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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**COUNCIL**

**Forty-Second Ordinary Session**  
**Geneva, October 30, 2008**

EXAMINATION OF THE CONFORMITY OF  
THE DRAFT LAW ON BREEDER'S RIGHTS  
OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA  
WITH THE 1991 ACT OF THE UPOV CONVENTION

*Documents prepared by the Office of the Union*

Introduction

1. By Note dated September 10, 2008, addressed to the International Union for the Protection of New Varieties of Plants (UPOV), the Permanent Mission of the former Yugoslav Republic of Macedonia to the United Nations Office at Geneva and other International Organizations in Switzerland enclosed a letter dated September 5, 2008, addressed to the Secretary-General of UPOV, by His Excellency Mr. Aco Spasenoski, Minister for Agriculture of the former Yugoslav Republic of Macedonia, requesting the examination of the Draft Law on of the Breeder's Rights (hereinafter referred to as the "Draft Law"), which constitutes the final version approved by the Government and is expected to be adopted by the Parliament of the former Yugoslav Republic of Macedonia at the end of September 2008, for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The Note and the letter are reproduced in Annex I to this document.
2. Annex II contains a translation in English of the Draft Law provided by the Government of the former Yugoslav Republic of Macedonia.

3. Article 34(3) of the 1991 Act provides that “[a]ny State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.”

4. The Government of the former Yugoslav Republic of Macedonia already started the procedure to become a member of UPOV by Note dated February 18, 2008, in which His Excellency Mr. Antonio Milošoski, Minister for Foreign Affairs, requested the examination of the Law on New Varieties of Agricultural Plants of the former Yugoslav Republic of Macedonia (hereinafter referred to as the “Law”), which was adopted by the Parliament of the former Yugoslav Republic of Macedonia on July 4, 2007, for conformity with the 1991 Act of the UPOV Convention.

5. At its twenty-fifth extra-ordinary session, on April 11, 2008, the Council decided to:

(a) take note of the analysis in document C(Extr.)/25/4;

(b) recommend that the former Yugoslav Republic of Macedonia incorporate the additional provisions and amendments in the Law, as provided in document C(Extr.)/25/4, and recommend that once the additional provisions and amendments have been incorporated in the Law, the amended Law should be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act;

(c) request the Office of the Union to offer its assistance, at the earliest opportunity, to the Government of the former Yugoslav Republic of Macedonia in drafting the necessary additional provisions and amendments to the Law; and

(d) authorize the Secretary-General to inform the Government of the former Yugoslav Republic of Macedonia of that decision.

6. In relation to the above decision of the Council of April 11, 2008, Article 35 of the Draft Law provides that “[o]n the day of entering into force of this Law, the Law for on protection of new varieties of agriculture plants shall cease to apply (‘Official Gazette of Republic of Macedonia’ No.84/2007).” For this reason, and pursuant to Article 34(3) of the 1991 Act, the Government of the former Yugoslav Republic of Macedonia had made a new request (see paragraph 1 of this document), to ask the advice of the Council in respect of the conformity of the Draft Law with the 1991 Act.

#### Basis for the Protection of New Plant Varieties in The former Yugoslav Republic of Macedonia

7. In the former Yugoslav Republic of Macedonia, the protection of new plant varieties will be governed by the Draft Law once adopted. An analysis of the Draft Law follows in the order of the substantive provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

8. Article 4 of the Draft Law contains definitions corresponding to the relevant definitions in Article 1 of the 1991 Act.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

9. Article 2 of the Draft Law provides that “[t]he purpose of this Law is to grant breeders’ rights and protect breeders’ rights” corresponding to the basic obligation provided by Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

10. Article 10 of the Draft Law provides as follows:

“Genera and Species to be protected

“(1) At the date of the coming into force of this Law, the provisions of this Law shall apply to at least 15 plant genera and species designated by the Minister of Agriculture, Forestry and Water economy based on genera and species of economic interest for the Republic of Macedonia, to be proposed by a Commission that includes competent persons in this area.

“(2) The persons to be included, and the manner of work of the Commission shall be designated by the Minister of Agriculture, Forestry and Water economy.”

