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**EXAMEN DE LA CONFORMITÉ DE LA LOI SUR LA PROTECTION DES  
OBTENTIONS VÉGÉTALES DE BOSNIE-HERZÉGOVINE  
AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

*Document établi par le Bureau de l'Union*

Introduction

1. Dans une lettre datée du 2 octobre 2008, adressée au secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV), M. Milad Zeković, directeur de l'Office de protection phytosanitaire de Bosnie-Herzégovine, demande l'examen de la loi sur la protection des obtentions végétales de Bosnie-Herzégovine (ci-après dénommée "loi"), qui a été adoptée par le Parlement le 27 juillet 2004 (Journal officiel de B&H, n° 46/04), du point de vue de sa conformité avec l'Acte de 1991 de la Convention de l'UPOV (ci-après dénommé "Acte de 1991"). Cette lettre est reproduite dans l'annexe I du présent document.

2. L'annexe II contient une traduction en anglais de la loi, fournie par le Gouvernement de Bosnie-Herzégovine. Il sera parfois nécessaire de vérifier l'exactitude de la traduction et la terminologie employée par rapport au texte original. En attendant que ces vérifications soient effectuées, il n'est pas possible de savoir si les incompatibilités apparentes avec l'Acte de 1991 résultent d'une traduction inexacte ou proviennent du texte original de la loi.

3. L'article 34.3) de l'Acte de 1991 dispose que "[t]out État qui n'est pas membre de l'Union ou toute organisation intergouvernementale demande, avant de déposer son instrument d'adhésion, l'avis du Conseil sur la conformité de sa législation avec les dispositions de la présente convention. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé."

#### Fondement de la protection des obtentions végétales en Bosnie-Herzégovine

4. En Bosnie-Herzégovine, la protection des obtentions végétales est régie par la loi. On trouvera ci-après une analyse de cette loi dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

#### Article premier de l'Acte de 1991 : Définitions

5. La définition du terme "obteneur", énoncée à l'alinéa a) de l'article 2 et dans la première phrase ainsi qu'au paragraphe 4 de l'article 12 de la loi, ne correspond pas à la définition dudit terme au point iv) de l'article premier de l'Acte de 1991.

6. Il est dit à l'article 2.a) de la loi que "L'obteneur d'une variété est une personne physique qui crée, découvre ou met au point une variété indépendamment d'autres personnes physiques ou conjointement avec elles". Le terme "physique" après "personne" semble exclure les personnes morales, ce qui n'est pas le cas selon le point iv) de l'article premier de l'Acte de 1991.

7. À l'article 2.a) de la loi (voir également les articles 12.2) et 3) de la loi) figurent les termes "découvre ou met au point". Il est question, au point iv) de l'article premier de l'Acte de 1991, de la personne qui "découvre et met au point".

8. La traduction de la définition du terme "variété" doit être vérifiée par rapport à la version originale de la loi.

9. L'article 2 de la loi contient également les définitions suivantes :

"[...]

b) Le détenteur du droit est une personne physique ou morale habilitée à présenter une demande de protection d'une variété (ci-après dénommée "demande")

c) Le demandeur est la personne physique ou morale qui a présenté la demande.

d) Le détenteur du droit est une entité physique ou morale qui a acquis le droit d'obtention de la plante du fait de sa protection.

[...]

g) Une variété protégée est une variété pour laquelle une décision en matière de protection a été prise. Elle est définie par une description officielle de la variété, par un échantillon protégé, et elle est dénommée de la façon prescrite par la présente loi.

h) Le matériel de la variété protégée est tout plant ou le produit de la variété protégée, respectivement, pouvant être utilisé pour la propagation ultérieure de ladite variété.

i) Un échantillon protégé est un échantillon officiel d'un plant de la variété protégée."

10. Les définitions des termes “détenteur de droit” à l’article 2.b) de la loi, du terme “demandeur” à l’article 2.c) de la loi et des termes “détenteur du droit d’obtention” à l’article 2.d) de la loi doivent être clarifiées par rapport à la définition du terme “obtenteur” figurant à l’article 1.iv) de l’Acte de 1991. Cette clarification entraînera la modification d’autres dispositions de la loi.

11. La définition du terme “matériel” figurant à l’article 2.h) de la loi ne semble pas couvrir la totalité du champ sémantique des termes “produit de la récolte” figurant aux articles 6.1), 14.2) et 16 de l’Acte de 1991, et en conséquence, dans les dispositions correspondantes de la loi (articles 5, 15 et 17). L’Acte de 1991 est précis en ce qui concerne le matériel de la variété faisant l’objet de différentes dispositions, et il définit le terme “matériel” uniquement aux fins du paragraphe 1) de l’article 16 de l’Acte de 1991. Une telle définition ne figure pas à l’article 17 de la loi.

#### Article 2 de l’Acte de 1991 : Obligation fondamentale des Parties contractantes

12. Sous réserve de la décision concernant la loi et l’analyse figurant dans le présent document, il est dit à la première phrase de l’article premier de la loi que “[l]a présente loi établit la procédure relative à la protection de nouvelles variétés de plantes ainsi qu’à l’acquisition et à la protection de droits d’obtention” conformément à l’obligation fondamentale des Parties contractantes en vertu de l’article 2 de l’Acte de 1991.

#### Article 3 de l’Acte de 1991 : Genres et espèces devant être protégés

13. Il est dit à la deuxième phrase de l’article premier de la loi que “[c]onformément aux dispositions de la présente loi, toutes les variétés des familles et espèces de plantes, y compris les hybrides de familles et d’espèces, peuvent être protégées”. Sous réserve de la vérification de la traduction de cette disposition par rapport à la version originale de la loi, la loi semble s’appliquer à tous les genres et à toutes les espèces de plantes visés à l’article 3.2) de l’Acte de 1991.

#### Article 4 de l’Acte de 1991 : Traitement national

14. L’Article 13.2) et 3) de la loi stipule que :

“Une personne morale ou physique étrangère jouit en Bosnie-Herzégovine des mêmes droits qu’une personne morale ou physique nationale à condition d’être soumise aux conventions et traités internationaux signés par la Bosnie-Herzégovine ou auxquels adhère ce pays, respectivement, sous conditions de réciprocité réelle, la charge de la réciprocité incombant à celle des parties qui l’invoque.”

“Suivant la procédure suivie vis-à-vis de la direction, la personne physique ou morale étrangère exerce son droit découlant de la présente loi par l’intermédiaire de son agent agréé qui est une personne physique résidant en Bosnie-Herzégovine, ou d’une personne morale ayant son siège en Bosnie-Herzégovine.”

15. Une fois la Bosnie-Herzégovine devenue membre de l'UPOV, les dispositions prévues à l'article 13.2) et 3) de la loi lui permettront de se conformer aux dispositions de traitement national figurant à l'article 4 de l'Acte de 1991.

Articles 5 à 9 de l'Acte de 1991 : Conditions de protection, nouveauté, distinction, homogénéité et stabilité

16. Les articles 4 à 8 de la loi contiennent des dispositions relatives aux conditions de protection. L'exactitude de la traduction de ces dispositions et la terminologie employée devront parfois être vérifiées par rapport à la version originale de la loi. On trouvera quelques exemples dans les paragraphes suivants.

*Nouveauté*

17. En ce qui concerne le critère de nouveauté cité à l'article 6.1) de l'Acte de 1991, les termes suivants appellent une vérification:

i) il convient de déterminer si les termes "vendu ou faisant l'objet d'une exploitation économique" et "la vente ou l'exploitation économique de la variété", figurant à l'article 5.1) et 2) de la loi, correspondent, dans la version originale, aux termes "vendu ou remis à des tiers [...] aux fins de l'exploitation de la variété"; et

ii) il convient de déterminer si les termes "détenteur de droit" figurant à l'article 5.1) et 2) de la loi correspondent dans le texte original au terme "obtenteur".

18. En ce qui concerne la disposition de l'article 6.1)ii) de l'Acte de 1991 relative à la période de six ans dans le cas "des arbres et de la vigne", l'article 5.1) de la loi fait état d'"un grand nombre d'années dans les cas des plantes feuillues et de la vigne".

19. Si les termes originaux de l'article 5 de la loi cités plus haut ne correspondent pas aux termes figurant à l'article 6.1) de l'Acte de 1991, le texte de l'article 5 de la loi devra être modifié en conséquence.

