

REPUBLIC OF MOLDOVA

LAW ON THE PROTECTION OF PLANT VARIETIES\*

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\* Translation provided by the Office of the Union.  
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Parliament shall adopt this organic Law.

This Law shall create the necessary legal basis for the application of the provisions of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, revised at Geneva on November 10, 1972, October 23, 1978, and March 19, 1991, of Council Regulation (EC) No. 2100/94 of July 27, 1994 on the establishment of a Community policy for the protection of plant varieties, as published in the Official Journal of the European Union No. L 227 of September 1, 1994, of Council Regulation (EC) No. 2470/96 of December 17, 1996 on the extension of time limits for Community protection of plant varieties for the potato, as published in the Official Journal of the European Union No. L 335 of December 24, 1996, of European Parliament and Council Directive No. 98/44/EC of July 6, 1998 on the legal protection of biotechnological inventions, as published in the Official Journal of the European Union No. L 213 of July 30, 1998, of European Parliament and Council Directive No. 2004/48/EC of April 29, 2004 on the enforcement of intellectual property rights, as published in the Official Journal of the European Union No. L 157 of April 30, 2004, and of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), concluded on April 15, 1994.

## Chapter I BASIC PROVISIONS

### Article 1

#### Scope and purpose of the Law

(1) This Law shall govern relations arising out of the creation, legal protection and use of plant varieties of any genera and species.

(2) The purpose of this Law shall be the establishment of a legal framework for the organization and functioning of a system of protection of plant varieties.

### Article 2

#### Legal basis

(1) The legal relations arising out of the creation, legal protection and use of plant varieties shall be governed by the Constitution of the Republic of Moldova, the Civil Code, the Code on Science and

Innovations, the Customs Code, international treaties to which the Republic of Moldova is party, this Law and other normative acts.

(2) If an international treaty to which the Republic of Moldova is party has established norms other than those contained in this Law, then the norms of the international treaty shall be applied.

### Article 3

#### Basic concepts

For the purposes of this Law:

“*breeder*” means a person who created or discovered and improved a variety;

“*variety*” means a plant grouping belonging to the lowest of the known botanical taxa, which irrespective of whether it complies fully with the criteria for the grant of patent protection:

- may be defined by the characteristics of a given genotype or combination of genotypes; the expression of the characteristics of the material of the variety of the said type may be permanent or temporary, and moreover the degree of variability shall be determined by the genotype or combination of genotypes;

- may be distinguished from any other plant grouping by the degree of expression of at least one of the said characteristics;

- may be considered to be reproduced without any alterations as a unified whole in terms of its characteristics;

“*categories of a variety*” means clone, line, or hybrid;

“*material of a variety*” means seeds, whole plants or parts thereof, capable of reproducing whole plants;

“*applicant*” means a natural person or legal entity requesting a plant variety patent;

“*patent owner*” means a natural person or legal entity to whom a plant variety patent belongs;

“*genetically modified organism*” means any living organism which has a new combination of genetic material obtained with the assistance of contemporary biotechnology.

**Article 4**

## Legal protection of a variety

(1) Rights in a variety may be obtained and enforced on the territory of the Republic of Moldova by means of a plant variety patent (hereinafter referred to as "*the patent*"), granted by the State Agency for Intellectual Property in accordance with this Law and sub-regulatory normative acts, and likewise with international treaties in this field, one of the parties to which is the Republic of Moldova.

(2) The scope of the legal patent protection shall be determined by the sum of essential characteristics of the variety, as specified in the official description thereof.

**Article 5**

## Authorities responsible for the legal protection of a variety

(1) The authorities implementing state policy in the area of legal protection of varieties are the State Agency for Intellectual Property (AGEPI) (hereinafter referred to as "*the Agency*"), and the State Commission for the Testing of Plant Varieties (hereinafter referred to as "*the State Commission*"). State policy in the field of the use of new varieties in breeding shall be implemented by the National Council for Plant Varieties.

(2) The Agency is the national department in the field of intellectual property protection and the single authority in the Republic of Moldova which grants legal protection of new plant varieties.

(3) The Agency:

(a) shall develop drafts of legislative and other normative acts in the field of the protection of plant varieties and ratify acts of a procedural nature which are essential for it to perform functions established by Law;

(b) shall register applications for the grant of a patent (hereinafter referred to as "*patent application*") and carry out examinations thereof, grant and grant patents on behalf of the State, publish official data in the Official Gazette of Industrial Property of the Republic of Moldova (hereinafter referred to as "*the Gazette*");

(c) shall maintain the National Collection of Plant Variety Patents and exchange information with international organizations for the protection of plant varieties and with appropriate authorities of other countries;

(d) shall keep the National Register of Plant Variety Patent Applications (hereinafter referred to as "*the National Register of Applications*") and of the National Register of Plant Variety Patents (hereinafter referred to as "*the National Register of Patents*"), and shall establish and confirm the procedure by which they are to be maintained.

(4) The Agency and State Commission shall represent the Republic of Moldova in the International Union for the Protection of New Varieties of Plants (hereinafter referred to as "UPOV"), and also in other international and inter-governmental organizations for the protection of plant varieties, and support bilateral and multilateral cooperation with them in this field.

(5) The State Commission shall be the authority which carries out the testing of plant varieties in its variety testing centers, experimental stations, specialized institutions and laboratories applying methodologies and within the time limits prescribed by international standards, in order to determine their compliance with the conditions of patentability, namely distinctness, uniformity and stability, and also the testing of varieties in order to determine their agronomical value. The State Commission shall maintain the Register of Plant Varieties of the Republic of Moldova (hereinafter referred to as "*the Register of Plant Varieties*"), including varieties approved for cultivation and sale in the Republic of Moldova.

## Chapter II

## SUBSTANTIVE PATENT LAW

## Part 1

## Patentability of a variety

**Article 6**

## Conditions of patentability of a variety

(1) A plant variety shall be patentable only where it is:

- (a) distinct;
- (b) uniform;
- (c) stable, and
- (d) new

(1) The variety shall be designated with a denomination in accordance with Article 36.

#### **Article 7** Distinctness

(1) The variety shall be deemed to be distinct if it is clearly distinguishable by the presence of at least one or more relevant features stipulated by a certain genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the time of the filing of the patent application with the Agency, or at the time of the requested priority, as applicable.

(2) The distinctness of the variety shall be determined by features which can be displayed and described precisely.

(3) The variety's existence shall be deemed to be a matter of common knowledge if at the application filing date:

(a) it is protected in the Republic of Moldova or in another country and has been entered into the official register of protected varieties;

(b) it has been entered in the Register of Plant Varieties or in similar registers and reference collections of other countries;

(c) a registered application exists for the grant of protection to the variety or for its entry in the Register of Plant Varieties provided that, as a result of the application, protection is granted or the variety is entered in the Register.

#### **Article 8** Uniformity

A variety shall be deemed to be uniform if, taking into account differences arising as a result of the particular features of its propagation, plants of the variety remain sufficiently uniform in the expression of characteristics included in the determination of distinctness of the variety, and also of other characteristics used to describe the variety.

#### **Article 9** Stability

A variety shall be deemed to be stable if its relevant characteristics for the determination of its distinctness and any other features used to describe the variety remain unchanged after repeated propagation, or at the end of each cycle of propagation.

#### **Article 10** Novelty

(1) A variety shall be deemed to be new if at the time of filing of the patent application at the Agency or at the time of the requested priority, material for the propagation of the variety or harvested material of the variety has not been sold or put at the disposal of third parties by the breeder or with his consent for the purposes of commercial exploitation of the variety:

(a) on the territory of the Republic of Moldova, earlier than one year before the filing date of the patent application;

(b) on the territory of other States, earlier than four years, and in the case of trees and vines, earlier than six years before the filing date of the patent application.

(2) The following shall have no bearing on the novelty of a variety as per paragraph (1):

(a) making the material of the variety available to an official body in the context of certain legal obligations, or third parties on the basis of an agreement or in the context of any other legal relations for the purposes of cultivation, reproduction, propagation, conditioning or storing provided that the breeder is not deprived of the exclusive right to dispose of material of the variety, and provided that material of the variety has not been made available for commercial purposes previously, except where such material of the variety was used repeatedly to obtain hybrids and if the material of the hybrid and the harvested material of the hybrid were sold;

(b) disposal of the material of the variety by one company or firm to another company or firm of which it is a subsidiary, or if both companies or firms are

wholly owned by a third company or firm, provided that there was no further disposal;

(c) disposal without reference to the kind of material of the variety or the harvested material of the variety, obtained from plants which have been cultivated for experimental purposes or for the purpose of the creation or discovery and improvement of a variety and which have not been used for fresh reproduction or propagation;

(d) disposal of the material of the variety occurring in the context of the exhibiting of the variety by the breeder at an exhibition which is officially recognized in compliance with the Convention on International Exhibitions;

(e) disposal of the material of the variety in the context of an agreement between the breeder and a third party, according to which the breeder approves the cultivation of seed material under his supervision.

## Part 2

### Right to request and obtain a patent

#### **Article 11**

##### Right in a patent

(1) The right in a patent shall belong to a breeder or his successor-in-title.

(2) Where the variety has been created or discovered and improved jointly by two or more breeders, the right in a patent shall belong to them all or to their successors-in-title. The priority of rights in the variety of each of them shall be established by a written contract between the breeders. The same priority shall be applied in cases where one or more breeders discovered the variety, but others improved said variety.

