

**Resolution No. 91/P9/2020  
of the Scientific Council of the Institute of Agrophysics, PAS  
of 29 September 2020**

concerning:

**the adoption of amendments to the “Regulation on the management of intellectual property rights and the principles for the commercialisation of the results of research and development work of the Institute of Agrophysics, PAS” of 17 April 2015, as amended by the resolution of 24 March 2017.**

On the basis of Article 94a of the Act of 30 April 2010 on the Polish Academy of Sciences (Journal of Laws of 2019, item 1183) and § 5(2)(j) of the Rules of Procedure of the Scientific Council of the Institute of Agrophysics, Polish Academy of Sciences in Lublin of 22 February 2019:

**§ 1**

The Scientific Council of the Institute of Agrophysics, PAS, at the request of the Director of the Institute, adopted at its meeting on 29 September 2020, by open vote, the following amendments to the “Regulation on the management of intellectual property rights and the principles for the commercialisation of the results of research and development work of the Institute of Agrophysics, PAS” of 17 April 2015, as amended by the resolution of 24 March 2017 (hereinafter: the Regulation), consisting in:

1) amendment to the content of the Preamble of the Regulation, which now reads as follows:

*“on the basis of Article 94a of the Act on the Polish Academy of Sciences (Journal of Laws of 2019, item 1183, as amended, hereinafter the PAS Act), in order to ensure appropriate legal protection of the results of research and development work conducted within the Institute, as well as to enable their subsequent commercialisation while ensuring full legal security of such activities and the protection of the interests of the Institute, and also for the rational use of the Institute’s Resources.”;*

2) amendment to the content of § 1 of the Regulation, which now reads as follows:

- a) “Doctoral Student means a participant of the Doctoral Studies conducted at the Institute and a participant of the Doctoral Schools co-conducted by the Institute.*
- b) Director means the Director of the Institute or a person authorised by the Director of the Institute to act on behalf of the Institute.*
- c) Research Support Department means the research support department or the designated post to which the Director has entrusted formal supervision over matters related to the Management of Intellectual Property Rights.*
- d) Institute means the Institute of Agrophysics, Polish Academy of Sciences.*
- e) Know-how means information gathered within the framework of research or development work conducted at the Institute, also in unfixed form, including information related to Results, their creation and application, in particular information of a technical, technological or commercial nature. (Know-how is subject to legal protection under the ACUC.)*
- f) Commission means the Commission for the Management of Intellectual Property Rights, which may be established by the Director.*

- g) Organisational Unit means a research department, the research support department or another unit separated within the structure of the Institute.*
- h) Costs mean the costs incurred from the adoption of a commercialisation decision by the Institute, or from the date of expiry of the deadline for taking such a decision, directly related to the commercialisation of the Result, in particular: the costs of obtaining legal protection, expert opinions, valuation of the Result and official fees.*
- i) Employee means a person employed by the Institute under an employment relationship.*
- j) Copyright Act means the Act of 4 April 1994 on copyright and related rights (Journal of Laws of 2019, item 1293, as amended).*
- k) Intellectual Property Rights mean all property copyrights and related rights connected with the Results of research or development work, as well as all patents and supplementary protection rights for inventions, protection rights for utility models, rights from the registration of industrial designs, rights to registered and unregistered Community designs, protection rights for trade marks and rights from the registration of Community trade marks, protection rights for geographical indications, rights from the registration of topographies of integrated circuits, and rights to applications and rights to file applications for any of the above-mentioned items of industrial property rights, as well as rights to databases, rights to unregistered distinguishing signs, rights to enterprise (firm) designations, rights to trade names, as well as any other rights to intangible goods protected by statute, regardless of whether they have been registered and published in accordance with the applicable regulations.*
- l) Industrial Property Act means the Act of 30 June 2000 – Industrial Property Law (Journal of Laws of 2020, item 286, as amended).*
- m) Regulation means this Regulation on the management of intellectual property rights and the principles for commercialisation of the Institute of Agrophysics, Polish Academy of Sciences, adopted by the Scientific Council on 17 April 2015, with subsequent amendments.*
- n) Result means an outcome of research or development work, fixed in any form, also unfinished, the protection of which is possible by means of Intellectual Property Rights in Poland or abroad.*
- o) Special-purpose company means a single-member capital company established by the Institute on the basis of Article 83 of the PAS Act for the purpose of commercialising specific Results and conducting activities in the area of technology transfer and science promotion, as well as a company which the Institute has joined for the same purpose by taking up or acquiring shares or stock in the company.*
- p) Commercialisation Proceeds mean the total value of licence fees, dividends of Special-purpose companies or other financial means paid out by a company to which the Result was transferred, as well as other income obtained directly or indirectly as a result of commercialisation, including interest, after deducting the public-law charges due.*
- q) Creator means every person who, within the Institute, created or co-created a Result and is entitled or jointly entitled to the Result, including a person who may be considered a creator or co-creator within the meaning of the Copyright Act or the Industrial Property Act.*