20. L'article 5.3) de la loi stipule que :

"Les plants de la variété constamment utilisés pour l'obtention d'une autre variété nouvelle, à savoir hybride, sont considérés comme remis dans un but lucratif, lorsque les plantes ou leurs éléments, appartenant à une autre variété, sont remis."

21. L'exactitude de la traduction de l'article 5.3) de la loi devrait être vérifiée, étant donné que la terminologie employée ne correspond pas à celle de l'article 6 de l'Acte de 1991 de la Convention de l'UPOV.

22. En ce qui concerne l'article 6.2) de l'Acte de 1991, l'article 53 de la loi institue un régime transitoire de nouveauté pour les "Variétés de création récente", selon les modalités suivantes :

"1. Les procédures d'assurance de la variété qui sont en cours lors de l'entrée en vigueur de la présente loi se poursuivent en vertu de ladite loi.

“2. À titre exceptionnel par rapport à la disposition du paragraphe premier de la présente loi, la variété, qui n’est pas nouvelle à la date d’entrée en vigueur de la présente loi, peut être protégée si:

- a) la demande de protection de la variété a été présentée avant l’entrée en vigueur de la présente loi,
- b) la variété répond aux autres exigences stipulées par l’article 4 de la présente loi et
- c) est protégée ou fait, dans l’un des États signataires, l’objet d’une procédure de protection également signée par la Bosnie-Herzégovine ou à laquelle adhère ce pays, et la procédure est menée à son terme avec la protection de la variété.

“3. En cas d’octroi du droit d’obtention en vertu du paragraphe 2 de la présente loi, le droit d’obtention dure, au plus, 20 ou 25 années supplémentaires, respectivement, dans le cas des plantes ligneuses à compter de la date d’octroi du droit d’obtention dans l’État signataire dans lequel la variété a bénéficié pour la première fois d’une protection.”

### *Distinction*

23. En ce qui concerne le critère de distinction cité à l’article 7 de l’Acte de 1991, il conviendrait de vérifier par rapport au texte original de la loi si :

- i) les termes “identifiable” et “identifié” figurant aux articles 4 et 6 de la loi correspondent aux termes “distinct” et “distinction”;
- ii) les termes “la variété qui est généralement connue” correspondent aux termes “variété dont l’existence est notoirement connue”.

### *Homogénéité*

24. En ce qui concerne le critère d’homogénéité cité à l’article 8 de l’Acte de 1991, l’article 7 de la loi contient les termes “caractères très importants pour la rendre différente des autres variétés”, au lieu des termes “caractères pertinents”.

### *Stabilité*

25. En ce qui concerne le critère de stabilité cité à l’article 9 de l’Acte de 1991, l’article 8 de la loi contient le terme “invariable” au lieu du terme “stabilité” et les termes “caractères de la plus haute importance pour la distinguer” au lieu des termes “caractères pertinents”.

### Article 10 de l’Acte de 1991 : Dépôt de demandes

26. Les articles 13 et 24 à 26 de la loi contiennent des dispositions concernant le dépôt de demandes.

27. L’article 25.1)g) de la loi stipule que la demande doit préciser la “description de si la variété a été obtenue par une technique de génie génétique et dans l’affirmative, être accompagnée du permis de tester ladite variété conformément à la réglementation applicable aux organismes génétiquement modifiés”. Il est à noter que l’article 18 de l’Acte de 1991 stipule que : “[l]e droit d’obteneur est indépendant des mesures adoptées par une Partie contractante en vue de réglementer sur son territoire la production, le contrôle et la commercialisation du matériel des variétés, ou l’importation et l’exportation de ce matériel. En tout état de cause, ces mesures ne devront pas porter atteinte à l’application des dispositions de la présente Convention”.

Article 11 de l'Acte de 1991 : Droit de priorité

28. L'article 27 de la loi contient des dispositions sur le droit de priorité.

29. Les dispositions de la deuxième phrase de l'article 11.2) et celles de l'article 11.3) de l'Acte de 1991 n'ont pas été incorporées dans la loi.

Article 12 de l'Acte de 1991 : Examen de la demande

30. Les articles 29 à 32 de la loi contiennent des dispositions relatives à l'examen de la demande.

31. L'article 31.1)a), 2), 3)a) et 5) de la loi contient les éléments suivants qui ne figurent pas à l'article 12 de l'Acte de 1991 : "vérifier si la variété fait partie d'une unité systématique, c'est-à-dire d'une famille ou espèce d'herbe spécifiée dans la demande"; "L'évaluation professionnelle est effectuée sur la base des résultats des tests de la variété réalisés sur le terrain ou en laboratoire"; "si les tests sont effectués dans des conditions agro-écologiques comparables selon les procédures et méthodes prescrites"; "la direction peut utiliser les résultats de tests de la variété communiqués par un autre pays aux caractéristiques agro-écologiques comparables".

Article 13 de l'Acte de 1991 : Protection provisoire

32. Sous réserve de modifications concernant l'étendue du droit de l'obtenteur (voir plus bas), de la clarification des termes "détenteur de droit" et d'une vérification tendant à déterminer si les termes "indemnité suffisante" correspondent, dans le texte original, aux termes "rémunération équitable", l'article 18.2) de la loi contient des dispositions en matière de protection provisoire correspondant à l'article 13 de l'Acte de 1991.

Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

33. Les articles 14 et 15 de la loi contiennent des dispositions relatives à l'étendue du droit d'obtenteur.

34. L'exactitude de la traduction de l'article 15 de la loi devrait être vérifiée par rapport au texte original de la loi, et les exemples suivants d'utilisation de termes différents de ceux figurant dans l'article 14 de l'Acte de 1991 sont fournis à titre indicatif:

- i) "licence" au lieu d'"autorisation";
- ii) "plants" au lieu de "matériel de reproduction";
- iii) "produits" au lieu de "produit de la récolte";
- iv) "possibilité appropriée d'acquérir le droit d'obtention" au lieu de "possibilité raisonnable d'exercer son droit".

35. En plus de la vérification susmentionnée de la traduction par rapport au texte original de la loi, les éléments suivants de l'article 14 de l'Acte de 1991 font défaut :

- i) l'"offre à la vente" citée à l'article 14.1)a)iii);

ii) bien qu'il n'existe pas dans la loi de disposition correspondant à l'article 14.1)b) de l'Acte de 1991, qui stipule que "[l]'obteneur peut subordonner son autorisation à des conditions et à des limitations", l'article 40 de la loi intitulé "Exploitation commerciale concernant les licences" semble porter sur les licences commerciales;

iii) la première phrase de l'article 15.3) de la loi stipule que "[l]a licence du détenteur pour les actes mentionnés au paragraphe premier est également nécessaire si elle concerne", la loi semble exclure l'application des dispositions contenues dans l'article 14.2) de l'Acte de 1991 relatives aux "Actes concernant le produit de la récolte" à l'article 15.3) de la loi concernant des variétés essentiellement dérivées et certaines autres variétés. Une telle exclusion serait contraire à la disposition correspondante de l'Article 14.5)a) de l'Acte de 1991;

iv) les dispositions de l'article 14.5)c) de l'Acte de 1991.

### Article 15 de l'Acte de 1991 : Exceptions au droit d'obteneur

36. L'exactitude de la traduction de l'article 16 de la loi concernant les exceptions au droit d'obteneur devrait être vérifiée par rapport au texte original de la loi. L'article 16 de la loi prévoit que :

"1. On estime qu'il n'y a pas atteinte au droit d'obteneur si :

a) la variété protégée est utilisée ou cédée :

1) à des fins privées non lucratives;

2) à des fins expérimentales ou scientifiques;

3) pour l'obtention de nouvelles variétés.

b) si la nouvelle variété est utilisée à des fins économiques citées à l'alinéa a) du troisième paragraphe du présent Article, à ceci près qu'il s'agit d'une variété dérivée;

"c) le produit d'une variété protégée de certaines espèces de plantes, récolté par les producteurs dans leur propre exploitation agricole, est utilisé pour un ensemencement ultérieur dans ladite exploitation et le producteur exerçant cette option verse au détenteur de droit une compensation appropriée. La compensation est appropriée si elle est nettement inférieure au montant calculé pour la production sous licence de plants de la variété dans la même région.