(3) The right in a patent shall likewise belong jointly to a breeder and a certain person (or certain persons) if the breeder and person (or persons) have declared in writing that they have agreed to share such a joint right.

(4) Where the right in a patent belongs jointly to two or more persons in accordance with parts (2) and (3), one person or several of the said persons may, by means of a written statement, confer the others with the right in the patent.

(5) Where two or more persons created or discovered and improved the same variety independently of each other, the right in a patent shall belong to the person whose patent application has the earlier date of filing or priority, assuming it has been granted. This provision is applied only in cases where the first application was published in accordance with Article 44.

(6) In the context of procedures conducted by the Agency, the applicant is the person entitled to a patent.

#### **Article 12**

##### Varieties bred or discovered and improved in the course of employment:

(1) The right in a patent for a variety bred or discovered and improved by a breeder in the performance of an employment contract or research contract shall belong to the employer where the contract between said employer and the breeder has not stipulated otherwise; in this instance, the breeder shall have the right to commensurate remuneration as prescribed by the contract. The amount of remuneration shall be determined depending on the profit obtained as a result of utilizing the variety during the term of validity of the patent to the variety, and on the value of the variety, and shall comprise not less than 15 per cent of this profit, including receipts from the sale of licenses.

(2) A variety shall be deemed to have been bred in the course of employment if, in breeding the variety, the breeder:

(a) performed duties entrusted to him by virtue of his position;

(b) performed duties specifically entrusted to him for the purpose of breeding a new variety;

(c) made use of material or financial means made available to him by the employer or a person who commissioned the breeding of the variety, as well as of knowledge and expertise gained in the performance of professional duties.

(3) Where the employer, within 60 days of having been notified by the breeder of the breeding of the new variety, has not filed an application for a patent or has not assigned his right to file an application to another person, or has not instructed the breeder in writing to keep the newly bred variety secret, the breeder shall acquire the right to file a patent application and to obtain a patent in his own name. The employer shall in that case have a preferential right to be granted a non-exclusive license to use the variety.

(4) Where the employer has obtained a patent to a variety bred in accordance with paragraph (1), the employee shall have a preferential right to obtain a non-exclusive license to use the variety.

(5) Where the parties have not reached agreement regarding the amount of remuneration to which the employee is entitled, or the value of the license, these grants shall be resolved by a court depending upon the contribution of each party to the breeding of the variety and upon its commercial value.

(6) The procedure for the breeding and use of varieties by employees shall be established by the Regulations on Industrial Property Subject Matter, bred as part of employment duties, as approved by the Government.

### **Article 13**

#### Right to file a patent application

(1) The following shall be entitled to file a patent application:

(a) natural and legal persons domiciled or with a place of business in the Republic of Moldova;

(b) natural and legal persons domiciled or with a place of business on the territory of a State party to relevant international treaties, a party to which is the Republic of Moldova;

(c) natural and legal persons of any other country, provided that said country grants natural and legal persons domiciled or with a place of business in the Republic of Moldova protection for varieties of the same botanical taxon which is equivalent to the protection granted by this Law.

(2) The patent application may be filed by two or more persons complying with the requirements stipulated in paragraph (1). Denial of a patent to one or more breeders shall not extend to the others, where they have acted in accordance with this Law.

### **Article 14**

#### Patent application filed by a non-competent person

(1) Where it is recognized by a final court judgment prior to the granting of a patent by the Agency that an entity with the right to obtain a patent under Part (1), Article 11, is a person other than the applicant, then that person shall be entitled:

(a) to continue the patent application procedure as if it were his own instead of the applicant within three months of the date of the final court judgment;

(b) where the patent application was withdrawn or refused, to file a fresh patent application for the same variety which retains the filing date of the original application within one month of the date of withdrawal or refusal of the application;

(c) to request withdrawal of the patent application.

(2) The interested party shall present a copy of the court decision to the Agency. The court's decision shall be entered in the National Register of Applications and shall be published in the Gazette.

### **Part 3**

#### Consequences of patent protection

### **Article 15**

#### Patent owner's rights

(1) The patent owner shall have the exclusive right in the patent and in the patent-protectable variety, which comprises the right to exploit the variety, the right to manage the patent and variety, and the right to prohibit third parties from performing the following

acts in relation to the material of the patented variety or the harvested material of the variety without prior approval:

- (a) breeding or reproduction (for the purposes of propagation);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other kinds of marketing;
- (e) exporting;
- (f) importing;
- (g) storing for any of the purposes mentioned in items (a) to (f).

(1) The provisions of paragraph (1) shall apply in relation to the harvested material of the protected variety only where it has been obtained by means of unapproved use of the material of the protected variety, except when the patent owner could reasonably benefit from his right in relation to the material of the variety.

(2) The provisions of paragraph (1) shall also be applied in relation to products obtained directly from the material of the protected variety, where these products were obtained by means of unapproved use of the material of the protected variety, and where the patent owner did not have the opportunity to profit from his right in relation to this material.

(3) The provisions of paragraphs (1) to (3) shall likewise apply in relation to varieties:

- (a) which are essentially derived from the protected variety, where the protected variety itself is not an essentially derived variety;
- (b) which are not distinguishable from the protected variety, as stipulated in Article 7;
- (c) the breeding of which requires repeated use of the protected variety.

(5) According to the meaning of item (a) of paragraph (4), a variety shall be deemed to be essentially derived from another variety (hereinafter referred to as “the *initial variety*”), where it:

- (a) is predominantly derived from the initial variety or a variety which, in turn, is predominantly derived from the initial variety;
- (b) is distinguishable from the initial variety in accordance with Article 7;
- (c) conforms to the initial variety to the extent of expression of characteristics that result from the genotype or combination of genotypes of the initial variety, with the exception of differences resulting from selection.

(6) Where there are several owners of the same patent, their mutual relations in relation to the use of the protected variety shall be determined by agreement between them. Where no such agreement exists, each of the patent owners shall be fully entitled to use the variety at his own discretion, and to institute patent infringement proceedings against any person who uses the variety without the approval of the patent co-owners, but shall not be entitled to renounce the patent without notification of same, or to enter into license agreements or agreements on the assignment of rights without their consent.

(7) Enforcement of the patent owner’s rights may not infringe any public authority directive adopted due to moral principles or for the purposes of securing public order, public security, the protection of the health and life of people, animals or plants, the protection of the environment, the protection of industrial or commercial property or for the purposes of safeguarding competition, trade and agricultural production.

#### **Article 16**

##### Limitation of patent owner’s rights

The right of a patent owner shall not extend to acts performed for:

- (a) private, non-commercial purposes;
- (b) scientific research and experiments;

(c) the breeding or discovery and improvement of other varieties, as well as to acts specified in paragraphs (1) to (3) of Article 15, in relation to these other varieties, except where the provisions of paragraph (4), Article 15 shall apply.

#### **Article 17**

##### Expiry of patent owner's rights

The rights of the patent owner shall not extend to actions in relation to the material of the protected variety, or a variety to which the provisions of paragraph (4), Article 15 shall apply, and which was produced by a breeder or with his consent, where such actions:

(a) are not intended for the subsequent propagation of the variety, except where such propagation was envisaged in the context of the sale of the corresponding material;

(b) are not connected with the export of the material of the variety, enabling propagation of the variety in a country in which varieties of the botanical genus or species are not protected, except the export of material for the purposes of consumption.

#### **Article 18**

##### Use of a variety denomination

(1) Any person offering or assigning to third parties for commercial purposes the material of a protected variety, or a variety to which the provisions of paragraph (4), Article 15 shall apply, must use the denomination of the variety conferred to it in accordance with Article 36. The denomination of a variety must be easily recognizable and reproducible in writing.

(2) A person undertaking actions specified in paragraph (1) in relation to any material of the variety must specify the denomination of the variety at the request of any authority, customer or person demonstrating a legitimate interest.

(3) The provisions of paragraphs (1) and (2) shall be valid even after the expiry of patent protection.

#### **Article 19**

##### Limitation of use of a variety denomination

(1) The patent owner may not use the right granted to him in relation to a designation identical to the denomination of the protected variety, in order to prohibit the free use of said denomination in relation to the variety even after the expiry of patent protection.

(2) A third party may use the right granted to him in respect of a designation identical to the denomination of the protected variety, in order to prohibit the free use of this denomination only where said right was granted before the conferral of the denomination under Article 36.

(3) The denomination conferred on a variety patented in the Republic of Moldova or a UPOV member State, or any other denomination with which the denomination of the variety might be confused, may not be used on the territory of the Republic of Moldova in relation to another variety of the same or closely related species or the material of this other variety.

#### **Part 4**

##### Period of validity and termination of patent protection

#### **Article 20**

##### Term of validity of patent protection

(1) The term of validity of patent protection for a plant variety shall be up to 25 years or, in the case of varieties of vines, potatoes and trees, up to 30 years from the publication date of information in the Gazette regarding the grant of the patent.

(2) On the request of the patent owner, the term of patent protection may be extended for a further five years following the expiry of the terms specified in paragraph (1).

#### **Article 21**

##### Annulment of a patent

A patent may be annulled where:

(a) On the date of grant of the patent, the conditions stipulated in Articles 7 or 10 had not been satisfied;

(b) The grant of the patent was based on data and documents provided by the applicant, and as at the date of the grant of the patent, the conditions specified in Articles 8 or 9 had not been satisfied;

(c) The patent was granted to a person who was not entitled to it, provided it was not subsequently transferred to a competent person.