- r) PAS Act means the Act of 30 April 2010 on the Polish Academy of Sciences (Journal of Laws of 2019, item 1183, as amended).
  - s) ACUC means the Act of 16 April 1993 on combating unfair competition (Journal of Laws of 2019, item 1010, as amended).
  - t) Collaborator means any person participating in research or development work conducted within the Institute on a basis other than an employment relationship.
  - u) Resources mean all means of the Institute used directly or indirectly to create a Result or Know-how, including financial means, organisational resources, administrative personnel, materials, equipment and premises.
  - v) Creator Team means a group of Creators involved in the creation of a Result.”;
- 3) amendment to the content of § 4(3)(b) of the Regulation, which now reads as follows:  
*“transferring to the Research Support Department referred to in § 3(3) all information and works held, together with the ownership of the media on which those works have been fixed, as well as the technical experience needed for the commercialisation of Results,”;*
- 4) amendment to the content of § 4(3)(c) of the Regulation, which now reads as follows:  
*“refraining from conducting any activities aimed at the implementation of Results contrary to the provisions of the Regulation,”;*
- 5) amendment to the content of § 5(1) of the Regulation, which now reads as follows:  
*“The Regulation applies to Results created within the framework of research or development work conducted within the Institute, financed from subventions, subsidies and external sources, including such Results that:*  
  - a) *were created by an Employee in the course of performing their duties arising from the employment relationship,*
  - b) *arose within the framework of a contract between the Institute and a Collaborator,*
  - c) *arose within the framework of a contract between the Institute and another entity, to the extent to which the Institute acquired the rights to the Results,*
  - d) *arose with the use of the Institute’s Resources,*
  - e) *were acquired by the Institute from third parties,*
  - f) *arose within the framework of education in the doctoral studies and the doctoral school conducted by the Institute, taking into account the rules resulting from the provisions governing proceedings for the conferral of the doctoral degree.”;*
- 6) amendment to the content of § 6(5) of the Regulation, which now reads as follows:  
*“The Commission may adopt rules of procedure specifying the detailed principles of its functioning.”;*
- 7) amendment to the content of § 7(2) of the Regulation, which now reads as follows:  
*“The Register includes information on:*  
  - a) *the Creators of the Result,*
  - b) *the date of notification of the Result to the Research Support Department,*
  - c) *the contract between the Creator or the Creator Team and the Institute,*
  - d) *the date of conclusion of the contract referred to in point c,*
  - e) *the form of commercialisation, including licences granted,*
  - f) *the filing of the Result with the appropriate office,*
  - g) *the decisions of the appropriate authorities,*