"2. Les producteurs profitant de la possibilité de procéder à un ensemencement ultérieur versent au détenteur de droit d'obtention une compensation appropriée conformément à l'alinéa c) du paragraphe premier du présent article et communiquent au détenteur du droit d'obtention, à sa demande, toutes les informations concernant un ensemencement ultérieur.

"3. Les petits exploitants sont exemptés du versement d'une compensation appropriée au détenteur du droit d'obtention en vertu de l'alinéa c) du paragraphe premier du présent article.

"4. La direction détermine l'espèce de plante pour laquelle une compensation est accordée au détenteur du droit d'obtention en vertu de l'alinéa c) du paragraphe premier du présent article, ainsi que les critères applicables aux petits exploitants."

37. Les dispositions de l'article 16.1)a)3) et 1)b) de la loi semblent porter sur l'exemption accordée à l'obteneur, mais ne correspondent pas à l'exception au droit d'obteneur visée à l'article 15.1)iii) de l'Acte de 1991.

38. La loi contient à l'article 16.1)c), 2), 3) et 4) des dispositions sur l'exception facultative prévue à l'article 15.2) de l'Acte de 1991.

#### Article 16 de l'Acte de 1991 : Épuisement du droit d'obteneur

39. L'article 17 de la loi intitulé "Exceptions" semble inclure certaines dispositions de l'article 16 de l'Acte de 1991 intitulé "Épuisement du droit d'obteneur". L'exactitude de la traduction de l'article 17 de la loi devrait être vérifiée par rapport au texte original de la loi.

40. Les dispositions suivantes de l'article 17 de la loi ne correspondent pas à celles de la première phrase de l'article 16 de l'Acte de 1991 :

"Le détenteur du droit d'obtention n'a pas besoin de licence pour les actes visés au paragraphe premier de l'article 15 de la présente loi, ni pour la production d'une variété protégée dérivée d'une variété protégée, à condition d'avoir fourni les plants de la variété lui-même ou par l'intermédiaire d'une personne autorisée, à moins que lesdits actes ne comprennent: [...]"

41. L'Acte de 1991 est précis en ce qui concerne le matériel de la variété auquel se rapportent les différentes dispositions et définit le "matériel" uniquement aux fins du paragraphe premier de l'article 16 de l'Acte de 1991. Cette définition ne figure pas à l'article 17 de la loi (voir paragraphe 11 plus haut).

#### Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obteneur

42. L'article 41 de la loi contient des dispositions concernant une "licence forcée". L'article 41.1) de la loi fait mention du motif d'intérêt public correspondant à la stipulation de l'article 17.1) de l'Acte de 1991.

43. Il est dit à l'article 41.8) de la loi que "le détenteur du droit d'obtention a droit à une compensation". L'article 17.2) de l'Acte de 1991 stipule que l'obteneur doit "recevoir une rémunération équitable".

#### Article 18 de l'Acte de 1991 : Réglementation économique

44. Sous réserve d'une clarification du texte de l'article 25.1)g) de la loi (voir paragraphe 27 plus haut), la loi ne semble pas contenir de dispositions contraires à l'article 18 de l'Acte de 1991.

#### Article 19 de l'Acte de 1991 : Durée du droit d'obteneur

45. L'article 18.1) de la loi contient, au sujet de la durée du droit d'obteneur, des dispositions qui correspondent à celles de l'article 19 de l'Acte de 1991.



Article 20 de l'Acte de 1991 : Dénomination de la variété

46. Les articles 10, 11 et 37 de la loi contiennent des dispositions relatives aux dénominations des variétés. L'exactitude de la traduction devrait être vérifiée par rapport au texte original de la loi.

47. Les dispositions prévues par les articles 10.4) et 11.3) de la loi ne correspondent pas à celles de l'article 20.3) de l'Acte de 1991 concernant l'enregistrement et/ou le refus de la dénomination.

48. Les dispositions de l'article 10.2)j) de la loi, qui stipule qu'aucune dénomination ne doit être "contraire à la réglementation de la propriété industrielle", ne correspondent pas à celles de l'article 20.4) de l'Acte de 1991 concernant les "droits antérieurs des tiers".

49. L'Acte de 1991 ne contient pas de disposition correspondant à l'article 11.2) de la loi. L'article 11.2) de la loi stipule que :

"La disposition du paragraphe 2 n'est pas valable si un plant de la variété protégée est utilisé à des fins non commerciales dans le secteur privé."

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

50. L'article 35 de la loi intitulé "Décision déclarée nulle et non avenue" cite les motifs de nullité du droit d'obtenteur. Des éléments des motifs de nullité en vertu de l'article 21.1) de l'Acte de 1991 semblent figurer dans l'article 35.1)a), b) et c) de la loi. L'exactitude de la traduction devrait néanmoins être vérifiée par rapport à la version originale de la loi.

51. Pour être conformes à la disposition figurant à l'article 21.2) "Exclusion de tout autre motif" de l'Acte de 1991, les motifs de nullité cités à l'article 35.1)d), e), f) et g) de la loi, qui semblent s'apparenter à des motifs de déchéance, devraient faire l'objet d'un article distinct concernant la déchéance de l'obtenteur.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

52. Dans son paragraphe 1)d), e), f) et g), l'article 35 "Déclaration d'une décision nulle et non avenue" de la loi semble citer les motifs de déchéance de l'obtenteur.

53. Pour être conformes à la disposition figurant à l'article 22.2) "Exclusion de tout autre motif" de l'Acte de 1991, les motifs de déchéance devraient être retirés de l'article 35 de la loi, pour faire l'objet d'un article distinct concernant la déchéance de l'obtenteur.

54. L'exactitude de la traduction devrait être vérifiée par rapport à la version originale de la loi, et en particulier, la référence, dans l'article 35.1)g), à l'"article 43" de la loi, semble en fait renvoyer à l'article 42 de ladite loi. Il semble également que les alinéas d) et e) de l'article 35.1) de la loi contiennent une répétition qui est absente dans les dispositions correspondantes de l'alinéa a) et du point i) de l'alinéa b) de l'article 22.1) de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la Convention

55. En ce qui concerne l'obligation de "prévoir les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), les articles 45 à 51 de la loi évoquent les recours civils et administratifs ainsi que les sanctions et amendes disponibles. Comme l'expliquent les paragraphes 34, 35, 36 et 37 du présent document, les dispositions de la loi concernant le champ du droit d'obtenteur et les exceptions à celui-ci appellent un certain nombre d'éclaircissements et de modifications pour correspondre aux dispositions de l'Acte de 1991 de la Convention UPOV. Ces modifications entraîneront des changements dans le texte des articles 46.3) et 50.1) de la loi concernant le non-respect du droit d'obtenteur. Des changements sont également à attendre en ce qui concerne l'article 51 de la loi relative aux sanctions administratives ou aux amendes pour non-respect des règles ou utilisation irrégulière des dénominations des variétés (voir paragraphes 47, 48 et 49 plus haut).

56. Conformément à l'obligation prévue à l'article 30.1)ii) de l'Acte de 1991, l'article 33.1) de la loi stipule que :

"Si, sur la base de l'évaluation professionnelle prévue à l'article 31 de la présente loi, il est établi que le demandeur a satisfait à toutes les exigences, la direction rendra publique la décision relative à la protection de la variété et la publiera dans son journal officiel."

57. En ce qui concerne l'obligation en vertu de l'article 30.1)iii) de l'Acte de 1991, l'article 19 de la loi stipule que :

"1. La direction a les compétences suivantes :

[...]

"c) publie au journal officiel les informations relatives aux demandes, y compris la proposition concernant une dénomination de variété,

"d) maintient les décisions négatives concernant les demandes, l'enregistrement et les modifications ultérieurement apportées à l'enregistrement de la demande, le retrait des demandes, les décisions concernant la protection des variétés et leurs modifications ultérieures, et d'autres informations officielles,

[...]

"2) La direction publie au journal officiel les informations prévues au paragraphe premier du présent article."

58. L'article 19 de la loi est conforme à l'obligation de publier des informations sur les demandes et l'octroi de droits d'obtenteur et les dénominations proposées, comme le stipule l'article 30.1)iii) de l'Acte de 1991.

59. Comme le stipulent les articles 20.3) et 30.1)iii) de l'Acte de 1991, les décisions publiées au sujet des droits d'obtenteur devraient également comprendre les informations relatives aux dénominations approuvées.