### **Article 22**

#### Action regarding annulment of a patent

(1) An action regarding the annulment of a patent may be brought at any time during the term of the patent, and must only be predicated on the reasons specified in Article 21.

(2) Any person may bring an action in court to annul a patent. In the case provided for by item (c) of Article 21, the action may only be brought by a person entitled to enter patents in the National Register of Patents as a patent owner, or jointly by persons entitled to enter a patent in the Register as joint owners in accordance with paragraph (2) of Article 11.

(3) action to annul a patent may be brought even where rights granted by the patent have been terminated, or where the patent has been refused.

(4) A decision regarding the annulment of the patent shall be communicated to the Agency by the interested parties and entered in the National Register of Patents. A communication regarding the annulment of the patent shall be published in the Gazette.

### **Article 23**

#### Consequences of annulment

(1) Where a patent is declared annulled, the consequences of protection specified in Articles 15 to 19 shall be regarded as void from the date of grant of the patent.

(2) The retrospective effect of annulment of a patent shall not extend:

(a) to decisions relating to actions for the infringement of rights, which are recognized as final and coming into legal force before the decision to annul was taken;

(b) to contracts concluded before the decision to annul was taken, to the extent that they were implemented before this decision was taken. In the interests of fairness, compensation of sums paid under the contract may be demanded.

### **Article 24**

#### Deprivation of patent owner's rights

(1) The Agency shall announce the withdrawal of the patent owner's rights with consequences *in futurum* where it has been established that the conditions specified in Articles 8 and 9 are no longer being satisfied. Where it has been established that these conditions were not being satisfied at a date earlier than the date of deprivation of rights, then the deprivation of rights may commence from this earlier date.

(2) The Agency shall announce the deprivation of a patent owner's rights where, within a time limit prescribed by the Agency, the patent owner:

(a) refuses to provide at the request of the State Commission information, documents or material of the protected variety necessary for its controlled testing;

(b) fails to propose another denomination for the variety, where the denomination of the variety no longer complies with the conditions of Article 36;

(c) fails to pay patent grant and maintenance-in-force fees;

(d) where the patent owner or his successor-in-title no longer satisfy the conditions specified in Articles 13 and 87.

(3) The deprivation of a patent owner's rights on the basis of non-payment of an annual fee or, where necessary, of an additional fee, shall be regarded as entering into force from the expiry date of the prescribed time limit for payment of this fee.

(4) The Agency shall publish a notice in the Gazette regarding the deprivation of a patent owner's rights.

## **Article 25**

### Surrender of a patent

(1) A patent owner shall be entitled to surrender a patent by written request to the Agency, on condition of payment of the prescribed fee.

(2) The surrender of a patent by one of the patent owners shall not terminate the validity of the patent, which shall remain in the ownership of the other patent owners.

(3) The surrender of a patent shall take effect only after its entry in the National Register of Patents. A record of this shall be published in the Gazette.

(4) The surrender of a patent shall be entered in the National Register of Patents only with the consent of a person enjoying a preferential right which has been entered in the Register.

(5) Where the patent is the subject of a license contract entered in the National Register of Patents, the surrender of the patent shall be entered in the Register only where the patent owner provides evidence of the fact that he informed the licensee of his intention to surrender the patent. In such a case, the licensee shall have a preferential right to obtain the patent in his name within three months of the patent owner notifying him in writing of his intention to surrender the patent.

(6) At the same time as submitting a written request to the Agency, the patent owner shall notify the breeder of his intention to surrender the patent. In such a case, the breeder shall have a preferential right to obtain the patent in his name within three months of the patent owner informing him in writing of his intention to surrender the patent.

### Part 5

#### Patent application and patent as a subject of ownership

## **Article 26**

### Rights granted by a patent application after publication

(1) During the period from the date of publication until the date of grant of a patent, the patent application shall temporarily grant the applicant the

same rights as those granted to the patent owner in accordance with Article 15.

(2) Infringement by third parties of the rights specified in paragraph (1) shall oblige the guilty party to compensate damages in accordance with the law. Compensation for damage shall be discharged following the grant of the patent. The amount of compensation shall be prescribed by agreement between the parties. Where the parties are unable to reach agreement regarding the amount of compensation, it shall be fixed by a court.

(3) The consequences of a patent application, as specified in paragraph (1), shall be regarded as invalid and shall cease to exist where the patent application has been withdrawn or rejected.

## **Article 27**

### Transfer of rights

(1) The patent application and patent may be transferred to one or more successors-in-title.

(2) Transfer of a patent application or patent by means of assignment may only be effected to a successor-in-title which satisfies the conditions specified in Articles 13 and 87. Assignment shall be performed in writing and signed by the parties to the contract, with the exception of assignment on the basis of a court decision or any other final document of a legal procedure. Otherwise, it shall be considered invalid.

(3) Regarding cases referred to in Article 61, the transfer of rights shall not affect the rights of third parties which have been obtained before the date of transfer.

(4) The transfer of rights shall be regarded as coming into effect for the Agency and may be presented to third parties only after the provision of specified documentary evidence and following their entry into the National Register of Applications or the National Register of Patents.

## **Article 28**

### Proprietary rights

(1) A patent may be an independent subject of a mortgage or the subject of another proprietary right.

(2) The rights specified in paragraph (1) shall be entered into the National Register of Patents at the request of one of the parties, and corresponding information shall be published in the Gazette.

### **Article 29**

#### License contracts

(1) The patent application and patent may be the subject of a license contract. The licenses may be exclusive or non-exclusive.

(2) The applicant or patent owner may claim rights granted by the patent application or patent to a license owner who has infringed one of the conditions or limitations stated in the license contract, in accordance with part (1).

### **Article 30**

#### Joint ownership

In the case of joint ownership of a patent, the provisions of Articles 27 to 29 shall be applied *mutatis mutandis* in relation to the appropriate parts belonging to the joint owners, where such parts are defined by the contract.

### **Article 31**

#### Compulsory licenses

(1) The court may grant compulsory, non-exclusive licenses for the use of the protected variety to one or more persons filing an application within three years after the grant of the patent, under the following conditions:

(a) authorization for such use shall be given where it is in the public interest;

(b) such use may be authorized only where prior to such use, the proposed user has attempted to obtain authorization from the patent owner on reasonable commercial terms and by acceptable means, although, regardless of his best efforts, he has not been successful within a reasonable period of time. Deviation from this provision is only permissible in situations of national emergency or other circumstances of extreme urgency or in cases of public, non-commercial use. In such instances, the patent owner shall be notified as soon as reasonably practicable;

(c) the scope and duration of such use shall be limited to the purposes for which it was authorized;

(d) such use shall be non-exclusive and non-assignable, except for transfer with the part of the enterprise or its intangible assets which enjoy such use;

(e) any such use shall be authorized predominantly to satisfy the requirements of the domestic market;

(f) authorization for such use shall be liable, subject to appropriate protection of the legitimate interests of the persons so authorized, to be terminated, if the circumstances which led to it cease to exist and it is evident that they will not recur. The courts shall have the authority to review the case, upon reasonable request, where these circumstances persist;

(g) the patent owner shall be paid adequate remuneration appropriate to each individual case, taking into account the economic value of the authorization;

(h) the validity of any decision relating to authorization of such use, and any decision relating to remuneration stipulated in relation to such use, may be subject to judicial review or other independent review by higher authorities;

(i) the provisions specified in items (b) and (e) shall not apply where such use is permitted to remedy a practice deemed after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration payable in such cases. The courts shall have the right to refuse termination of authorization where it is likely that the circumstances which led to such authorization may recur.

(2) A compulsory license shall only be granted to a person who is able to use the variety in accordance with the license, which shall confer on its owner the right to obtain source material of the variety from the patent owner.

(3) The compulsory license shall not prevent the patent owner using the protected variety or granting licenses for its use to others.

(4) A compulsory, non-exclusive license for the use of a protected variety may be granted, upon request, to the owner of the patent for a biotechnological invention on condition of payment of fair remuneration where:

(a) he unsuccessfully attempted to obtain a license contract from the plant variety patent owner;

(b) the invention is regarded as significant technological progress, with substantial economic significance in relation to the protected variety.

(5) Where the plant variety patent owner has been granted a compulsory, non-exclusive license for the use of the patented invention, a reciprocal, non-exclusive license for use of the variety may be granted, upon application, to the patent owner of the invention on reasonable terms.

(6) A compulsory license may be granted to the patent owner for an essentially derived variety, under the provisions of paragraph (1). The conditions for granting the compulsory license may include payment of fair remuneration to the owner of the initial variety patent.

(7) The decision of the court to grant or, under certain circumstances, to cancel the compulsory license shall be notified by the holder to the Agency, entered into the National Register of Patents and published in the Gazette.

(8) Where the holder of the compulsory license has failed to exploit the variety within one year following the date of the grant, the license may be cancelled by a court decision. The validity of the license shall likewise be terminated in the event where its holder fails to exploit the variety within two years following the date of the grant.

### Chapter III PATENT APPLICATION

#### Part 1 Conditions of filing a patent application

#### **Article 32** Filing of an application

The patent application shall be filed at the Agency by a competent person under Article 13 in person

or via a patent attorney in accordance with Article 87.

