

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1), extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

Article 6

Conditions Required for Protection

(1) The breeder shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection, or precise description in a publication. The characteristics which permit a variety to be defined and distinguished must be capable of precise recognition and description.

(b) At the date on which the application for protection in a member State of the Union is filed, the variety