Conclusion générale

60. De l'avis du Bureau de l'Union, l'analyse faite dans le présent document montre que la loi contient certaines dispositions de l'Acte de 1991. Cette analyse a cependant permis de repérer un certain nombre de dispositions de l'Acte de 1991 qui ne figurent pas dans la loi ou qui ne correspondent pas audit acte. En outre, certaines dispositions de la loi font apparaître une incohérence interne ou nécessitent des précisions. De plus, certains passages du document laissent à penser que l'exactitude de la traduction et la terminologie employée devront être vérifiées par rapport à la version originale de la loi.

61. En conclusion, pour que le Gouvernement de Bosnie-Herzégovine soit en mesure de donner effet aux dispositions de l'Acte de 1991, comme le prévoit l'article 30.2), la loi devra incorporer les dispositions supplémentaires et les modifications proposées dans le présent document.

62. *Le Conseil est invité à :*

*a) prendre note de l'analyse faite dans le présent document;*

*b) recommander à la Bosnie-Herzégovine d'incorporer dans la loi les dispositions supplémentaires et les modifications signalées dans le présent document, et recommander que dès que ces dispositions supplémentaires et ces modifications auront été incorporées dans la loi, la loi ainsi modifiée soit soumise au Conseil pour examen, conformément à l'article 34.3) de l'Acte de 1991;*

*c) demander au Bureau de l'Union d'offrir son concours au Gouvernement de Bosnie-Herzégovine, à la première occasion, pour la rédaction des dispositions supplémentaires et des modifications nécessaires; et*

*d) autoriser le secrétaire général à informer le Gouvernement de Bosnie-Herzégovine de cette décision.*

[Les annexes suivent]

**Traduction d'une lettre datée du 2 octobre 2008**

**adressée par :** M. Milad Zeković, directeur de l'Office de protection phytosanitaire de Bosnie-Herzégovine

**à :** M. Kamil Idris, secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV)

Monsieur le Secrétaire général,

J'ai l'honneur de vous informer que le 27 juillet 2004, le Parlement de Bosnie-Herzégovine a adopté la loi sur la protection des obtentions végétales (Journal officiel de B&H, No. 46/04).

La Bosnie-Herzégovine envisage d'adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Convention UPOV).

Conformément aux dispositions de l'Article 34.3) de la Convention UPOV, je saurais gré au Conseil de l'UPOV d'examiner la conformité de la loi sur la protection des obtentions végétales de Bosnie-Herzégovine avec les dispositions de la Convention UPOV.

Veillez agréer, ...

(Signé : Milad Zeković)

[L'annexe II suit]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /  
Nur auf Englisch / En Inglés solamente]

**LAW**  
**ON PROTECTION OF NEW VARIETIES OF PLANTS**  
**OF BOSNIA AND HERZEGOVINA**

Pursuant to Article IV 4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at its 42<sup>nd</sup> session of the House of Representatives, held on 27 July 2004, and at the session of the House of Peoples, held on 9 July 2004, passed.

**I - General Provisions**

**Article 1**  
**Content of the Law**

1. This Law establishes the procedure for protection of new varieties of plants and acquisition and protection of breeding rights. In accordance with the provisions of this Law, all the varieties of families and species of plants, including hybrids of families and species, may be protected.

**Article 2**  
**Terms meaning**

1. The terms used in this Law shall have the following meanings:
- a) Breeder of variety is a physical person who breeds, discovers or develops a variety independently or jointly with other physical persons.
  - b) Right holder is a physical or legal entity who is entitled to file an application for a variety protection (hereinafter referred to as: the Application)
  - c) Applicant is a physical or legal entity who has filed the application.
  - d) Breeding right holder is a physical or legal entity who has acquired the plant breeding right through protection.
  - e) Breeding right is a common expression provided for by Article 15 of this Law.
  - f) A variety is a group of plants or parts thereof, provided that complete plants can be again produced from them within the lowest botanic classification which can, regardless of whether it meets other requirements for protection, be:
    - 1) defined by its characters originating from a certain genotype or a combination of genotypes,
    - 2) distinguished among any other groups of plants at least by one of these characters, and
    - 3) considered as a systematic unit if these characters are not changed in the course of plant propagation.
  - g) Protected variety is a variety for which a decision on protection has been issued. It is defined by an official description of the variety, by a protected sample, and is denominated in the manner as prescribed by this Law.

- h) Material of the protected variety is any seedling or the product of the protected variety, respectively, which could be used for further propagation of the variety.
- i) Protected sample is an official sample of a seedling of the protected variety.
- j) The relevant bodies, in the light of the provisions of this Law, are: the Management of Bosnia and Herzegovina for protection of plants health (hereinafter referred to as: the Management) and relevant bodies of the Entities and Brčko District of Bosnia and Herzegovina (hereinafter referred to as: the relevant bodies of Entities and Brčko District).

### **Article 3** **Commission for addition to the National variety list**

The procedure for protection of a new variety, applications register for protection of a new variety (hereinafter referred to as: Applications Register) and the Protected Varieties Register are maintained by the Commission for addition to the National variety list (hereinafter referred to as: the Commission) as a body within the Management.

## **II – REQUIREMENTS FOR VARIETY PROTECTION**

### **Article 4** **Protection of varieties**

- 1. A variety is protected by acquisition of the breeding right.
- 2. Any variety may be protected, provided it is:
  - a) new
  - b) identifiable
  - c) uniformed
  - d) invariable and
  - e) denominated in compliance with the provisions of this Law.

### **Article 5** **A new variety**

- 1. It shall be considered that a variety is new on the date of application if it has been sold or economically exploited with the permission of the right holder in Bosnia and Herzegovina at the most for one year prior to the date of filing the application, and for four years out of Bosnia and Herzegovina, prior to the date of filing the application; in the event of many year leaf plants and grape vine not more than six years prior to the date of filing the application.
- 2. Sale or economic exploitation of variety, in the light of the preceding paragraph, shall not be considered to be the:
  - a) use or delivery of the variety for profitable aims without permit or knowledge of the right holder;
  - b) contracted right assignment of the variety;
  - c) contracted economy, propagation, seed processing or warehousing of the seedlings or products of the variety for the right holder, provided the right holder has kept the sole right of ownership of the propagated seedlings, products of the variety or the products from the same;

- d) testing of the variety in the field or laboratory and, respectively, experimental production for the purpose of determination of the use value if so done by the right holder or his/her authorized person;
  - e) official testing of the variety for registration in the Register of Varieties or the risk assessment of the genetically changed varieties;
  - f) sale of products originating as by-products or, respectively, surpluses in development of a new variety, provided that these products are intended for final use and that on this occasion the variety is not specified.
3. Seedlings of the variety which is constantly used for breeding of other new variety, that is, hybrid, shall be considered to be delivered for profitable purposes, when the plants or their parts, belonging to other variety, are delivered.

### **Article 6** **Identified variety**

1. A variety is identifiable if it is possible to distinguish it clearly from any other variety which is generally known to the date of filing the application.
2. A variety shall be generally known, in particular if:
  - a) it was to that date protected in any country or registered in the List of Varieties;
  - b) an application to protect it or register it in the List of Varieties has been filed in any country to that date and the procedure is finished by the variety protection or its registration in the List of Varieties;
  - c) the seedlings of the variety or its product has already been on the sale or used for profitable purposes.

### **Article 7** **Uniformed variety**

The variety is uniformed if it has sufficiently and specifically expressed those characteristics which are of great importance for making it different from other varieties, despite the aberrations which may be expected for the specificity of its propagation.

### **Article 8** **Invariable variety**

A variety is invariable if its characteristics, being of utmost importance to distinguish it, after more successive propagations and, respectively, in case of particular cycle of propagation, are not changed.

### **Article 9** **Protected variety**

The protected variety shall be denominated which is a sign of its difference.