#### **Article 33**

Criteria which a patent application must satisfy

(1) The patent application must include:

(a) a statement regarding the grant of the patent;

(b) specification of the botanical taxon;

(c) information about the applicant (applicants);

(d) information about the breeder (breeders);

(e) a proposal for the denomination of the variety;

(f) a technical description of the variety (technical questionnaire);

(g) a declaration by which the applicant assumes responsibility for confirming that the variety for which protection is sought conforms with the provisions of Article 10;

(h) information relating to any other application filed for the variety, along with such applications.

(2) The following shall accompany the application:

(a) a document regarding payment of fees for the filing of the application;

(b) a document regarding priority, where necessary;

(c) a power of attorney, where the application is filed through a patent attorney;

(d) necessary documentary proof of acquisition of the right to the patent, where the applicant is not the breeder or is not the sole breeder;

(e) photographs or drawings, as necessary;

(f) results of testing of the variety, carried out by a competent body, as necessary;

(g) permission for introduction into the environment, granted by a competent national body in accordance with legislation in the field of biological security, where the variety is a genetically modified organism.

(3) A separate patent application shall be filed for each variety or each category of variety.

(4) The breeder shall be entitled to be specified in the application, patent, and in Agency publications concerning the application or patent. The breeder shall likewise be entitled to refuse attribution of his name in the patent and relevant Agency publications, for which purpose a request shall be filed in writing with the Agency.

(5) Other requirements which the application must satisfy shall be prescribed in regulations ratified by the Government (hereinafter referred to as "the *Regulations*").

#### **Article 34**

##### Language of prosecution

(1) A patent application shall be filed with the Agency in Moldovan.

(2) The filing of the application and accompanying documentation shall be permitted in another language with the exception of the items specified in (a) Article 33(1)((a)-(e).

(3) Where the application and accompanying documentation are filed in another language, for the purposes of examination the applicant shall be obliged to provide a translation into Moldovan within two months of filing the application. Otherwise, the application shall be declined.

#### **Article 35**

##### Filing date of the application

(1) The filing date of the patent application shall be deemed to be the date when the Agency was presented with an application containing, at the very least, the items specified in (a) Article 33(1)((a)-(g).

(2) Where the requirements specified in Article 33(1)(a)-(g) are not satisfied, the filing date of the application shall be deemed to be the date on which these conditions were satisfied.

(3) The parts of the application specified in item (h) of paragraph (1), and documents accompanying the application specified in paragraph (2) of Article 33,

with the exception of those specified in items (b) and (g), may be provided by the applicant within two months of the application filing date.

(4) Permission to introduce a genetically modified organism into the environment shall be provided simultaneously with the filing of the application or within two months of the date of completion of the substantive examination.

#### **Article 36**

##### Variety denominations

(1) The variety must be designated by a denomination which includes its generic designation and which enables it to be identified.

(2) Variety denominations:

(a) must be easily identifiable and reproducible by users and must not consist solely of figures, except where this conforms with the established practice for designating specific varieties;

(b) must not be misleading or confusing in relation to the characteristics, qualities or identity of the variety, or in relation to the identity of the breeder;

(c) must be different or may not be confused with the denomination of another variety of the same, or closely related, species, which has been entered in the Official Register of Varieties or marketed in any UPOV member State, except when this other variety no longer exists and its denomination did not acquire special significance;

(d) must be used even after the expiry of the term of the patent;

(e) must be different or may not be confused with other denominations used for the marketing of goods, or with denominations which may not be used by virtue of other normative acts.

(f) must not conflict with ethical standards and public order.

(3) Where the variety has already been entered in the Official Register of Plant Varieties and the material of the variety has been marketed in any

UPOV member State, the denomination of the variety in the patent application filed in the Republic of Moldova must be the same.

(4) Where, by virtue of a previously acquired right, a person obliged to use the variety denomination in accordance with paragraph (5) is prohibited from doing so, the Agency may require the applicant to provide another denomination for the variety.

(5) Any person who, on the territory of any UPOV member State, offers for sale or markets the material of a variety protected on the territory of said State, shall be obliged to use the denomination of that variety, even after the expiry of the term of the patent protecting that variety, except where the provisions of paragraph (4) apply.

(6) A variety denomination conforming with paragraphs (1) to (5) shall be entered in the National Register of Patents at the same time as the patent is granted, and shall be published in the Gazette.

(7) The conditions for conferral of the denomination to the variety shall be prescribed in the Regulations.

## Part 2 Priority

### **Article 37** Right of priority

(1) The priority of the application shall be determined by its filing date. Where several applications have been filed on the same date, priority shall be established dependent upon the order in which they are received.

(2) Any person or his successor-in-title who has filed a plant variety patent application in accordance with the law in a UPOV member State or member of the World Trade Organization, shall enjoy for the purposes of filing the application for that same variety the right of priority for 12 months from the filing date of the preceding application; the filing day shall not be included in this period.

(3) The applicant shall enjoy the right of priority of the preceding application on condition that such application exists on the filing date.

(4) The right of priority shall be recognized in relation to any filing of an application valid as a correctly registered national application.

(5) The applicant shall be granted a two-year period following the expiry of the term of priority or, where the initial application was refused or withdrawn, an appropriate period after such refusal or withdrawal, in order to provide all documentation, information or materials requested for the purpose of carrying out an examination.

### **Article 38** Requesting priority

(1) An applicant who wishes to benefit from the priority of a previous application must file an application regarding the request of priority, a copy of the previous application, and, where necessary, a translation into Moldovan.

(2) Priority shall be requested at the same time as filing of a patent application or within two months of the date of filing of the application, and shall be confirmed by a priority document.

(3) The request for the right of priority shall be invalid where the applicant has failed to provide the Agency with copies of the previous applications, certified by a competent authority, within three months of the date of filing of the application.

(4) Where the previous application was not in Moldovan, the Agency shall be entitled to request a certified translation into Moldovan.

### **Article 39** Restoration of the right of priority

(1) Where an application in which the priority of a previous application is sought is filed after the expiry of the time limit specified in paragraph (2) of Article 37, but not later than two months after the expiry of said period, the Agency may re-establish the right of priority, if, at the same time as the filing of the patent application, the applicant filed a request confirming that under these circumstances appropriate measures had been taken, or that failure to comply with the time limit was unintentional.

(2) An application regarding the re-establishment of the right of priority shall be filed within two months of the expiry date of the priority period specified in paragraph (2) of Article 37, along with payment of the prescribed fee; failure to do so will result in the application being deemed not to have been filed.

(3) Where the Agency has not been provided with a copy of the previous application in the time limit specified in paragraph (3) of Article 38, the Agency may restore the right of priority if the following conditions are satisfied in aggregate:

(a) the applicant filed an appropriate request with the Agency before the expiry of the time limit prescribed in paragraph (3) of Article 38;

(b) the applicant provided the Agency with confirmation of the request filed with the Office which registered the previous application, proving that a copy of the previous application was requested in a period not exceeding 14 months from the filing date of said previous application;

(c) the Agency was provided with a certified copy of the previous application within one month of the date when the Office which registered the previous application granted the applicant with the relevant copy.

#### **Article 40**

##### Effect of the right of priority

(1) The effect of the right of priority shall be that where Articles 7 and 10 apply, the filing date of the previous application and the filing date of the patent application shall be one and the same.

(2) The filing of another patent application, publication of information on a variety or use of a new variety which was the subject of an initial application, in the period specified in paragraph (2) of Article 37, may not serve as a basis for refusing a subsequent application and the acquisition of rights by third parties.

(3) Failure to comply with the time limits stipulated in paragraphs (2) and (3) of Article 38, or to pay the priority claim fee shall cause the priority claim not to be recognized.

## Chapter IV PROCEDURE FOR GRANTING A PATENT

### Part 1

#### Examination conducted prior to the granting of a patent

#### **Article 41**

##### Examination of an application

(1) The Agency and the State Commission shall verify whether the patent application and variety which is the subject matter of the patent comply with the requirements stipulated by the Law. To this end, the Agency shall conduct an examination of form, a preliminary examination and a substantive examination of the patent application. The State Commission shall conduct a technical examination of the patent application.

(2) The Agency shall be entitled to request from the applicant what it deems to be necessary additional materials in relation to the identity of the applicant himself or of the breeder, a correctly registered national application, or to the fulfillment of conditions of patentability.

(3) The conditions for providing the additional materials specified in paragraph (2) shall be prescribed in the Regulations.

#### **Article 42**

##### Examination of form

(1) In conducting a formal examination, the Agency shall within two months verify the compliance of the patent application with the criteria for the award of a filing date under paragraph (1) of Article 35.

(2) Where the application complies with the criteria specified in (a)Article 33(1)((a)-(g), the Agency shall enter information relating to the application in the National Register of Applications.

(3) Where the application fails to comply with the criteria specified in (a)Article 33(1)((a)-(g), the Agency shall give the applicant the opportunity to correct any shortcomings within a time limit prescribed in a notification.

(4) If in the prescribed timeframe the applicant fails to provide the necessary information or to satisfy the conditions of (a) Article 33(1)(a)-(g), the application shall be deemed not to have been filed, and the applicant shall be accordingly notified of this.

#### **Article 43**

##### Preliminary examination

(1) In conducting a preliminary examination, within three months of the filing date of the patent application the Agency shall verify:

(a) the application's compliance with the conditions specified in Article 33, and, where necessary, Article 34;

(b) compliance of the contents of the application documentation with the conditions specified in the Regulations;

(c) compliance of the procedure for claiming right of priority with the provisions of Articles 37 and 38;

(d) fulfillment of the requirements of Article 87;

(e) payment within the prescribed time limit of the application filing fee.