- h) *the deadlines for payment of the fees for granting and maintaining legal protection of the Result,*
- i) *the date of expiry of protection of the Result.”;*
- 8) updating the content of Annex No. 1 to the Regulation – Template of the register table, referred to in § 7(6) of the Regulation, in accordance with the content attached to this resolution,
- 9) deletion of § 8 from the Regulation,
- 10) deletion of § 9 from the Regulation and, at the same time, of Annexes 2–4 to the Regulation,
- 11) amendment to the content of § 10(1) of the Regulation, which now reads as follows:  
*“The Employee shall provide the Research Support Department with information on the results of research or development work and the know-how related to those results; this concerns in particular the creation of a Result that may be subject to protection as an invention, industrial design, utility model, topography of an integrated circuit, or a plant variety bred, or discovered and developed – the Creator is obliged to promptly notify the Research Support Department of the creation of such a Result.”;*
- 12) amendment to the content of § 10(2) of the Regulation, which now reads as follows:  
*“Notification of the Result to the Research Support Department is made by submitting, in electronic form, a completed form constituting Annex No. 5 to the Regulation – Result Notification, which contains a declaration that the Result does not infringe the intellectual property rights of third parties.”;*
- 13) updating the content of Annex No. 5 to the Regulation – Result Notification, referred to in § 10(2) of the Regulation, in accordance with the content attached to this resolution,
- 14) deletion of paragraph 3 from § 10 of the Regulation,
- 15) amendment to the content of § 10(5) of the Regulation, which now reads as follows:  
*“The Creator may be obliged to make available information and technical experience, together with the ownership of the media on which that information has been fixed.”;*
- 16) amendment to the content of § 11(1) of the Regulation, which now reads as follows:  
*“[All rights belong to the Institute] Unless the provisions of statute or the provisions of a contract provide otherwise, all Intellectual Property Rights to Results and the ownership of Know-how created within the framework of research and development work conducted within the Institute shall belong to the Institute.”;*
- 17) amendment to the content of § 11(2) of the Regulation, which now reads as follows:  
*“[Funding agreements] Agreements concerning the financing of undertakings encompassing research and development work, implemented from external funds, may provide for different rules for the acquisition of Intellectual Property Rights to Results and the ownership of Know-how, including an obligation of the Institute to transfer to the Creator all or part of the rights to the Results and the ownership of Know-how.”;*
- 18) amendment to the content of § 11(3) of the Regulation, which now reads as follows:  
*“Within the framework of individual undertakings encompassing research or development work carried out within the Institute on commission and for the benefit of a third-party entity, the Institute may conduct research or development work as a result of which the Intellectual Property Rights to Results and the ownership of Know-how will belong to the entity financing or co-financing the given undertaking. The conduct of*

*this type of undertaking may not obstruct the implementation of other tasks of the Institute, in particular those related to the commercialisation of Results by the Institute.”;*

19) addition to § 12 of the Regulation of paragraph 1a with the following content:

*“If the Director qualifies a given Result for commercialisation, the Research Support Department shall promptly notify the Creator and the Head of the Organisational Unit in which the Creator is employed of this fact.”;*

20) correction of a clerical error in § 12(2) and assignment of the following content to it:

*“Before the publication of a scientific work, the Employee shall submit the scientific work to the Head of the Organisational Unit for assessment as to whether the scientific work does not disclose Know-how or a Result in respect of which an exclusive right may be granted. In the event of an assessment that the scientific work contains the above information, harming the interests of the Institute, the scientific work shall not be published. Re-assessment is possible at the request of the Creator after the expiry of at least a further 3 months.”;*

21) amendment to the content of § 14(3) of the Regulation, which now reads as follows:

*“If the Institute and the Employee or Collaborator, in accordance with Article 94f of the PAS Act, have decided to determine differently, by way of contract, the rights to Results or the manner and mode of commercialisation of Results, then, in the event of circumstances arising that entail the need to adapt the adopted principles (e.g. a change of roles and persons in the course of implementing the given undertaking within which the Result was created, difficulties in determining the Creator’s Commercialisation Proceeds), one should aim to apply solutions that most fully reflect the idea of the provisions agreed upon by the parties to the contract. In particular, the parties to the contract referred to in Article 94f of the PAS Act may specify in more detail the division of the benefits from commercialisation in proportion to the contribution to, and involvement in, the creation of the Result.”;*

22) amendment to the content of § 15(3) of the Regulation, which now reads as follows:

*“If commercialisation of the Result is carried out by the Creator or the Creator Team, the Institute is entitled to 25% of the Commercialisation Proceeds obtained by the Creator or the Creator Team from commercialisation, reduced by not more than 25% of the Costs incurred by the Creator or the Creator Team.”;*

23) amendment to the content of § 15(5) of the Regulation, which now reads as follows:

*“The division of the Commercialisation Proceeds among the members of the Creator Team is made in a proportion depending on their share in the creation of the Result. The rules of division should be established in a written agreement, and the division itself should reflect the tasks of the individual members of the Creator Team in the substantive work.”;*

24) amendment to the content of § 16(2) of the Regulation, which now reads as follows:

*“Commercialisation takes place in compliance with the principles of fair competition and the provisions on State aid, and with the assurance that no conflict of interest arises.”;*

25) amendment to the content of § 16(3) of the Regulation, which now reads as follows:

*“Commercialisation takes place taking into account best practices, on the assumption that the most optimal and recommended method of commercialisation is the granting*

*of a licence. A different commercialisation path is chosen when commercialisation would otherwise be impossible or inexpedient.”;*