## **Article 10**

### **Name registration**

1. Any designation which makes it possible to distinguish it, may be registered as the name of the protected variety and it may be a word, a combination of words, a combination of words and numbers or combination of letters and numbers, unless it was otherwise prescribed by this Law.
2. As the name of a protected variety, there shall not be a designation which:
  - a) is not appropriate for the language reasons;
  - b) makes it impossible to identify the variety;
  - c) consists only of numbers, except where it is already a routine practice;
  - d) is the same or similar to the name of any generally known variety of the same species or related species of plants while in use; this provision is also exceptionally valid after termination of use of this variety, if this variety was specifically denominated;
  - e) makes confusion in regard to the sources, characters, value, use, identity or geographical origin, respectively.
  - f) consists of botanic or general name, family or species, or includes such a name which could bring in a confusion;
  - g) includes the words such as “variety, cultivated species, form, hybrid, cross-species” or translation of these words;
  - h) makes confusion in regard to the plant variety breeder or the right holder;
  - i) is contrary to public order or morale;
  - j) is contrary to the regulations on industrial ownership;
3. If a certain variety is already protected or registered in the Variety List, or if the application was filed to be protected or registered in any signatory state of the international treaties or conventions of which Bosnia and Herzegovina is also a signatory or accessed it. Only the name of the variety which was registered, entered on the Variety List or stated in the application in other country, may be registered in Bosnia and Herzegovina.
4. Exceptionally, a certain variety may be registered in Bosnia and Herzegovina under some other name only if the use of the original name is inappropriate for the language reasons or because it was contrary to the public order and morale.
5. At the proposal of the Commission, the Management shall define the related variety under paragraph 2.d) of this Article and a more detailed requirements for registration of the variety.

## **Article 11**

### **Name of protected variety**

1. The use of the name of a protected variety is binding. The seedlings of the protected variety may be on sale only if the name of the protected variety is stated.
2. The provision of paragraph 2 shall not be valid if a seedling of the protected variety is used for non-commercial purposes in private sector.



3. The protected variety shall be designated with the same registered name in all countries, except in case of aberration under Article 10 paragraph 4 of this Law.
4. In addition to registered name, the trademark or, respectively, other designation can also be used in sale of seedlings of the protected variety, provided that the registered name is quite visible and identifiable.
5. The name of the protected variety or the name which can be replaced with this name shall not be used for some other variety of the same or related plant.

### **III –HOLDERS OF RIGHT TO PROTECT VARIETY AND ACQUISITION OF BREEDER’S RIGHT**

#### **Article 12**

##### **Holders of the right to protect variety**

Holder of the right to protect variety and acquisition of breeder’s right is the variety breeder or his/her legal heir.

2. If more persons have jointly created, bred, discovered or developed a variety, the joint right to protect the variety and acquire the right belong to them and, respectively, their heirs.
3. If more persons individually created, bred, discovered or developed a variety, the breeder’s right belongs to the one who filed the application first.
4. If the breeder is employed by a legal entity, and their mutual rights and duties are governed by the employment contract, the right to acquisition is determined in accordance with this contract. On the contrary, it is implied that the provisions from the regulations on the rights of industrial ownership from work relationship referring to the patents shall be applied.

#### **Article 13**

##### **Requirements to acquire breeder’s rights**

1. The breeder’s right referred to by the preceding Article can be acquired by the right holder who is a citizen of Bosnia and Herzegovina, other physical person residing permanently in Bosnia and Herzegovina and a legal entity seated in Bosnia and Herzegovina.
2. Foreign legal or physical entity shall enjoy the same rights in Bosnia and Herzegovina as a national legal or physical entity does, provided it arises from the international treaties and conventions signed or accessed by Bosnia and Herzegovina or, respectively, under the conditions of real reciprocity; the burden of proving the reciprocity is on the one who refers to it.
3. In the procedure before the Management, the foreign legal or physical entity exercises his or her right from this Law through his or her authorized person who is a physical person residing in Bosnia and Herzegovina or a legal entity seated in Bosnia and Herzegovina.

## **IV – BREEDER’S RIGHT**

### **Article 14 Breeder’s right**

A breeder acquires the breeder’s right when a variety is protected.

### **Article 15 License**

1. The license of the breeder’s right is necessary for carrying out the following actions in regard to seedlings of a protected variety

- a) production or propagation,
- b) preparation of protected variety material for propagation
- c) selling or other forms of sale,
- d) export or import, and
- e) keeping the material of protected variety for the purposes mentioned in the preceding paragraphs.

2. In addition to the actions referred to in paragraph 1, the license of the right holder is also necessary in case of the products of protected variety only if:

- a) the product is the result of unauthorized use of seedlings of the protected variety, and
- b) the holder did not have appropriate opportunity to acquire the breeder’s right in seedlings of this variety.

3. The license of the holder for the undertakings mentioned in paragraph 1 is also necessary if it concerns:

- a) the varieties derived from the protected variety, except if the protected variety is derived in itself;
- b) the varieties which he or she could not distinguish from the protected variety;
- c) the varieties or, respectively, hybrids of which the breeding requires a permanent use of the protected variety.

4. A certain variety is considered to be a derived variety, if:

- a) its origin is a prevailing original variety or the variety which is mainly derived from the original variety,
- b) it can be distinguished from the original variety, and
- c) it is, by its expressed essential characteristics, which define the genotype or a combination of genotypes of the original variety, similar to the original variety, except in differences which are the result of derivation.

### **Article 16**

1. It shall be considered that the breeder's right is not breached if:
  - a) the protected variety is used or disposed with:
    - 1) in private non-profitable purposes;
    - 2) for testing or scientific purposes;
    - 3) for breeding new varieties.
  - b) if the new variety is used for economic reasons from the third paragraph, item a) of this Article, except that this variety is a derived variety;
  - c) the product of protected variety of certain species of plants, produced by the producers on own agricultural estate, is used for further seeding on the agricultural estate, and the producer exploiting this possibility shall pay the breeding right holder an appropriate compensation. The compensation is appropriate if it is significantly lower than the amount calculated for production of seedlings of the variety in the same region under the license.
2. The producers using a possibility of further seeding shall pay the breeding right holder appropriate compensation in compliance with item c) paragraph 1 of this Article and shall give the breeding right holder, at his or her request, all the information concerning further seeding.
3. Small land owners are exempted from payment of appropriate compensation to the breeding right holder under item c) paragraph 1 of this Article.
4. The Management shall determine the plant species for which an appropriate compensation is paid to the breeding right holder under item c) paragraph 1 of this Article, as well as the criteria for smaller land owners.

### **Article 17 Exceptions**

The breeding right holder does not need a license for the undertakings provided for by Article 15 paragraph 1 of this Law or for production of protected variety derived from a protected variety, provided that he or she has given the seedlings of the variety by himself or herself or by some other person authorized to do so, except that these undertakings comprise:

- a) further propagation of the protected or derived variety, or
- b) export of material of the protected or derived variety, which can be used for further propagation, to the country in which the plant families or species, to which this plant species belongs, is not possible to protect. This provision is not valid if the exported material is intended for final use.

### **Article 18 Period of breeder's right**

1. Unless this Law prescribes otherwise, the period of breeder's right lasts from the date of its acquisition to the end of twentieth calendar year, and when hop, grape vine and species of trees are concerned it last to the end of twenty-fifth calendar year which follows the year of the right acquisition.

2. Regardless to the provisions of paragraph 1, the right holder from Article 12 of this Law, who has already filed a complete application, is entitled to the adequate indemnity, if anybody, during the procedure to protect the variety, contrary to Article 15 of this Law, economically exploited or disposed of the variety applied for protection. The right holder may claim the indemnity only for the period from the date of publication of the application in the “Official Gazette of the Management of Bosnia and Herzegovina for protection of herbal health” to the date of acquisition of the breeder’s right.
3. The breeder’s right ceases to exist:
- a) by termination note of the holder of breeder’s right;
  - b) by expiration period, as determined in paragraph 1 of this Article;
  - c) by ceasing or, respectively, cancellation of the decision by which it was acquired.

## **V – PROCEDURE OF VARIETY PROTECTION**

### **1. Bodies**

#### **Article 19**

#### **Competences and tasks of the Management**

1. The Management shall have the following competences:
  - a) conduct an administrative procedure for a new variety protection and the variety denomination registration in compliance with this Law and the Law on General Administrative Procedure,
  - b) maintain the Application Register and Protected Varieties Register,
  - c) publish in the Official Gazette the information on applications including the proposal for a variety denomination,
  - d) maintain negative decisions to the applications, registration and eventual changes in the registration of application, withdrawal of applications, decisions on variety protection and its eventual changes, and other official information,
  - e) cooperate with the international organizations and associations, the state bodies and, respectively, non-governmental organization from the region of the protected new varieties,
  - f) participate technically and professionally with authorized agencies of foreign countries in the area of testing varieties and checking the maintenance of varieties,
  - g) exchange the results of testing of varieties and other information from its competence with the relevant bodies in other countries,
  - h) checking the fulfillment of obligations of the protection holder, and
  - i) perform other duties in the area of varieties protection.
- 2) The Management publishes the information provided for by paragraph 1 of this Article in the Official Gazette of Management.