11. Furthermore, Article 34 of the Draft Law provides as follows:

“Gradual application of the Law to additional genera and species

“In respect to the genera and species which are not part of the list mentioned in article 10 of this law, the provisions of this law will be applied to additional plant genera and species, as designated by the Minister, and to all plant genera and species before the expiration of a period of 10 years after the entry into force of this law.”

12. The provisions of Article 10 and Article 34 of the Draft Law correspond to the obligations under Article 3(2) of the 1991 Act. It should be noted that in accordance with Article 36(1)(ii) of the 1991 Act, when depositing its instrument of accession, the former Yugoslav Republic of Macedonia must notify in its declaration the list of the 15 plant genera and species.

Article 4 of the 1991 Act: National Treatment

13. Article 3 of the Draft Law provides that “Nationals of a member of UPOV, or contracting parties to international agreements to which the Republic of Macedonia is party to, as well as domestic and foreign natural persons resident and legal entities having their registered offices within the territory of a member of UPOV, shall, insofar as the grant and protection of breeders’ rights are concerned, enjoy within the territory of Republic of

Macedonia the same treatment as is accorded by this Law to its nationals.” The provisions in Article 3 of the Draft Law correspond to the requirements of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection, Novelty, Distinctness, Uniformity and Stability

14. Articles 5 to 9 of the Draft Law contain provisions of the conditions of protection corresponding to the provisions of Articles 5 to 9 of the 1991 Act.

15. Article 6(3) and (4) of the Draft Law implement a transitional novelty regime for “Varieties of recent creation” based on Article 6(2) of the 1991 Act.

“Article 6

“Novelty

“[...]

“(3) Where, according to Articles 10 and 34, this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place in the territory of the Republic of Macedonia within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

“(4) The provision under paragraph 3 of Article 6, shall only apply to applications for protection of the breeder’s right filed within one year, at the latest, after the provisions of the Law apply to the genera or species concerned.”

Article 10 of the 1991 Act: Filing of Applications

16. Article 11 of the Draft Law contains provisions on the filing of applications. The Draft Law does not seem to contain provisions which conflict with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

17. Article 12 of the Draft Law contains provisions on the right of priority corresponding to the provisions of Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

18. Article 13 of the Draft Law contains provisions concerning the examination of the application corresponding to the provisions of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

19. Article 15 of the Draft Law contains provisions on provisional protection corresponding to the provisions in Article 13 of the 1991 Act.

Article 14 of the 1991 Act: Scope of the Breeder's Right

20. Article 16 of the Draft Law contains provisions on the scope of the breeder's right corresponding to the provisions of Article 14 of the 1991 Act.

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

21. Article 17(1) of the Draft Law contains provisions concerning the exceptions to the breeder's right which correspond to the provisions of Article 15(1) of the 1991 Act.

22. Article 17(2) of the Draft Law contains provisions on the optional exception under Article 15(2) of the 1991 Act as follows:

“Article 17

“Exceptions to the Breeder's Right

“[...]

“(2 ) In relation to varieties included in a list of agricultural plants, the breeder's right shall not be infringed by small farmers who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 16 (3) (a) (i) or (ii) of this Law.

“(3) The varieties of fruit trees, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (2) of this Article.”

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

23. Article 18 of the Draft Law contains provisions concerning the exhaustion of the breeder's right which correspond to the provisions of Article 16 of the 1991 Act.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

24. Article 19 of the Draft Law contains provisions on the restrictions on the exercise of the breeder's right which correspond to the provisions in Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

25. Article 20 of the Draft Law provides that:

“Article 20

“Measures regulating commerce

“The breeder's right shall be independent of any measure taken by the Republic of Macedonia to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Law.”

26. The Draft Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

27. Article 21 of the Draft Law contains provisions concerning the duration of the breeder's right which correspond with the provisions of Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

28. Article 22 of the Draft Law contains provisions on variety denominations corresponding to the provisions of Article 20 of the 1991 Act.