(2) Where deficiencies are identified which may be obviated, the Agency shall notify the applicant, having granted him the opportunity to obviate them within a time limit specified in the notification. Where the specified time limit is not observed, or in the absence of a request to extend the time limit, the patent application shall be refused.

#### **Article 44**

##### Publication of the application

(1) Three months after the date of filing the patent application, the Agency shall publish information regarding said application in the Gazette. The information subject to publication shall be prescribed in the Regulations.

(2) At the same time as the publication of the application in the Gazette, the Agency shall publish the documents relating to the application in the form in which they were provided by the applicant.

(3) Patent applications which were withdrawn or refused prior to the completion of technical preparation for publication shall not be published.

#### **Article 45**

##### Substantive examination

(1) In conducting a substantive examination, within six months of the filing date of the patent application the Agency shall verify:

(a) compliance of the variety for which a patent has been applied for with the conditions specified in Article 10;

(b) compliance of the variety denomination with the conditions specified in Article 36.

(2) The Agency is entitled to request from the applicant any missing corroborative documents or clarifying materials which he must provide within a time limit specified in the Agency's notification. Where the time limit is not observed, or in the absence of a request to extend it, the patent application shall be refused.

(3) Where during the examination it is established that the variety denomination does not comply with the conditions of Article 36, the applicant shall be offered the opportunity to provide the Agency with a new variety denomination within a time limit specified in the notification. Where the time limit is not observed, or in the absence of a request to extend it, the patent application shall be refused.

(4) Where the patent application complies with the prescribed conditions, the Agency shall notify the applicant to this effect.

(5) Upon completion of the substantive examination, the Agency shall forward copies of the application documentation to the State Commission for the purpose of conducting a technical examination of the variety.

#### **Article 46**

##### Technical examination of a variety

(1) Where after conducting examinations under Articles 43 and 45, the Agency establishes that there are no obstacles to granting a patent, steps shall

be taken to conduct a technical examination in order to:

(a) determine whether the new candidate variety belongs to the botanical taxon applied for by the applicant and identified in the preliminary examination;

(b) establish whether the variety complies with the conditions of distinctness, uniformity and stability according to Articles 7, 8 and 9;

(c) establish whether a description of the new variety enables it to be distinguished from another commonly known variety.

(2) A technical examination of the variety shall be carried out by the State Commission and shall include the conduct of breeding tests:

(4) The State Commission shall establish a date and place for the seeds or propagating material required to conduct a technical examination to be provided free-of-charge, in appropriate samples and in necessary quantities. Failure to provide the necessary materials within the prescribed time limit shall result in the application being deemed to have been withdrawn.

(5) The State Commission may request all necessary information and documents from the applicant.

#### **Article 47**

##### Conducting a technical examination

(1) The State Commission shall conduct a technical examination of a variety in accordance with directions and within time limits prescribed by international standards.

(2) The applicant shall pay the prescribed fee for the technical examination to be conducted.

(3) Where testing of the variety has been carried out by a competent authority of a UPOV member State or by the applicant, the State Commission shall analyze its results in order to confirm or deny the suitability of the testing done.

(4) On the basis of the results of the technical examination, the State Commission shall compile a report on the technical examination and send it to the Agency.

#### **Article 48**

##### Technical examination report

(1) Where the State Commission deems the results of the technical examination to be insufficient to evaluate the variety, it shall send a report on the technical examination and a more precise official description of the variety to the Agency.

(2) Where in the course of conducting a technical examination it is established that the variety does not comply with the conditions in Articles 7, 8 and 9, the State Commission shall compile a report on the technical examination and send it to the Agency.

(3) The Agency shall notify the applicant of the results of the technical examination and invite him to provide feedback within the time limit specified in the notification.

(4) Where it is established that the report on the technical examination does not contain sufficient grounds to make a decision, the State Commission may, on its own initiative and following consultation with the applicant or upon reasonable request of the applicant, stipulate the conducting of an additional examination on condition of an additional payment. Any additional examination carried out prior to taking the final decision shall be deemed to be a constituent part of the examination carried out in accordance with Article 46(1).

(5) The results of the technical examination shall be for the exclusive use of the Agency and may only be used in future with its consent.

#### **Article 49**

##### Objections to a patent application

(1) Any person may file objections to a patent application in writing. Objections must be reasonable and relate exclusively to the failure to comply with Articles 6 to 10 and 36 and may be lodged:

(a) within three months of the publication date of the application where the proposed denomination does not comply with the provisions of Article 36;

(b) in the period between the publication of the application and before a decision is taken in the case of failure to comply with the conditions specified in Articles 6 to 10.

(2) The applicant shall be notified of objections and granted the opportunity to respond within two months. The objections and responses provided shall be taken into account by the Agency in taking the decisions specified in Article 50.

### **Article 50**

#### Decisions of the Agency

(1) Within three months of the date of obtaining the report on the technical examination and the precise official description of a variety, where it has been established that the examination results are sufficient to take a decision on an application, and in the absence of any of the obstacles specified in Article 49 and paragraph (2) of this Article, the Agency shall take a decision regarding the grant of the patent.

(2) The Agency shall take a decision to reject an application:

(a) where the applicant has failed to eliminate deficiencies within the time limit specified in Articles 43 and 45;

(b) where the applicant has failed to satisfy the requirements specified in paragraph (1) of Article 46;

(c) where the applicant has failed to propose a variety denomination in accordance with Article 36;

(d) where on the basis of the technical examination report it has been concluded that the conditions of Articles 7, 8 and 9 have not been satisfied;

(e) at the request of a person whose right in the patent has been recognized by a court decision.

(3) The Agency shall notify the applicant of the decision taken.

### **Article 51**

#### Basis of decisions

(1) The Agency's decisions must contain the grounds for taking said decisions.

(2) The Agency's decisions shall be based exclusively on grounds and items of evidence with which interested parties could familiarize themselves orally or in writing and on which they could state their point of view.

### **Article 52**

#### Publication of a decision

(1) The Agency shall publish notification of its decision to grant a patent or refuse an application in the Gazette.

(2) At the same time as the publication of the notification of the decision to grant a patent, the Agency shall publish patent documents containing the official description of a variety and photographs, as necessary. Information for publication shall be determined by the Regulations.

### **Article 53**

#### Withdrawal of a patent application

(1) An applicant shall be entitled to withdraw a patent application at any time prior to a decision being taken as to its validity.

(2) Where there is more than one applicant, a patent application may only be withdrawn with the consent of each of them.

(3) Where the applicant is not the breeder, he shall inform the breeder of his intention to withdraw the application at the same time as lodging a request to this effect in writing with the Agency. In this case, the breeder within two months of receiving such notification shall have a preferential right to apply for continuation of the application procedures as the applicant.

Part 2  
Appeals procedure

**Article 54**  
Conditions for filing an appeal

(1) Any decision taken by the Agency may be appealed at the Board of Appeals of the Agency.

(2) Any natural or legal person may lodge an appeal, while complying with the provisions of Article 87, against a decision affecting him directly, or against a decision affecting another person, but who has a direct relationship with him.

(3) A justified appeal shall be presented to the Agency in writing within two months of the day of the decision where the appeal is lodged by the applicant, or otherwise, within two months of the date of publication of the decision.

(4) The appeal shall only be deemed to have been lodged upon payment of the prescribed fee.

(5) An appeal lodged according to paragraph (1) has a suspending effect. The Agency, where it considers it necessary, may take the decision not to suspend an appealed decision.

**Article 55**  
Examination of an appeal

(1) Where an appeal is permitted for examination, the Board of Appeals shall verify whether it is reasonable.

(2) In the course of examination of the appeal, which shall be conducted in accordance with the Regulations on the Board of Appeals of the Agency, the parties may lodge as necessary within the time limit prescribed by the Board of Appeals their feedback on the notifications addressed to them, or the communications received from other parties.

(3) The parties to the appeals procedure shall be entitled to make oral representations.

**Article 56**  
Decision in relation to an appeal

(1) Following examination of an appeal, the Board of Appeals shall either pass final judgment on it, or transfer the matter to a competent sub-division of the Agency or to the State Commission in order to repeat the examination.

(2) Where the Board of Appeals transfers the matter to a competent sub-division of the Agency or to the State Commission, the grounds and directions contained in the Board of Appeals' decision shall be binding on said sub-division and the State Commission, provided that the facts of the matter are one and the same.

(3) The decision of the Board of Appeals shall be published in the Gazette within two months of it being taken.

**Article 57**  
Means of appealing the  
Board of Appeals' decisions

(1) Any decision taken by the Board of Appeals may be challenged in court under the provisions of the Code of Civil Procedure. The bringing of a suit shall not have a suspending effect.

(2) Grounds for bringing a legal action may be lack of competence, infringement of the fundamental requirements of the procedure, infringement of the provisions of this Law or the order of its application or abuse of authority.

(3) A Board of Appeals' decision, which in the procedure is not final with respect to one of the parties, may not be the subject of a legal action before the final decision is taken, except where such a decision does not provide for a legal action to be brought.

(4) The court is entitled to cancel or amend an appealed decision.

(5) A legal action may be brought in court within two months of the date of notification of interested parties of the Board of Appeals' decision.