### **Article 20**

#### **Commission**

1. Council of Ministers of Bosnia and Herzegovina (hereinafter referred to as: the Council of Ministers) appoints the Commission consisting of nine members, out of which three members of the Commission are proposed by relevant bodies of Entities each, two by the Management and one by Brčko District.

2) The position of the Commission is to be an expert in the procedure for variety protection, and based on the examination of application and enclosed documents it proposes a decision to the Management concerning the variety protection.

**2. Registers**  
**Article 21**  
**Content of Register**

1. The Management maintains the Applications Register and the Protected Varieties Register in compliance with the regulations.

2. The Register contains the information from the documents which serves as a basis for registration in both registers. The documents are collected in a collection of documents which is an attachment to both registers.

3. The Application of Register shall in particular contain:

- a) data on the applicant, breeder and eventual authorized representative,
- b) date of complete application,
- c) specification of plant species,
- d) proposal of temporary designation of the variety or, respectively, proposal of denomination of variety,
- e) in case of claiming priority right, specifies the country in which the application has already been filed and the date of receiving the complete application in that country,
- f) proposal for suspension or termination of the procedure, respectively,
- g) notes of courts' decisions in regard to the rights to file application.

4. The Register of insured varieties contains, in particular:

- a) plant variety and registered name of the variety, all synonyms are also entered with the name,
- b) official description of the variety or reference to the documents which contains official description of the variety and they are an integral part of the Register,
- c) in case of the variety of which breeding requires a constant use of certain additions for production of seedlings of the protected variety, the addition should specify,
- d) name and surname of breeding right holder, the breeder and any representative in the procedure,
- e) date of acquisition and termination of the variety protection and the reasons thereof,
- f) name and address of the person to whom the right to economically exploitation was transferred by the license contract,
- g) name and address of the person who was awarded a forced license, specifying the requirements for awarding and the date of termination of the right,
- h) notes on courts' decisions regarding the breeding right.

5. The Management shall keep the collection of documents concerning individual cases in original or copies for at least five years following the withdrawal or negative decision to the application or, respectively, for five years following termination of breeder's right.

6. The Management shall determine in more details the content and method of maintenance of the Register.

**Article 22**  
**Data Publicity**

1. Applications Register and Varieties Protection Register are public.
2. The Management shall enable any person who has proved the legal interests to have insight into the following documents and collection of documents:
  - a) the documents relating to the applications,
  - b) the documents relating to acquired breeding rights,
  - c) the documentation relating to the official testing of variety.
3. Exceptionally from the provisions under paragraph 2 of this Article, the applicant, in case of hybrids, may require that the documentation, concerning component parts of variety, being in the procedure of protection, is not accessible for public.

**3. Costs of procedure**  
**Article 23**  
**Costs**

1. In the procedure for protection of a new variety and for the maintenance of the breeding right, the applicants or, respectively, the breeding right holders shall pay the prescribed fees, the costs of technical and professional checking of justification of the application, the costs of testing the variety and the costs relating to publication and other actions.
2. The Council of Ministers of Bosnia and Herzegovina shall prescribe the amount of fees and costs under paragraph 1 of this Article and the amount of fees provided for by Article 39.

**4. Course of procedure for variety protection**

**Article 24**  
**Application**

1. The procedure for variety protection begins with the application filed by the applicant to the Management.
2. The Management makes decision in the administrative procedure.
3. An appeal may be filed against the administrative acts of the Management. The appeal shall be filed, within 30 days from the date of receiving the decision, to the Ministry of foreign trade and economic relations of Bosnia and Herzegovina.

**Article 25**  
**Content of application**

1. The application shall be lodged on the prescribed form and shall contain the following:
  - a) information concerning the applicant or his representative or agent;
  - b) data relating to the breeder, if he or she is not the applicant by himself or herself;
  - c) Latin and national name of species to which the variety belongs;

- d) proposed name of the variety or, respectively, a temporary designation of the variety;
  - e) the country in which the application has already been filed and the date of receipt of application in that country, if the application claims priority right;
  - f) technical description of the variety which can be an attachment to the application; and
  - g) description whether the variety was obtained by means of gene technology and, if so, attach the permit for testing this variety in accordance with the regulations of genetically changed organisms;
2. a more detailed form and content of the application, and the documents which shall be attached to the application are prescribed by the Management.

### **Article 26** **Correction of application**

1. The Management examines whether the application is complete and properly filled in and whether the evidence of paid fee is attached.
2. If the application is incomplete or improperly filled in or if the prescribed fee has not been paid in, the Management shall call the applicant to supplement it within 30 days from the date of its receipt. If the applicant does not meet the requirements stipulated by the Management within the given period, such an application shall be deemed not to be filed.
3. The applicant is given a receipt. The complete application is registered in the Application Register and published in the Official Gazette of the Management. The date of receipt of the application or the date of receipt of the supplement which makes the application complete, is entered as the date of receipt of the complete application.
4. The extract from the complete application is published in the Official Gazette following the expiry of three months from the date of its filing.

### **Article 27** **Priority rights**

1. The applicant who filed the application for protection of a new variety in any signatory state of the international treaties or conventions signed or accessed by Bosnia and Herzegovina, can, following the provision of evidence of a complete application filed for the same variety in other country, achieve priority right. In this case, the application filed in Bosnia and Herzegovina shall be deemed to be filed on the date when the complete application was filed in foreign country.
2. The priority right under the preceding paragraph shall be expressly requested by the applicant in the application.
3. The applicant can accomplish the priority right in Bosnia and Herzegovina within 12 months, at latest, from the date of filing the first complete application abroad.

### **Article 28** **Appeal**

1. Anyone who has a legal interest may appeal the application, published in the Official Gazette on the basis of Article 26 paragraph 4 of this Law, to the Management while the procedure for protection of the variety is in the course.
2. The appeal may relate only to meeting the requirements under Articles 5, 6, 7, 8 and 10 of this Law.
3. The appeal shall be in writing and explained. Relevant evidence shall be attached to the appeal and prescribed court fee shall be paid.
4. The management shall immediately submit the received appeal to the applicant and called upon him or her to reply to the appeal not later than 30 days from the receipt of the appeal.
5. The Management shall inform the appellant on its opinion in regard to the appeal not later than three months following their filing.

### **Article 29** **Review of the application**

The Management shall review whether the content of the application is appropriate, and shall check, on the basis of the data stated in the application, whether the variety is new and whether the applicant is entitled to acquisition of the breeding right. If it is determined in the course of reviewing the content that the requirements under Article 5 and 12 of this Law are not met, such an application is rejected.

### **Article 30** **Name of variety**

1. The Management also evaluates the appropriateness of the proposed name of the variety. In case that the proposed name of the variety is contrary to the provisions of Article 10 of this Law, the Management shall call the applicant to propose new name for the variety. The proposal shall be given not later than three months from the date of receipt of the call.
2. In the course of protection of a variety, the Management shall exclusively use the name of the variety which was registered in the Application Register for protection of a new variety.

### **Article 31** **Professional evaluation**

1. Any variety which meets the requirement of Articles 26 and 29 of this Law shall be subject to a professional evaluation for the purpose of:
  - a) checking whether the variety falls under a systematic unit, i.e. a herb family or species specified in the application,
  - b) ascertaining whether the variety is different, unified and invariable (Articles 6, 7 and 8 of this Law) and



- c) preparation of an official description of the variety if it meets the requirements under items a) and b) of this paragraph.
2. The professional evaluation is carried out on the basis of the results obtained from testing the variety in the field or in a laboratory.
3. The testing of variety may be carried out by:
  - a) The Management or, respectively, the Management recognized professional institution in Bosnia and Herzegovina or abroad, if the testing is carried out in comparative agroecological conditions by means of prescribed procedures and methods;
  - b) the applicant, at the request of the Management.
4. In the event that the Management does not carry out testing alone, it shall ensure a professional supervision over testing the variety.
5. In professional evaluation of a variety, the Management may use the results of testing of the variety obtained from other country which has comparative agroecological conditions, provided that the testing was carried out within the international systems of testing, and whether the evidence of results were issued according to the international treaties made or entered into by Bosnia and Herzegovina.
6. Council of Ministers, at the request of the Management and in cooperation with relevant bodies of the Entities and Brčko District, prescribes a more detailed requirements, procedures and methods for testing the variety.

