



2024/833

12.3.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/833

of 11 March 2024

amending Commission Regulation (EC) No 1768/95 as regards the liability for damage pursuant to Article 94(2) of Council Regulation (EC) No 2100/94

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ⁽¹⁾, and in particular Article 14(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1768/95 ⁽²⁾ sets out implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation (EC) No 2100/94. In particular, Article 18(2) of that Regulation provides for a liability to compensate for further damage pursuant to Article 94(2) of Regulation (EC) No 2100/94 in case of non-compliance in respect of one or more varieties of the same holder.
- (2) On 16 March 2023, the Court of Justice in its judgement in Case C-522/21 ⁽³⁾ declared Article 18(2) of Regulation (EC) No 1768/95 invalid. The Court stated that, in so far as Article 18(2) of Regulation (EC) No 1768/95 sets the amount of the compensation to be paid in relation to the licence fee, it establishes an irrebuttable presumption as to the minimum extent of the damage suffered by the holder and limits the discretion of the court seized contrary to Article 94(2) of Regulation (EC) No 2100/94 as interpreted by the Court.
- (3) For this reason, that provision should be removed.
- (4) Moreover, it should be replaced by a new one to ensure compliance with Article 94(2) of Regulation (EC) No 2100/94 and to safeguard the legitimate interests of the breeder and of the farmer.
- (5) As experience has shown, any further damage pursuant to Article 94(2) of Regulation (EC) No 2100/94 usually consists of the costs of the investigations carried out by the holder to identify and evaluate the scope of that non-compliance.
- (6) For this reason, Article 18(2) of Regulation (EC) No 1768/95 should reflect that such costs could be a relevant element for calculating any further damage suffered by the holder by an intentional or negligent breach of the holder's rights under Article 14(3), fourth indent, of Regulation (EC) No 2100/94. Regulation (EC) No 1768/95 should therefore be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Regulation (EC) No 1768/95

Article 18(2) of Regulation (EC) No 1768/95 is replaced by the following:

'2. If such person has intentionally or negligently not complied with its obligation pursuant to Article 14(3), fourth indent, of the basic Regulation, in respect of one or more varieties of the same holder, the liability to compensate the holder for any further damage pursuant to Article 94(2) of the basic Regulation may include the costs of the investigations carried out by the holder to identify and evaluate the scope of that non-compliance.'

⁽¹⁾ OJ L 227, 1.9.1994, p. 1, ELI: <http://data.europa.eu/eli/reg/1994/2100/2008-01-31>.

⁽²⁾ Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights (OJ L 173, 25.7.1995, p. 14, ELI: <http://data.europa.eu/eli/reg/1995/1768/oj>).

⁽³⁾ Judgment of 16 March 2023, *MS v Saatgut-Treuhandverwaltungs GmbH*, C-522/21, ECLI:EU:C:2023:218.

*Article 2***Entry into force**

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

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

Done at Brussels, 11 March 2024.

For the Commission
The President
Ursula VON DER LEYEN