(6) An action may be brought by any of the parties to proceedings which have been affected by the Board of Appeals' decision.

(7) The Agency shall be informed of a court's decision by an interested party. The Agency shall enter amendments arising from the court's final and legally enforceable judgment in the national registers, and shall publish said judgment in the Gazette within two months of the date of registration with the Agency.

Chapter V  
PROCEDURE FOR GRANT AND  
MAINTENANCE IN FORCE OF A PATENT

**Article 58**

Grant of a patent

(2) Where a decision to grant a patent has not been challenged, or the lodged appeals were rejected, the Agency shall grant a patent to the person entitled to said patent, provided that the prescribed fees have been paid, and shall publish information to that effect in the Gazette.

(3) The patent shall be granted by the Agency on the basis of the decision on the grant of the patent.

(4) The date of grant of the patent shall be the publication date of a notification of its grant in the Gazette. A list of information to be published shall be determined by the Agency. The date of grant of the patent shall be entered in the National Register of Patents.

(5) Where the prescribed fees for the grant of a patent have not been paid following publication of the notification of the grant of the patent under the conditions specified in the Regulations, the patent shall not be granted; a notification regarding the loss of the patent owner's rights shall be entered in the National Register of Patents and published in the Gazette.

**Article 59**

Maintenance in force of a patent

(2) In order to maintain a patent in force, it shall be necessary to pay annual fees in accordance with the provisions of Article 92.

(3) Annual fees shall be paid following publication of the notification regarding grant of a patent, and shall be deemed to have been paid when payment is effected within the time limit prescribed in the Regulations.

(4) Where the annual fee has not been paid within the prescribed time limit, it may be paid within six months of the expiry date of said time limit, subject to the payment of an additional fee.

**Article 60**

Patent granted to a non-competent person

(1) Where a patent is granted to a person who is not entitled to it, then the person who is so entitled may request the transfer of the patent to his name, without prejudicing other existing rights or actions according to the law.

(2) Where a person is only entitled to partial patent protection, he may request recognition as the joint owner of the patent in accordance with paragraph (1).

(3) The actions specified in paragraphs (1) and (2) may only be examined in court within five years of the publication date of the decision to grant the patent in the Gazette.

(4) Paragraph (3) shall not be applied where, on the date of the grant or grant of the patent, the patent owner was aware that he was not entitled to it, or was not the sole person so entitled.

(5) The lodging of a legal action shall be recorded in the National Register of Patents. A certified copy of the court judgment shall be provided to the Agency by the interested party. The final and legally enforceable court judgment shall be entered in the National Register of Patents and come into force for third parties as of the publication date in the Gazette.

**Article 61**

Implications of a change of patent owner

(1) Where there is a change of patent owner following a court judgment, a license agreement and any other rights shall be terminated by entering the authorized person in the National Register of Patents.

(2) Where, prior to bringing the action, the patent owner or license owner used the variety on the territory of the Republic of Moldova or undertook effective and substantive preparations for this purpose, they may continue such use, provided that an application for the grant of a non-exclusive license is submitted to the new patent owner, as entered in the National Register of Patents. The application must be submitted within the time limit stipulated in the Regulations. The license shall be granted for a defined period and under reasonable conditions.

(3) In the absence of agreement between the parties, the non-exclusive license specified in paragraph (2) may be granted by a court.

(4) The provisions of paragraph (2) shall not be applied where the patent owner or license owner acted in bad faith when they began to use the variety or prepared for such use.

#### **Article 62**

##### Change in variety denomination

(1) The denomination of the variety, conferred to it in accordance with Article 36, may be changed where the Agency establishes that such denomination fails to satisfy or no longer satisfies the requirements specified in the relevant Article, and where it has previously been possible to demonstrate the right of a third party, and the patent owner has agreed with the change, or where use of the variety denomination by the patent owner or by any other person is prohibited by a court decision.

(2) The Agency shall propose to the patent owner to provide an amended variety denomination in accordance with Article 36.

(3) The amended denomination proposed may become the subject of objections under Article 49.

#### **Article 63**

##### Technical inspection

(1) The patent owner shall be obliged to maintain the protected variety for the patent's entire term to such an extent as to retain all of its features as specified in the official description of the variety as at the date of the grant of the patent.

(2) The State Commission may carry out a technical inspection under Articles 46 and 47 in order to verify whether the protected variety is in continued existence as such, i.e. whether it retains all the features specified in the official description as at the date of the grant of the patent.

(3) The patent owner shall be obliged to provide the State Commission with all information necessary to verify the existence of the variety as such. He shall be obliged to provide variety material and to allow testing for the purpose of establishing whether essential measures have been taken to guarantee the existence of the variety as such.

#### **Article 64**

##### Technical inspection report

(1) Where the State Commission has established that the variety is no longer uniform or stable, it shall send the Agency a report with its conclusions.

(2) Where, upon conducting the technical inspection, it emerges that the variety fails to comply with the conditions of patentability specified in Part (1), the Agency shall notify the patent owner of the results of the inspection and give him the opportunity to provide feedback.

(3) Where the patent owner fails to provide feedback, the Agency shall announce his loss of rights as granted by the patent, in accordance with Article 24.

#### Chapter VI

#### INFORMING THE PUBLIC

#### **Article 65**

##### Informing the public

The Agency and State Commission shall, by virtue of their authority, inform the public of all decisions and notifications which stipulate a certain time limit or communication, which in turn are stipulated by other provisions of this Law, order of the Director General of the Agency, or order of the Chairman of the State Commission.

#### **Article 66**

##### Registers

(2) The Agency shall keep the National Register of Applications, including:

(a) patent applications, containing an indication of taxon, preliminary variety denomination, filing date, names and addresses of the applicants, breeders and patent attorney;

(b) all information relating to the completion of the procedure concerning patent applications, with reference to the information specified in item (a);

(c) proposals for the denomination of the variety;  
(d) amendments affecting the applicant or the patent attorney.

(1) The Agency shall keep the National Registry of Patents, in which the following information shall be included after the decision regarding the grant of a patent is taken:

(a) the species and denomination of the variety;

(b) the official description of the variety, or an indication of a document at the Agency's disposal, which contains such a description;

(c) for varieties requiring certain components in order to obtain material for repeated use, an indication of such components;

(d) the names and addresses of the patent owner, breeder and patent attorney;

(e) the commencement date and expiry date of the period of validity of the patent;

(f) upon request, any contractual right to exclusive use or any right to compulsory use of the variety, including the name and address of the person enjoying the right of use;

(g) instructions for the identification of the variety as an initial variety, or a variety essentially inheriting the features of the initial variety, including the denomination of the varieties and the names of the parties involved.

(1) The Agency shall maintain the registers specified in paragraphs (1) and (2), in accordance with the provisions of the Law on Registers.

(2) The State Commission shall maintain the Register of Plant Varieties, which contains the following information about varieties permitted for breeding in the Republic of Moldova:

(a) registration number;

(b) variety denomination;

(c) breeder's name and address;

(d) holder's name and address;

(e) year of registration;

(f) some morphological and breeding characteristics of the variety.

#### **Article 67**

##### Public inspection

(1) The registers referred to in Article 66 shall be open for public inspection.

(2) Where there is legitimate interest and in accordance with the conditions specified in the provision, the following shall be open for public inspection:

(a) documents concerning the patent application;

(b) documents concerning the granted patent;

(c) cultivation tests conducted for the purposes of the technical examination of the variety;

(d) cultivation tests conducted for the purposes of the technical inspection of the maintenance of the variety.

(3) In the case of varieties whose material, consisting of specific components, must be used repeatedly in order to obtain the variety, upon the request of the applicant any information on the components, including their cultivation, shall be excluded from the number of materials subject to public inspection. After the decision regarding the patent application has been taken, such an application shall not be accepted.

(4) The Agency and State Commission shall not be entitled to transfer material provided or obtained within the framework of testing to third parties, except where the relevant person gives his consent.

(5) Upon request by an interested party, the Agency and the State Commission shall be entitled to grant excerpts from the register upon payment of the prescribed fee.

#### **Article 68**

##### Periodicals

(1) The Agency shall, on a monthly basis, grant the Gazette, containing:

(a) information entered in the National Register of Applications and the National Register of Patents, and likewise any other information whose publication is stipulated by this Law;

(b) notifications and information of a general nature, received from the Director General of the Agency, and also any other information affecting this Law and the application thereof.

(2) The State Commission shall periodically publish the Register of Plant Varieties, including varieties and hybrids allowed for breeding and marketing.

#### **Article 69**

##### Preventive marking

(1) The patent owner shall be entitled to mark the material of a variety or the harvested material of a variety with preventive marking indicating that the variety is patented.

(2) The absence of preventive marking shall not have legal consequences.

(3) A person who, directly or indirectly, falsely specifies that the material of a variety or the harvested material of a variety obtained or sold by him belongs to a variety patented by another person shall be answerable before the law.

(4) Where genetically modified plant varieties are marketed, the material of a variety shall be marked appropriately with an indication on the label and/or in accompanying documentation of the presence of genetically modified organisms.

## Chapter VII ENSURING OBSERVANCE OF RIGHTS

### **Article 70**

#### Actions for infringement of rights

(1) The undertaking of any act specified in Article 15 without the permission of the patent owner shall be deemed to be an infringement of rights arising from a patent application or a patent, as shall the following acts:

(a) incorrect use of the variety denomination or failure to indicate the denomination in contravention of the provision of Article 18(2);

(b) contrary to Article 19(3), use of the denomination of a protected variety or of a denomination so similar as to be easily confused with the denomination of a protected variety.