26) correction of a clerical error in § 17(1) and assignment of the following content to it:

*“The Director takes a decision on the commercialisation of the Result within three months from the date of submission of the declaration referred to in § 10(6), subsequently conveying this decision in written form to the Creator and to the Research Support Department.”;*

27) correction of a clerical error in § 17(3) and assignment of the following content to it:

*“In the event of a decision by the Director on non-commercialisation, or after the ineffective expiry of the 3-month period, the Institute is obliged, within 30 days, to present to the Creator or the Creator Team an offer to conclude an unconditional contract, for consideration, for the transfer of the rights to the Results, together with the information, technical experience and works, and with the ownership of the media on which this information has been recorded. The remuneration of the Institute under the contract shall not exceed 5% of the average monthly remuneration for work in the national economy in the preceding year, as announced by the President of Statistics Poland.”;*

28) amendment to the content of § 19(1) of the Regulation, which now reads as follows:

*“Employees, Doctoral Students and Collaborators use the Institute’s Resources for the purpose of carrying out research and development work that has been notified and accepted for implementation within the Institute by the appropriate body of the Institute on the basis of separate rules applicable at the Institute.*

*2. Employees, Doctoral Students, Collaborators and third parties may use the Institute’s Resources for a fee for purposes other than those indicated in paragraph 1 above.”;*

29) amendment to the content of § 20(1) of the Regulation, which now reads as follows:

*“The Institute may provide scientific research services to third parties.”;*

30) amendment to the content of § 20(3) of the Regulation, which now reads as follows:

*“The provision of scientific research services to third parties requires the prior consent of the Director and cooperation with the designated employees of the Institute. The detailed procedure in this respect is specified in a Director’s Order.”;*

31) amendment to the content of § 20(4) of the Regulation, which now reads as follows:

*“Remuneration for conducting research is determined taking into account the remuneration for the use of the Resources on the terms specified in the order referred to in paragraph 3.”;*

32) amendment to the content of § 20(5) of the Regulation, which now reads as follows:

*“§ 10 of the Regulation shall apply accordingly to scientific research services provided to third parties.”;*

33) amendment to the content of § 21(2) of the Regulation, which now reads as follows:

*“A breach of the provisions of the Regulation constitutes, in particular, a breach of the employee obligations regulated in the Act of 26 June 1974 – Labour Code (Journal of Laws of 2020, item 1320, as amended), entailing the consequences specified in the provisions of the PAS Act and the Labour Code”;*

34) amendment to the content of § 21(3) of the Regulation, which now reads as follows:

*“In matters not regulated in the Regulation, generally applicable provisions shall apply, in particular:*

- a) the Act of 30 April 2020<sup>1</sup> on the Polish Academy of Sciences (Journal of Laws of 2019, item 1183, as amended),*
- b) the Act of 4 April 1994 on copyright and related rights (Journal of Laws of 2019, item 1231, as amended),*
- c) the Act of 30 June 2000 – Industrial Property Law (Journal of Laws of 2020, item 286, as amended),*
- d) the Act of 23 April 1964 – Civil Code (Journal of Laws of 2019, item 1145, as amended),*
- e) the Act of 16 April 1993 on combating unfair competition (Journal of Laws of 2019, item 1010, as amended),*
- f) the Act of 26 June 2003 on the legal protection of plant varieties (Journal of Laws of 2018, item 432, as amended).”;*

35) correction of a clerical error by correcting the erroneously duplicated numbering of Article 21 to Article 22,

36) amendment to the content of § 22(2) of the Regulation, which now reads as follows:

*“The provisions of the Regulation shall apply to all undertakings encompassing research and development work, and to applications for Industrial Property Rights, commencing or filed after the date of entry into force of the Regulation.”*

## **§ 2**

In order to facilitate the use of the Regulation, its consolidated text is introduced, constituting an annex to this resolution.

## **§ 3**

The resolution enters into force on the date of its adoption.

Chairperson of the Scientific Council  
of the Institute of Agrophysics, PAS in Lublin

Prof. dr hab. Wiesław Oleszek  
corresponding member of PAS

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<sup>1</sup>Translator’s note: the Polish original reads “30 kwietnia 2020 r.” (30 April 2020); the correct date of the Act on the Polish Academy of Sciences is 30 April 2010, as cited elsewhere in this resolution. Translated faithfully to the source.