

Czech Republic

Inputs for the preparation of a draft reference document on the exception regarding farmers' and/or breeder' use of patented inventions

Farmers' use of patented inventions

Farmers' privilege is regulated by Section 8 (Limitation of rights of patent holder) of Act No. 206/2000 Coll., on the Protection of Biotechnological Inventions (the Biotech Act) as follows:

(1) The person, who has obtained the plant propagating material being subject of the patent from its holder or with his consent, is authorised to use for reproduction during his agricultural activity except commercial exploitation, also the product of his harvest.

(2) The person, who has obtained the animal reproductive material being subject of the patent from its holder or with his consent, is authorised to use this material during his agricultural activity except commercial exploitation; this includes making the animal or other animal reproductive material available.

Section 8 (1) and (2) of the Biotech Act implements Article 11(1) of the Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions¹.

Breeders' use of patented inventions

In the Czech Republic, the breeders' exemption is not introduced into the Patent Act. This does not prevent breeders from using other exceptions provided for in the Patent Act, in particular those provided for in Article 18 d) (acts for non-commercial use) and e) (experimental use) of the Patent Act.

The Agreement of Unified Patent Court² includes so called "limited breeders' exemption" in Article 27 c) (Limitations of the effects of a patent), which says that "*The rights conferred by a patent shall not extend to the use of biological material for the purpose of breeding, or discovering and developing other plant varieties.*" Although the Czech Republic is not yet part of the unitary patent system, Czech users can use this system. Likewise, Czech breeders can benefit from the breeders' exemption on the territory of 18 Contracting Member States of the UPC Agreement³.

To implement Article 12 (Compulsory Cross-Licensing) of Directive 98/44/EC, the Czech Biotech Act (Act No. 206/2000 Coll.) introduced compulsory cross-licences. Where a breeder cannot acquire or exploit a plant or animal variety right without infringing a prior patent, he/she may apply for a compulsory licence for non-exclusive use of the invention protected by the patent. The Industrial Property Office of the Czech Republic grants the licence, if the breeding certificate holder applied unsuccessfully to the patent holder to obtain a contractual licence and if the plant

¹ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0044>

² See [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42013A0620\(01\)&qid=1743088754326](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42013A0620(01)&qid=1743088754326)

³ See <https://www.consilium.europa.eu/en/documents/treaties-agreements/agreement/?id=2013001>

or animal variety constitutes significant technical progress of considerable economic interest compared with the invention, protected by the patent. In this case, the patent holder has the right to a cross-license for commercial use of the protected variety under the same conditions as for a compulsory license according to national Act No. 408/2000 Coll. on plant variety rights protection, as amended.

According to Section 19 (9) of Act No. 408/2000 Coll., on the protection of plant variety rights and the amendment to Act No. 92/1996 Coll., on plant varieties, seed and planting material of cultivated plants, as amended (Act on the protection of plant variety rights) the following exploitation of the propagation material shall not constitute a breach of the plant variety rights (listed in paragraph 1 of this Section) a) performed for research, b) performed with the aim to create additional varieties including exploiting such varieties except for varieties under paragraph 4 (a) varieties essentially derived from the protected variety, b) varieties which are not distinct from the protected variety, c) varieties whose production requires the repeated use of the protected variety), c) performed for own use of a natural person.

Since the Czech Republic is a Member State of the European Union, the Czech breeders can benefit from the breeders' exemption, incorporated into the Community Plant Variety Rights (CPVR) system⁴, which guarantees free access to protected varieties for the development and exploitation of new plant varieties.

The application of this exception does not represent a practical problem in patent law as applicable in the Czech Republic. The Industrial Property Office of the Czech Republic is not aware of any court judgements regarding the interpretation of this exception.

⁴ See Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, Art. 15
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31994R2100>