(2) A person who has committed the infringements specified in paragraph (1) shall be obliged to compensate for damages sustained by the patent owner. The amount of compensation may not be less than the benefit obtained by the infringer.

### **Article 71**

#### Actions preceding the grant of a patent

The patent owner may apply for reasonable compensation from any person who in the period between the publication date of the patent application and the patent grant date committed an act which would have been prohibited had the patent been granted.

### **Article 72**

#### Right to bring an action for infringement of rights

(1) An action for infringement of rights may be brought by a patent owner.

(2) A licensee may bring an action for infringement of rights, except where such an eventuality was deliberately excluded by way of agreement with the patent owner in the case of an exclusive license, or by a court in accordance with Article 31 or 61.

(3) Any licensee shall have the right to participate in infringement proceedings brought by the patent owner in a court in order to obtain compensation for damages sustained.

#### **Article 73**

Measures to secure evidence prior to the filing of an action for infringement of rights

(2) Any competent person who has provided sufficient evidence to confirm the infringement of his rights may request a court or other competent authority prior to the filing of an action against illegal acts to take temporary measures to secure relevant evidence provided that the confidentiality of the information is safeguarded. A court may pronounce judgment on the adoption of measures to secure evidence on condition that a deposit is lodged by the plaintiff or a guarantee of equivalent value is provided, necessary to compensate any damages caused to the defendant where no infringement is confirmed.

(3) In order to adopt measures to secure evidence, the court shall have the right to:

(a) request a detailed description of the variety or its materials, the rights to which are assumed to have been infringed, either with or without specimens;

(b) to seize the disputed products;

(c) to seize materials and equipment used in the production process and/or distribution of the disputed products, and also documents relating thereto.

(1) The procedure for applying measures to secure evidence shall be performed by a court or other competent authority in accordance with the Code of Civil Procedure. Measures to secure evidence shall be implemented with the assistance of a bailiff, accompanied where necessary by a representative of the Agency and a police officer.

#### **Article 74**

Securing evidence in urgent cases

(2) Measures to secure evidence may be prescribed without the knowledge of the defendant where a delay could cause irreparable harm to the patent

owner or where there is a risk of the evidence being destroyed. The affected parties shall be promptly informed of the court's decision.

(3) The decision regarding the securing of evidence may be appealed to the court.

#### **Article 75**

Invalidity of measures to secure evidence

(1) Measures to secure evidence shall be deemed worthless or invalid:

(a) where within 20 working days the plaintiff fails to bring an action on infringement of rights in court;

(b) as a result of any actions or inaction of the plaintiff which involved the causing of damage;

(c) upon the establishment of the absence of infringement or the risk of infringement of rights in a plant variety;

(d) in other cases specified by law, by court decision.

(2) Where damage is caused by measures to secure evidence recognized as worthless or invalid, the plaintiff shall pay the defendant appropriate compensation.

#### **Article 76**

Provision and securing of evidence in the context of an action for infringement of rights

(1) Where a party presents arguments as a basis for his claims, and also information that specific evidence is available to the opposing party, the court shall order that these documents are provided in sufficient and reasonable number provided that confidentiality of the information is ensured. In the case of an infringement of rights in a commercial field, the court may additionally order the parties to provide bank, financial or trade documentation.

(2) Where one of the parties to proceedings unreasonably refuses access to necessary information or in bad faith delays providing such information, thereby hindering settlement of the dispute, the court shall make a judgment on whether or not to take into consideration the statement of claim on the basis of information provided, including the appeals or claims of the party adversely affected

by the refusal to grant access to the information, on condition that the parties are granted the opportunity of a hearing as regards their claims or evidence.

**Article 77**  
Right to information

(1) Where upon examination of the dispute it has been established that rights in a plant variety have been infringed, a court may request information regarding the provenance and distribution channels of materials infringing the right in the variety from the infringer or any other person:

(a) in whose possession counterfeit materials intended for sale were discovered;

(b) identified by the person mentioned in item (a) as a person involved in the production, reproduction or distribution of the variety materials.

(2) The information specified in paragraph (1) shall include where necessary:

(a) the names and addresses of the breeder, distributor, supplier and previous owners of the variety materials, and also of wholesalers and retailers;

(b) information on the amount produced, supplied, obtained or ordered, and also about the price of the relevant variety materials.

(3) The provisions of paragraphs (1) and (2) shall be applied without detriment to other legislative and regulatory norms, which:

(a) shall enable the patent owner to obtain more detailed information;

(b) shall govern use of information provided in accordance with this Article in civil or criminal cases;

(c) shall determine responsibility for abuse of the right to information;

(d) shall give the opportunity to refuse to provide information which might force the person identified in paragraph (1) to recognize his own participation or that of close relatives in the infringement of the patent;

(e) shall govern the safeguarding of confidentiality of information sources or the processing of personal data.

**Article 78**

Measures to secure an action for infringement of rights

(1) Having established actual or unavoidable infringement of a patent, a court may, upon the application of the right owner, take measures to secure an action on infringement of rights in relation to the infringer and/or intermediaries, such as:

(a) taking a decision on the temporary prohibition of any act which is an infringement of the patent owner's rights, or permitting the continuation of such acts on condition that a deposit is lodged which is sufficient to compensate the patent owner for damages sustained;

(b) the sequestration of materials suspected in the infringement of a patent in order to prevent their use in commercial trade;

(c) the sequestration of any of the infringer's property, including freezing of bank accounts, requiring bank, financial or commercial documentation to be provided, where the infringement has been committed in the commercial arena and there is a risk of failure to compensate for damages sustained.

(2) Measures for ensuring maintenance of rights may be prescribed without the defendant's knowledge, where any delay could cause irreparable harm to the patent owner, or where there is a risk that the evidence will be destroyed. The affected parties shall be promptly informed of the court's decision.

**Article 79**  
Remedies

(1) Having established that an infringement of rights has taken place, a court may, upon application, order appropriate measures to be taken in relation to the products infringing a patent, and in appropriate cases in relation to materials and equipment which were used for creating and manufacturing such products.

In particular, such measures are:

- (a) temporary withdrawal from trade;
- (b) final and complete withdrawal from trade;
- (c) destruction.

(2) The measures specified in paragraph (1) shall be implemented at the expense of the defendant, except when there are important reasons preventing this.

(3) Upon examination of an application for remedies, a court shall be led by the principle of fairness, by proportionality of the seriousness of the infringement and prescribed means of protection, and shall also take into account the interests of third parties.

#### **Article 80**

##### Ensuring execution of a court judgment

Where a court passes judgment on the verification of a patent infringement, the court may, upon the patent owner's request, take measures to ensure the infringer fulfils the judgment, in accordance with which the latter shall be ordered to cease any actions infringing the rights of the patent owner. For this purpose, the court may oblige the infringer to lodge an appropriate deposit or provide a guarantee of equivalent value. The patent owner may also request the application of such measures to intermediaries whose services are used by third parties in infringing the patent.

#### **Article 81**

##### Alternative measures

The court may, upon the request of the infringer, prescribe financial compensation to the plaintiff instead of the measures specified in Articles 79 and 80, where the infringer acted unintentionally or carelessly, where adoption of such measures would cause him disproportionate detriment, and where financial compensation for the plaintiff is reasonable.

#### **Article 82**

##### Compensation for damage

(1) Upon the request of an aggrieved party, a person who deliberately infringed, or who had reasonable grounds to recognize the patent had been infringed,

shall compensate the patent owner for realistic damage caused by the infringement of his rights. In determining the amount of compensation:

(a) all existing circumstances must be taken into account, such as negative economic consequences, including profit foregone by the aggrieved party, income obtained illegally by the defendant, and also other aspects, such as moral damage sustained by the patent owner as a result of infringement of his rights;

(b) as an alternative, a single lump sum may be determined, calculated based upon, at the very least, regular payments or remuneration which would be due to the patent owner where the defendant has requested permission to use the relevant plant variety.

(3) Where the infringer has committed an infringement unwittingly or did not have reasonable grounds to be aware of said infringement, he shall be obliged to compensate the patent owner for profit foregone or damage caused, as prescribed in accordance with the law.

#### **Article 83**

##### Publication of court decisions

(1) In the context of actions for infringement of protected rights, at the request of the plaintiff and at the expense of the defendant, a competent legal authority may prescribe measures for the distribution of information relating to a court decision, including displaying it in public places, and also partial or full publication of the decision.

(2) The competent legal authority may prescribe additional publicity measures, including mass-market, appropriate to the specific circumstances.

#### Chapter VIII

#### GENERAL PROVISIONS

#### **Article 84**

##### Extension of time limits and reinstatement of a missed deadline

(1) Time limits concerning the application or patent prescribed by this Law or by the Regulations may be extended by submitting a request to the Agency prior to the expiry of the prescribed time limit. The

time limit shall be extended by no more than six months from the expiry date of the prescribed time limit.

(2) The request for an extension to a time limit shall be deemed to be submitted only upon payment of the relevant fee.

(3) An applicant who has breached a time limit prescribed in relation to any procedure under the Agency's auspices may request the reinstatement of the missed deadline within six months of the expiry date of the prescribed time limit. The missed procedure must be undertaken within this time limit. The request shall be deemed to be submitted only after the payment of the fee for the reinstatement of a missed deadline; otherwise, it shall be rejected.