Article 21 of the 1991 Act: Nullity of the Breeder's Right

29. Article 23 of the Draft Law contains provisions on the nullity of the breeder's right corresponding to the provisions of Article 21 of the 1991 Act.

Article 22 of the 1991 Act: Cancellation of the Breeder's Right

30. Article 24 of the Draft Law contains provisions on the cancellation of the breeder's right corresponding to the provisions of Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

31. In relation to the obligation to "provide for appropriate legal remedies for the effective enforcement of breeders' rights" (Article 30(1)(i) of the 1991 Act), the Draft Law provides the following:

(a) Articles 26 and 27 of the Draft Law refer to the available civil actions and remedies to enforce the breeders' rights;

(b) Article 29 of the Draft Law provides for the supervision of the State Agriculture Inspectorate, including the temporary seizure of "all items used, or intended for use, or resulted from the violation itself";

(c) Articles 30 and 31 of the Draft Law provide for offenses and penalties; and

(d) Article 32 of the Draft Law for procedures of settlement and mediation.

32. In relation to the obligation under Article 30(1)(ii) of the 1991 Act, Article 14(1) of the Draft Law provides as follows:

“Article 14

“Decision on granting of the breeder’s rights

“(1) On the basis of the completed examination results concerning the application submitted by the Directorate for Seed and Seedlings, the Minister for Agriculture, Forestry and Water Economy issues a decision for granting or rejecting breeders’ rights.”

33. Article 25(2) of the Draft Law corresponds to the obligation to publish information concerning applications for and grant of breeders’ rights, and proposed and approved denominations as required in Article 30(1)(iii) of the 1991 Act.

General Conclusion

34. In the opinion of the Office of the Union, the Draft Law incorporates the substantive provisions of the 1991 Act. On that basis, once the Draft Law is adopted and the Law in force, the former Yugoslav Republic of Macedonia will be in a position “to give effect” to the provisions of the 1991 Act, as required by its Article 30(2).

35. *The Council is invited to:*

*(a) take note of the analysis in this document;*

*(b) take a positive decision on the conformity of the Draft Law on the Breeder’s Rights of the former Yugoslav Republic of Macedonia with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows that, once the Draft Law is adopted and the Law in force, the former Yugoslav Republic of Macedonia may deposit its instrument of accession to the 1991 Act; and*

*(c) authorize the Secretary-General to inform the Government of the former Yugoslav Republic of Macedonia of that decision.*

[Annexes follow]

ANNEX I

Note from the Permanent Mission of the former Yugoslav Republic of Macedonia of September 10, 2008, enclosing a letter from the Minister for Agriculture to the Secretary-General of UPOV



**PERMANENT MISSION OF THE REPUBLIC OF MACEDONIA  
TO THE UNITED NATIONS OFFICE AT GENEVA AND OTHER INTERNATIONAL  
ORGANIZATIONS IN SWITZERLAND**

16-01-492/1

The Permanent Mission of the Republic of Macedonia to the United Nations Office at Geneva and Other International Organizations in Switzerland presents its compliments to the International Union for the Protection of New Varieties of Plants (UPOV) and has the honor to submit the Law on Breeder's right together with a letter from the Minister of Agriculture Mr. Aco Spasenoski, in which he is stating the intention of the Government of the Republic of Macedonia to adhere to the UPOV Convention.

The Permanent Mission of the Republic of Macedonia avails itself of this opportunity to renew to the International Union for the Protection of New Varieties of Plants (UPOV) the assurances of its highest consideration.



10 September 2008

**Dr. Kamil Idris**

**Secretary-General  
International Union for the Protection  
of New Varieties of Plants (UPOV)**

GENEVA

Dear Secretary-General D-r Idris,

I have the pleasure to inform you that the Parliament of Republic of Macedonia is in the process of adopting the Law on Breeder's right.

In this regard I am pleased to inform you that the Republic of Macedonia intends to adhere to the International Convention for the Protection of New Varieties of Plants, from December 2, 1961, revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (UPOV Convention).

Pursuant to the provisions of Article 34(3) of the UPOV Convention, I would appreciate if the Council of UPOV could examine the conformity of the abovementioned draft Law of the Republic of Macedonia with the provisions of the UPOV Convention.