**Article 32**  
**Professional evaluation of variety**

1. The applicant shall submit to the Management, within a prescribed period, necessary information, documents and, respectively, seedlings for making a professional evaluation of the variety for the purpose referred to by Article 31 paragraph 1 of this Law.
2. If the applicant fails to meet the requirements under paragraph 1 of this Article without a justified reason, the application shall be refused.

**Article 33**  
**Decision**

1. If, on the basis of professional evaluation provided for by Article 31 of this Law, it is established that the applicant has met all the prescribed requirements, the Management shall issue the decision on protection of the variety and publish it in the Official Gazette of the Management.
2. The data from the effective decision on protection of the variety or, respectively, on refusing the application, are entered in the Application Register.
3. Together with the effective decision on insurance of the variety, the holder is issued a certificate on acquisition of breeding right, which is valid from the date of effectiveness of the decision.

4. On the basis of the effectiveness of the decision on protection of a variety, the relevant data are entered in the Protected Variety Register.

5. Council of Ministers, at the proposal of the Management, prescribes the form and content of the certificate on acquisition of the breeding right.

### **5. Termination of the plant breeding right**

#### **Article 34**

#### **Decision on termination of the plant breeding right**

1. At the request of the breeding right holder under Article 18 paragraph 3 a) of this Law, the Management shall issue a decision in the administrative procedure confirming that the plant breeding right has been terminated at the request of the holder. The plant breeding right shall terminate on the following day from the date of receipt of the written statement by the holder.

2. Based on the effective decision under the preceding paragraph, the termination of the plant breeding right shall be published in the Official Gazette of the Management.

#### **Article 35**

#### **Declaration of the decision null and void**

1. The Management, in the administrative procedure, shall declare the decision on protection of a variety null and void only in the cases if it is subsequently ascertained that:

- a) the variety was not new on the date of receiving a complete application (Article 5 of this Law) or it could not be distinguished (Article 6);
- b) the variety was not uniformed on the date of receipt the complete application (Article 7) and invariable (Article 8 of this Law), and the variety was protected primarily on the basis of the information and documents submitted by the applicant;
- c) the plant breeding right was awarded to the person who was not entitled to it, and the right holder did not request a forced transfer in accordance with Article 37 of this Law;
- d) the holder does not meet the requirements stipulated by Article 44 of this Law or, respectively if ascertained that the variety is no more uniformed (Article 7 of this Law) or invariable (Article 8 of this Law)
- e) the holder does not submit, at the written request of the Management and within the prescribed period of time, the seedlings for checking or the documentation on selection for maintenance of the variety in accordance with Article 44 of this Law;
- f) the holder does not submit, at the written request of the Management and within the prescribed period of time, the proposal of a new name in accordance with Article 38 paragraph 1 of this Law;
- g) the holder does not duly pay the prescribed annual fee for maintenance of validity of the plant breeding right under Article 43 of this Law.

#### **Article 36**

#### **Forced transfer of the right**

1. If the application for protection of a new variety is submitted by a person who is not entitled to it, and the plant breeding right has been awarded, the right holder may initiate a procedure before the Management for a forced transfer of the right.

2. The request for a forced transfer provided for by the paragraph 1 can be filed from the date of publication of the application for protection of a new variety in the Official Gazette of the Management, not later than five years from the date of publication of the application.
3. If the unduly acquired right was transferred to the third party, in case of paragraph 1 of this Article, the transfer of these rights shall be cancelled.
4. Exceptionally from the provisions of paragraph 3 of this Article, the holder of any right to use the variety may continue to use the variety, if he obtained this right in good faith prior to the beginning of the procedure under paragraph 1 of this Article, provided he pays to the right holder adequate compensation.

### **Article 37 Erasure from the Register**

1. The registered name of the variety is erased from the Application Register and the Protected Variety Registration under the following conditions:
  - a) if so required by the applicant or, respectively, the plant breeding right holder proves to have legal right to this action; the application shall specify the reasons for erasure and a proposed new name;
  - b) if it is subsequently established that the name of the variety was registered despite the reasons for its refusal under Article 10 of this Law;
  - c) if the holder or any other person is banned to use this name.
2. The Management forthwith informs the applicant or, respectively, the breeding right holder about the proposal or the request for erasure of the name and the application, and call him or her to propose a new name of the variety, not later than three months. After the procedure under Article 30 of this Law is carried out and the prescribed requirements are met, the proposed name is registered in the relevant register and published in the Official Gazette of the Management. At the same time, the former name is erased from the register.

### **7. Reinstating Article 38 Reinstating**

1. In case that the plant breeding right holder or any other party to the procedure could not, for justified reasons, pay the fee or meet the other obligations towards the Management within the prescribed time which is a reason for loss of the right to protect variety under Article 36 of this Law, he or she can request a reinstating in the course of the procedure of a variety protection.
2. The reinstatement application shall be filed within eight days from the date when the reason causing the failure ceases, and in case that the party learns subsequently for the failure, then the application is filed from the date when the party learns and within the period of three months, following the cease of the reason for failure to meet the obligations, but not later than one year from the date of expiry, a period to which the obligation should be met. The request shall be attached with an explanation and the evidence of the prescribed fee payment.

3. If the reinstatement application is met, the Management determines a new time period for the applicant to fulfill the obligation. The time period to fulfill the obligation shall not be longer than the period of the delay to fulfill the obligation, and shall be from the date of receiving the notice of meeting the application.

4. The reinstatement applicant is not entitled to request any injury, if from the date of loss of the right to the date of reinstatement, anybody, in good faith, exploited or entered a contract for exploitation of the protected variety.

#### **IV – TRANSFER OF PLANT BREEDING RIGHT AND ASSIGNMENT OF PLANT BREEDING RIGHT EXPLOITATION**

##### **Article 39 Transfer of plant breeding right**

1. A plant breeding right holder may transfer through an agreement the whole or a part of the plant breeding right to another person.

2. The right holder or the applicant may transfer the right to application for a new variety protection or, respectively, the rights arising from the application.

3. Transfer contract of the rights referred to in paragraphs 1 and 2 of this Article shall be in writing or otherwise it shall be void.

4. Rights transfer under paragraphs 1 and 2 shall not affect the previous rights of any third persons.

5. Transfer of plant breeding rights has no legal effect on third persons until the agreement is registered in the register.

6. A proposal for registration the transfer contract can be given by any party to the agreement.

##### **Article 40 Economic exploitation of land**

1. Plant breeding right holder may transfer to a third person, through a license contract, partly or wholly the right of economic exploitation of the protected variety.

2. The license contract is registered in the relevant register at the request of one of the parties to the contract.

3. The license contract which is not registered in the relevant register under paragraph 2 of this Article has no legal effect towards third persons.

4. The form, the method of making and the content of the license contract and the legal protection are governed by the regulations of the law of obligations.

**Article 41**  
**Forced license**

1. If there is a public interest and if the plant breeding right holder alone or somebody else authorized by him or her does not carry out economic exploitation of the protected variety to a sufficient extent and does not assign to anybody the exploitation right or, respectively, some unjustified requirements are set for the assignment, the forced license may be assigned to somebody else.
2. The forced license can be awarded only to a person who proves to dispose technological and production abilities necessary for efficient exploitation of the protected variety and needed resources.
3. The forced license cannot be possibly awarded if the plant breeding right holder has evidenced that there are justified reasons for non-exploitation or not sufficient exploitation of the protected variety.
4. The forced license cannot be possibly awarded if, from the date of awarding of the plant breeding right to the date of filing the application for awarding a binding license, less than three years passed.
5. The forced license gives the license holder the right to perform undertakings stipulated by Article 15 of this Law partly or wholly for the purpose of supply the national market.
6. The forced license can be awarded for the period of at least two years and four years, the most. The forced license is possible to renew if, after studying again the requirements of paragraph 1, it is ascertained that there are still reasons for awarding the forced license.
7. The Management, at administrative procedure, makes decision on the application for awarding or extension of the forced license. Prior to making decision in regard of awarding or extension of the forced license, the Management shall have the opinion of interested parties.
8. In case of awarding the forced license, the plant breeding right holder is entitled to compensation.
9. The compensation amount under paragraph 8 shall be agreed between the plant breeding right holder and the person who was awarded the forced license. If the agreement has not been reached, the compensation amount shall be determined by the Management.
10. The Management may request the plant breeding right holder to provide the forced license holder with initial quantity of seedlings for use of the variety based on the forced license. The plant breeding right holder is entitled to adequate compensation for the seedlings.
11. In case of awarding the forced license, the plant breeding right holder may request from the professional institution, authorized to perform professional control of seedlings production, data of production of seedlings of the protected variety,

## **VII – OBLIGATIONS OF PLANT BREEDING RIGHT HOLDER AND THIRD PERSONS**

### **Article 42 Fee**

1. For maintenance of the plant breeding right, the plant breeding right holder is obliged to pay the Management annual fee for maintaining valid the plant breeding right.
2. The fee shall be paid at the beginning of every calendar year for the current year of protection but not later than 31 January.
3. If the fee for maintenance of the plant breeding right is not paid even in the subsequent period of time, as determined by the Management and it shall not be longer than 6 months after receiving notice, the right shall cede to be valid.