(4) The provisions of this Article shall not be applicable to the time limits specified in paragraphs (1) and (3) of this Article, paragraph (3) of Article 12, paragraph (3) of Article 34, paragraph (3) of Article 35, in Articles 37 to 39, 49, paragraph (3) of Article 54, paragraph (3) of Article 59, and paragraph (2) of Article 85.

#### **Article 85**

##### Restoration of rights (*restitutio in integrum*)

(1) Where, despite taking all appropriate measures dictated by circumstances, the applicant or patent owner or any of the parties to a procedure under the Agency's auspices are not confined to any time limit, a direct consequence of which is the loss of the right or the opportunity to appeal, the rights of the relevant person or party, upon request, shall be restored.

(2) A request for the restoration of rights shall be submitted in writing within two months of the date of the elimination of the reason for failing to comply with the prescribed time limit, but no later than 12 months from the expiry date of the missed deadline. Where a request concerns the reinstatement of a patent due to non-payment of the annual maintenance-in-force fee, the 12-month period shall commence from the expiry of the time limit specified in Article 59(3).

(3) A request for restoration of rights must be justified and contain the facts and arguments on which it is based.

(4) A request for restoration of rights shall be deemed to be submitted upon payment of the prescribed fee for restoration of rights.

(5) The provisions of this Article shall not be applicable to the time limits specified in paragraph (2) of this Article, paragraph (3) of Article 12, paragraph (1) of Article 14, in Articles 37 to 39, 49 and paragraph (3) of Article 54.

#### **Article 86**

##### Right of subsequent use

Any person who, in the period between the loss of application or patent rights and the restoration of such rights, used in good faith or undertook effective and essential preparations to use a variety which is the subject of a published application or enjoys patent protection, may continue to use it free of charge within the framework or for the requirements of his business, without exceeding the existing scope of use.

#### **Article 87**

##### Representation

(1) Applying the provisions of Part (2), nobody shall be obliged to have a representative for the conduct of business with the Agency in procedures prescribed by this Law.

(2) Natural or legal persons who are not domiciled or do not have a place of business in the Republic of Moldova, or likewise an industrial or commercial enterprise operating in the Republic of Moldova, must be represented by a patent attorney in order to conduct business with the Agency, with the exception of the following activities:

- (a) filing of a patent application;
- (b) payment of fees;
- (c) filing of a previous application.

(1) Natural or legal persons who are domiciled or have a place of business in the Republic of Moldova, or an industrial or commercial enterprise operating in the Republic of Moldova, may be represented at the Agency by their own employees.

(2) Representation shall be conducted through a power of attorney provided to the Agency, under the conditions and within the time limits prescribed by the Regulations.

(3) Patent attorneys shall conduct their activities in accordance with regulations approved by the Government.

#### **Article 88**

##### Examination at the Agency's initiative

(1) Whilst carrying out procedures, the Agency may, on its own initiative, resort to studying facts to the extent that they are the subject of the examinations specified in Articles 45 and 46.

(2) The Agency shall not be obliged to take into account facts which have not been requested, or evidence which has not been provided within the prescribed time limit.

#### **Article 89**

##### Oral procedure

(1) An oral procedure shall be conducted at the Agency's initiative or upon the request of one of the parties to the procedure.

(2) Without affecting the provisions of paragraph (3), an oral procedure conducted at the Agency shall not be public.

(3) An oral procedure conducted at the Board of Appeals, and in particular publication of the decision, shall be public, with the exception of decisions whose publication might inflict serious and unjustified losses, especially on one of the parties to the procedure.

#### **Article 90**

##### Gathering evidence

(1) In carrying out any procedure under the auspices of the Agency, State Commission, or the courts, the following measures may be undertaken for the collection of evidence:

- (a) hearing of the parties;
- (b) request for information;

(c) provision of documents and other evidence;

(d) hearing of witnesses;

(e) examination;

(f) visiting the place of business;

(g) written declarations under oath.

(2) Where the Agency, State Commission or court considers it necessary that a party to the procedure, witness or specialist give an oral testimony:

(a) the person shall be invited to the appropriate authority;

(b) a request to obtain testimonies from the appropriate person shall be submitted to the court or other competent authority.

(3) A party to the procedure, witness or specialist who has been invited to the Agency, State Commission or court, may request approval to be heard by a competent authority. After receiving such a request, or where the person fails to appear, the Agency, State Commission or court may request before the competent authority to receive the testimony of said person.

(4) Where a party to the procedure, witness or specialist gives evidence to the Agency, State Commission or court, the relevant person may request before the competent authority to be heard under appropriate conditions.

#### **Article 91**

##### Suspension of procedure in court

(1) Where the matter in court concerns establishing which person has the right to obtain a patent, and where the decision depends upon an assessment of the patentability of the variety according to Article 6, then such a decision may only be taken after the Agency has taken a decision as to the patentability of the variety in accordance with the patent application.

(2) Where the matter in court concerns a patent that has already been granted, in relation to which a cancellation or loss of rights procedure has been

applied, the procedure may be suspended to the extent that the decision is dependent upon the validity of the patent.

### **Article 92**

#### Fees

(1) In accordance with regulations ratified by the Government, the Agency shall levy fees for the performance of legal acts, and also annual fees for the maintenance in force of the patent during its term of validity.

(2) In the case of non-payment of fees prescribed for the performance of other acts only on the request of an interested party, the application shall not be deemed to be filed where the fee has not been paid within the time limit specified in the Agency's notification, by means of which the person was invited to pay the fee and was warned about the consequences of non-payment.

(3) Where certain information provided by the applicant may only be verified by means of carrying out a technical examination, the cost of which exceeds the prescribed payment, an additional charge shall be levied in respect of the technical examination.

(4) Fees shall be paid by the applicant, patent owner, and also by other interested natural or legal persons.

### **Article 93**

#### Protection and testing of varieties abroad

(2) Natural and legal persons from the Republic of Moldova shall have the right to choose in which State to submit the initial filing of the patent application.

(3) The applicant shall be entitled to apply to other UPOV member States for the grant of a plant variety patent, without having to wait for the grant of the patent for said variety by an authority of the State in which the initial application was filed.

(4) The variety for which protection is sought in the Republic of Moldova may be tested in another State where a corresponding bilateral or international treaty has been concluded with that State.

(5) An applicant who has filed his first application in another State shall be required to provide information on the testing carried out in compliance with the requirements for variety protection in that State.

(6) The cost of protecting a variety abroad shall be borne by the applicant.

### **Article 94**

#### Competencies in examination of disputes

(1) The Agency's Board of Appeals shall examine disputes concerning:

(a) grant of a patent or rejection of a patent application;

(b) recognition of right of priority;

(c) withdrawal of the patent application or refusal of the patent.

(2) The work of the Board of Appeals shall be governed by the Regulations on the work of the Agency's Board of Appeals, as ratified by the Government.

(3) The Cisinău Chamber of Appeals shall examine disputes:

(a) regarding the establishment of the breeder;

(b) concerning the establishment of the person entitled to obtain a patent;

(c) regarding the grant of a license for a patent application or patent;

(d) in relation to actions concerning the right of subsequent use;

(e) between an enterprise and an employee relating to actions affecting patent rights;

(f) relating to actions concerning the infringement of a patent application or a patent, and instructions on appropriate measures;

(g) regarding the cancellation of the patent;

(h) regarding the examination in a court of first instance of objections to decisions of the Board of Appeals.

#### **Article 95**

##### Use of varieties for production purposes

Plant varieties shall be used for production purposes only after said varieties are tested for agronomical value and entered in the Register of Plant Varieties. Varieties of genetically modified plants shall be used for production purposes only after obtaining approval for their introduction into the environment, granted where necessary by a national competent authority in compliance with biological safety legislation.

#### **Article 96**

##### National policy

Foreign natural and legal persons from UPOV member States shall enjoy rights granted by this Law on an equal footing with natural and legal persons from the Republic of Moldova. The provisions of this Law shall be applicable both in the case of bilateral agreements and on the basis of the principle of reciprocity.

#### Chapter IX

#### FINAL AND TRANSITIONAL PROVISIONS

#### **Article 97**

##### Entry into force

This Law shall enter into force three months from its publication date in the Official Monitor of the Republic of Moldova, with the exception of Articles 73, 74, 75 and 76, which shall come into effect at the same time as the entry into force of the corresponding changes entered in the Code of Civil Procedure.

From the date of entry into force of this Law, the Law on Protection of Plant Varieties No.915-XIII of July 11, 1996, as amended, shall be recognized as superseded.

It shall be established that:

(a) patent applications, the procedure for the examination of which shall not be complete until the date of entry into force of this Law, shall be examined in the order prescribed by this Law;

(b) patents for varieties of plants relating to botanical genera and species protected on the territory of the Republic of Moldova under the Law on Protection of Plant Varieties No.915-XIII of July 11, 1996, granted prior to the entry into force of this Law, shall be equivalent in legal terms to patents granted in accordance with this Law.

#### **Article 98**

##### Organization of enforcement

In the three-month period from the date of entry into force of this Law, the Government shall:

(a) present Parliament with proposals on bringing current legislation into line with this Law;

(b) bring its normative acts into line with this Law.

CHAIRMAN OF PARLIAMENT

Marian Lupu

Cisinău, February 29, 2008.  
No.39-XVI.