Please, accept, d-r Idris the assurances of my highest consideration.

Skopje, 05 September 2008

Minister  
Aco Spasenoski



Dr. Kamil Idris

Secretary- General  
International Union for the Protection  
of New Varieties of Plants (UPOV)

GENEVA

[Annex II follows]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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

**DRAFT LAW ON THE BREEDER'S RIGHTS**

**I. GENERAL PROVISIONS**

**Article 1**  
**Scope of the Law**

This Law regulates the treatment, manner and the conditions for grant, protect and cease of breeders' rights.

**Article 2**  
**Purpose of the Law**

The purpose of this Law is to grant breeders' rights and protect breeders' rights.

**Article 3**  
**National Treatment**

Nationals of a member of UPOV, or contracting parties to international agreements to which the Republic of Macedonia is party to, as well as domestic and foreign natural persons resident and legal entities having their registered offices within the territory of a member of UPOV, shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of Republic of Macedonia the same treatment as is accorded by this Law to its nationals.

**Article 4**  
**Definitions**

For the purposes of this Law the terms used shall mean:

1. "breeder" means
  - 1) the person who bred, or discovered and developed, a variety,
  - 2) the person who is the employer of the aforementioned person or who has commissioned the latter's work, or
  - 3) the successor in title of the persons referred to in subparagraphs 1 and 2 of this paragraph, as the case may be;
2. "applicant" means the natural or legal person entitled to file an application for the grant of a breeder's right in accordance with the definition of "breeder" provided in this Law;
3. "breeder's right" means the right of the breeder provided for in this Law;
4. "variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be
  - defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged;

5. "UPOV" means the International Union for the Protection of New Varieties of Plants established by the International Convention for the Protection of New Varieties of Plants;

6. Member of UPOV means a State party or a Contracting Party to the International Convention for the Protection of New Varieties of Plants.

## **II. CONDITIONS FOR GRANTING OF THE BREEDER'S RIGHT**

### **Article 5**

#### Conditions of Protection

(1) The breeder's right shall be granted where the variety is

1. new,
2. distinct,
3. uniform and
4. stable.

(2) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 22 of this Law and the applicant complies with the formalities provided for in this Law and that he pays the required fees.

### **Article 6**

#### **Novelty**

(1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

- 1) in the territory of the Republic of Macedonia earlier than one year before the date of filing the application and
- 2) in a territory other than that of the Republic of Macedonia earlier than four years or, in the case of trees or of vines, earlier than six years before the said date before issuing the application.

(2) The following acts shall be considered not to result in the loss of novelty for the variety referred to in paragraph 1 of this Article:

(i) sale or disposal of to others that forms part of an agreement for the transfer of rights to the successor in title.

(ii) sale or disposal of to others that forms part of an agreement under which a person multiplies propagating material of a variety on behalf of the breeder where that agreement requires that: the property in the multiplied material reverts to the breeder; and the multiplied material is not used for the production of another variety;

(iii) trials of the variety not involving sale or disposal of to others for purposes of exploitation of the variety;

(iv) sale or disposal of to others that forms part of an agreement under which a person undertakes field tests or laboratory trials, or small-scale processing trials, with a view to evaluating the variety;

(v) sale or disposal of to others that forms part of the fulfillment of a statutory or administrative obligation, in particular concerning biological security or the entry of varieties in an official catalogue of varieties admitted to trade.

(3) Where, according to Articles 10 and 34, this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place in the territory of the Republic of Macedonia within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

(4) The provision under paragraph 3 of Article 6, shall only apply to applications for protection of the breeder's right filed within one year, at the latest, after the provisions of the Law apply to the genera or species concerned.

#### **Article 7 Distinctness**

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

#### **Article 8 Uniformity**

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

#### **Article 9 Stability**

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

#### **Article 10 Genera and Species to be protected**

(1) At the date of the coming into force of this Law, the provisions of this Law shall apply to at least 15 plant genera and species designated by the Minister of Agriculture, Forestry and Water economy based on genera and species of economic interest for the Republic of Macedonia, to be proposed by a Commission that includes competent persons in this area.

