designation of the members by the competent authorities.

3. Participation in the Commission shall not give rise to the payment of remuneration, emoluments or allowances.

Article 8

(Operation of the Advisory Commission)

1. The Commission shall be convened by the President and shall be convened at least ten days before the date set for the sitting, accompanied by the documents relating to the subjects to be discussed.

2. **Any member of the Commission may, on reasoned request addressed to the President. — The next item is the report (Doc.**

3. The meetings of the Commission are valid when the President, or those acting in charge, are present in accordance with Article 170, paragraph 3-bis, letter b) of the Code, and a majority of its members.
4. The deliberations shall be adopted by an absolute majority of the members and in the event of a tie of votes shall prevail that of the President.
5. At each meeting of the Commission, the Secretary shall draw up appropriate minutes containing the agenda, the names of the members present, a summary of the debate and the deliberations adopted with the votes carried over.
6. The minutes shall be signed by the President, or by those who serve them in accordance with Article 170, paragraph 3-bis, letter b) of the Code, and by the Secretary and forwarded to all members of the Commission. In the absence of any comments within 10 days of the date of transmission, the minutes shall be deemed to have been approved.
7. The Secretary of the Commission referred to in Article 170(3-quater) of the Code shall keep the record of minutes.

Article 9

{Report}

1. The request for an opinion from the Commission referred to in Article 170(3-bis) of the Code shall be accompanied by a report sent by the competent office of the Ministry of Agricultural, Food and Forestry Policy, containing the necessary information on the trials, the methods followed, any checks carried out, the results obtained and any findings and observations made by the applicant. The Commission may, if it considers it necessary, obtain direct information from the technicians who have carried out the above mentioned tasks.

Article 10

(Opinions expressed by the Consultative Commission)

1. The Ministry of Agricultural, Food and Forestry Policy, within 10 days of the approval of the minutes, shall forward to the Italian Patent and Trade Mark Office the opinions expressed within the Advisory Committee on the basis of the results of the varietal tests;
2. For plant varieties approved by the Advisory Commission, the Italian Patent and Trade Marks Office shall grant protection rights within 90 days of receipt of the Commission's opinion and shall notify the Ministry of Agricultural, Food and Forestry Policy.
3. For plant varieties not approved by the Advisory Commission, the Italian Patent and Trade Marks Office will issue the decision rejecting the application, setting the deadline for appeals to the Complaints Committee pursuant to Article 135(1) of the Code.

Article 11

(Maintenance Fees)

1. The annual payment of the fees for the maintenance of plant new plant rights, referred to in Article 38, paragraph 2, of the "Regulation implementing the Code of the

industrial property' is carried out on the basis of Annex 2-ter to Decree-Law No 7 of 31 January 2005, converted into Law No 43 of 31 March 2005.

2. If the certificate for the protection of the new plant variety expires due to non-payment of the maintenance fees referred to in paragraph 1, the UIBM shall notify the Ministry of Agricultural, Food and Forestry Policy.

Article 12

(Repeals)

1. The Decree of the Minister for Economic Development, in agreement with the Minister for Agricultural, Food and Forestry Policy of 16 May 2012 shall be repealed and replaced by this Decree.

This decree will be published in the Official Gazette of the Italian Republic and its adoption will be published on the website of the Ministry of Economic Development and that of the Ministry of Agricultural, Food and Forestry Policy.

Rome 26.11.2019

THE MINISTER
OF ECONOMIC DEVELOPMENT
AND REFORMS



THE
MINISTER
OF AGRICULTURE, FOOD
AND FORESTRY POLICY