### **Article 43 Maintenance of protected variety**

1. Over the period of protection, the holder shall maintain the protected variety or, respectively, its hereditary components unchanged.
2. At the request of the Management, the holder shall, within a determined time, submit to the Management or an authorized institution the data, documentation or seedlings needed for checking the maintenance of the variety.
3. If the examination finds that the holder does not maintain the variety, the Management shall initiate procedure to cancel the plant breeding right.

### **Article 44 Sample of seedlings**

1. At the request of the Management or an authorized institution, respectively, the holder shall, within a specified time, provide an appropriate sample of seedlings of the requested variety or, respectively, its hereditary components for:
  - a) variety protection or renewal of the variety sample,
  - b) making comparative examination of other varieties which are in the procedure of protection.
2. The Management may authorize the plant breeding right holder to keep and renew by him/herself the protected sample of seedlings.

### **Article 45 Data**

1. Whoever without agreement or contrary to the agreement with the plant breeding right holder carries out economic exploitation or, respectively, disposes the seedlings of the protected variety shall give all the data to the holder in regard to it.

2. If the data are not given voluntarily, the plant breeding right holder can request the Management to issue a decision which orders the infringer to submit the data.

## **VIII – COURT PROTECTION**

### **Article 46**

#### **Breaching the rights**

1. Whoever breaches the right of the applied for or, respectively, protected new variety shall be responsible for damage under general regulations concerning the damage compensation.

2. The person whose right has been breached may request, in addition to the injury, that the person who breaches the right be banned any further breaches.

3. Breaching the plant breeding right is any unauthorized economic exploitation of the protected variety.

### **Article 47**

#### **Sue**

1. A sue against breaching the plant breeding right can be filed within three years when the plaintiff learned for infringer or, respectively, for breaching. Following the expiry of the period of five years, a sue cannot be filed any more.

2. The sue is filed with a regular court.

## **IX – SUPERVISION**

### **Article 48**

#### **Supervision**

1. The supervision of adherence to the provisions of Articles 11, 15, 16 and 46 of this Law shall be done by agricultural and forestry inspectors.

2. When the agricultural and forestry inspectors, in carrying out the supervision, reasonably suspect that the violation has been done, they shall temporarily confiscate the objects used or intended for violation or they originate from the violation.

3. The agricultural and forestry inspectors shall surrender the temporarily confiscated objects to the relevant body for conducting the violation proceedings with a proposal to start proceedings.

### **Article 49**

#### **Violation of plant breeding right**

1. If the plant breeding right holder evidence probable that the export of a certain seedlings of the protected variety from Bosnia and Herzegovina or import into Bosnia and Herzegovina is a violation of his or her plant breeding right, the phytosanitary inspectors may, at his request, determine at the border:

- a) that the holder or his or her authorized person may review the material;
- b) that the material be confiscated, exclude from the sale and keep at a safe place.

2. In the proposal referred to paragraph 2, the right holder shall give to the phytosanitary inspectors a detailed description of the material of the protected variety, satisfactory evidence concerning the plant breeding right and its probable violation. At the request of phytosanitary inspection, the holder shall deposit a bail for eventual damage which could arise from these measures.

3. A phytosanitary inspector shall forthwith inform the exporter on the measures made or, respectively, the importer and the receiver of the material of the protected variety, if the import of material of the protected variety in Bosnia and Herzegovina is concerned. The phytosanitary inspector shall revoke the measure made if the right holder does not file a sue within seven days or does not initiate some other procedure for justification of the measures undertaken.

## **X – PENAL PROVISIONS**

### **Article 50**

1. The legal entity shall be fined KM 5,000 for the violation if, without permission of the plant breeding right holder, produces or propagate the seedlings of the protected variety by this Law, if prepares the seedling of the protected variety for propagation, if put on sale, import or export the seedlings of the protected variety or if keeps the material of the protected variety for the above purposes (Article 15 of this Law).

2. The responsible person of the legal entity shall be fined KM 1,000 for the violation under paragraph 1.

3. An individual who makes such a violation in connection with independent performance of the business activity shall be fined KM 5,000 for the violation under paragraph 1 of this Article.

4. The physical entity shall be fined KM 1,000 for the violation under paragraph 1 of this Article.

### **Article 51**

1. The legal entity shall be fined KM 3,500 for the violation:

- a) if, contrary to the paragraph 1 of Article 11 of this Law, the material of protected variety is circulated, without specifying the registered name of the protected variety or if the name is not correctly stated;
- b) if, contrary to the paragraph 5 Article 11 of this Law, uses the name of the protected variety by this Law, or the name which can be easily mistaken for this name, for some other variety of the same or relative variety.
- c) if, contrary to the paragraph 2 Article 16 or 46, respectively, of this Law, does not give the requested data to the holder.



2. The responsible person of the legal entity shall be fined KM 700 for the violation of the preceding paragraph.
3. The individual shall be fined KM 500 for the violation of the first paragraph of this Article whose violation is in connection with independent performance of business activity.
4. The physical entity shall be fined at least KM 500 for the violation under paragraph 1 of this Article.

## **XI – TRANSITIONAL AND FINAL PROVISIONS**

### **Article 52 Pre-protected varieties**

1. The variety which has been, until this Law comes in force, protected under the former valid regulations, enjoy the protection under this Law until the expiry of the acquired plant breeding right.
2. The plant breeding right for the variety under paragraph 1 can be declared void and shall be cancelled only if it is ascertained that when awarding this right, the requirements in regard to identity, uniformity or invariability of the variety, respectively.

### **Article 53 Procedures in the course**

1. The procedures for insurance of the variety which are in the course at the time of coming into force of this Law, shall be continued under this Law.
2. Exceptionally from the provision of paragraph 1 of this Law, the variety, which is not new to the date of coming into force of this Law, can be protected, if:
  - a) the application for protection of the variety was filed prior to coming this Law into force,
  - b) the variety meets other requirements stipulated by Article 4 of this Law and
  - c) is protected or in the procedure for protection in one of the signatory states, also signed or accessed by Bosnia and Herzegovina, and the procedure is completed with protection of the variety.
3. In case of awarding the plant breeding right under paragraph 2 of this Law, the plant breeding right shall last another 20 years, at most, or 25 years, respectively, for wooden plants from the date of awarding the plant breeding right in the signatory state in which the variety was first protected.

### **Article 54 Regulations passed pursuant to this Law and deadline for their passing**

The regulations pursuant to this Law shall be passed within 12 months from the date of coming this Law into force. The Council of Ministers can, at a proposal of the Management, and in addition to the regulations provided for by individual articles of this Law, also pass other regulations necessary for implementation of this Law.

**Article 55**  
**Regulations implemented until new ones are passed**

Until new regulations are passed pursuant to this Law, the existing regulations in this area shall be implemented, if not contrary to this Law.

**Article 56**  
**Coming into force of this Law**

This Law comes into force on the eighth day from the day of its publishing in the “Official Gazette of BiH” and shall be published in the Official Gazettes of the Entities and Brčko District of Bosnia and Herzegovina.

PA BiH No. 99/04  
9 September 2004  
Sarajevo  
Chairman of the House of Representatives  
Parliamentary Assembly BiH  
Martin Raguž  
Chairman of House of Peoples  
Parliamentary Assembly BiH  
Goran Milojević

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Fin de l'annexe II et du document/  
Ende der Anlage II und des Dokuments/  
Fin del Anexo II y del documento]