(2) The persons to be included, and the manner of work of the Commission shall be designated by the Minister of Agriculture, Forestry and Water economy.

### **III. PROCEDURE FOR GRANTING OF THE BREEDER'S RIGHT**

#### **Article 11**

##### **Filling the application**

(1) The breeder shall file an application for a breeder's right with the Seed and Seedlings Directorate.

(2) The filing date of the application for a breeder's right shall be the date of receipt of the application filed as regulated by the By-law referenced in paragraph 3 of this article for granting of the breeder's right.

(3) The breeder shall pay the fees for granting of the breeder's right, as prescribed by the Minister.

(4) The form and content, procedure and the amount of fees concerning the filing of the application and the fees for granting of the breeder's right referred to in paragraph (1) and (4) of this Article shall be prescribed by the Minister of Agriculture, Forestry and Water economy.

#### **Article 12**

##### **Right of Priority**

(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of UPOV (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the Seed and Seedlings Directorate (the "subsequent application"), enjoy a right of priority for a maximum period of 12 months. This period shall be computed from the date of filing of the first application.

(2) In order to benefit from the right of priority, the breeder shall, in the subsequent application in the Republic of Macedonia, claim the priority of the first application. The Seed and Seedlings Directorate shall require the breeder to furnish, after a period of 3 months from the filing date, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(3) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, period of one year after such rejection or withdrawal, in which to furnish, to the Seed and Seedlings Directorate, any necessary information, document or material required for the purpose of examination referred to in Article 13 of this Law.

#### **Article 13**

##### **Examination of the Application**

(1) Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the Seed and Seedlings

Directorate may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the Seed and Seedlings Directorate may require the breeder to furnish all the necessary information, documents or material.

(2) For all finalized testing and checks referred to in paragraph 1 of this article, the applicant takes on the real costs for finalizing the necessary testing and checks.

(3) Necessary information, documents or materials referred to in paragraph (1) of this Article, as well as the amount of the costs mentioned in paragraph 2 of this article, shall be prescribed by the Minister of Agriculture, Forestry and Water economy.

#### **Article 14** **Decision on granting of the breeder's rights**

(1) On the basis of the completed examination results concerning the application submitted by the Directorate for Seed and Seedlings, the Minister for Agriculture, Forestry and Water Economy issues a decision for granting or rejecting breeders' rights.

(2) For granted breeders' rights, the holder of the right is obliged to pay an annual fee, for keeping the right in force.

(3) The amount of the fee referred to in paragraph 2 of this article is prescribed by the Minister for Agriculture, Forestry and Water Economy.

(4) The Decision from paragraph 1 of this article is issued in the "Official Gazette of the Republic of Macedonia".

#### **Article 15** **Provisional Protection**

The Republic of Macedonia shall provide measures designed to safeguard the interests of the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 16.

### **IV. THE RIGHTS OF THE BREEDER**

#### **Article 16** **Scope of the Breeder's Right**

(1) Acts in respect of the propagating material

(a) Subject to Articles 17 and 18 of this law, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- i. production or reproduction,
- ii. conditioning for the purpose of propagation,
- iii. offering for sale,

- iv. selling or other marketing,
  - v. exporting,
  - vi. importing,
  - vii. stocking for any of the purposes mentioned in i to vi, above.
- (b) The breeder may make his authorization subject to conditions and limitations.

(2) Acts in respect of the harvested material

Subject to Articles 17 and 18 of this law, the acts referred to in items i to vii of paragraph (1) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

(3) Essentially derived and certain other varieties

(a) The provisions of paragraphs (1) and (2) shall also apply in relation to

- i. varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- ii. varieties which are not clearly distinguishable in accordance with Article 6 from the protected variety and
- iii. varieties whose production requires the repeated use of the protected variety.

(b) a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when

- i. it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
- ii. it is clearly distinguishable from the initial variety and
- iii. except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(c) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

### **Article 17** **Exceptions to the Breeder’s Right**

(1) The breeder’s right shall not extend to

- 1. acts done privately and for non-commercial purposes,
- 2. acts done for experimental purposes,
- 3. acts done for the purpose of breeding other varieties, and, except where the provisions of Article 16(3) apply, acts referred to in Article 16(1) and (2) in respect of such other varieties.

(2) In relation to varieties included in a list of agricultural plants, the breeder’s right shall not be infringed by small farmers who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 16 (3) (a) (i) or (ii) of this Law.

(3) The varieties of fruit trees, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (2) of this Article.

**Article 18**  
**Exhaustion of the Breeder's Right**

(1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of paragraph (3) of Article 16 of this Law, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Republic of Macedonia, or any material derived from the said material, unless such acts

- i. involve further propagation of the variety in question or
- ii. involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

“material” means, for the purposes of this Article, in relation to a variety

- i. propagating material of any kind,
- ii. harvested material, including entire plants and parts of plants, and
- iii. any product made directly from the harvested material.

**Article 19**  
**Restrictions on the exercise of the breeder's right**

(1) Except where expressly provided in this Law, the free exercise of a breeder's right shall not be restricted in the territory of the Republic of Macedonia for reasons other than of public interest.

(2) When any such restriction has the effect of authorizing a third party to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration, according to law

**Article 20**  
**Measures regulating commerce**

The breeder's right shall be independent of any measure taken by the Republic of Macedonia to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Law.

**Article 21**  
**Duration of the Breeder's Right**

The breeder's right shall be granted for 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall be 25 years from the said date.

**V. VARIETY DENOMINATION**

**Article 22**  
**Variety Denomination**

(1) The variety shall be designated by a denomination which will be its generic designation. Subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the Seed and Seedlings Directorate. If it is found that the denomination does not satisfy the requirements of paragraph (2) of this Article, the Seed and Seedlings Directorate shall refuse to register it and shall require the breeder to propose another denomination within a period of 6 months. The denomination shall be registered by the Seed and Seedlings Directorate at the same time as the breeder's right is granted.

(4) Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden, to a person who, in accordance with the provisions of paragraph (6) of this Article, is obliged to use it, the Seed and Seedlings Directorate shall require the breeder to submit another denomination for the variety within a period defined in paragraph (3) of this article.

(5) A variety must be submitted to all members of UPOV under the same denomination. The Seed and Seedlings Directorate shall register the denomination so submitted, unless it considers the denomination unsuitable within the territory of Republic of Macedonia. In the latter case, it shall require the breeder to submit another denomination within a period defined in paragraph (3) of this article..

(6) Any person who, within the territory of the Republic of Macedonia, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

(7) When a variety is offered for sale or marketed, it shall be permitted to associate a markable trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

## **VI. NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT**

### **Article 23 Nullity of the Breeder's Right**

(1) The breeder's right shall be declared null and void when it is established

- i. that the conditions laid down in Articles 6 and 7 were not complied with at the time of the grant of the breeder's right,
- ii. that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in articles 8 or 9 were not complied with at the time of the grant of the breeder's right, or
- iii. that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(2) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph (1).

(3) The declaration of nullity of the breeder's right from paragraph (1) of this Article shall be published in the "Official Gazette of the Republic of Macedonia".

#### **Article 24** **Cancellation of the Breeder's Right**

(1) The breeder's right may be canceled if:

(a) it is established that the conditions laid down in Articles 8 or 9 are no longer fulfilled; or

(b) after being requested to do so within the period of 6 months :

(i) the breeder does not provide the Seed and Seedlings Directorate with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(ii) the breeder fails to pay such fees as may be payable to keep his right in force, or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

(2) No breeder's right shall be cancelled for reasons other than those referred to in paragraph (1).

(3) The decision of cancellation of the breeder's right from paragraph (1) of this Article shall be published in the "Official Gazette of the Republic of Macedonia".

### **VII. COMPETENT AUTHORITY**

#### **Article 25** **Competences**

(1) The Seed and Seedlings Directorate is competent for keeping Breeder's Rights Register and for publication of information from the registers concerning filed applications

(2) The Seed and Seedlings Directorate shall ensure that the public is informed through regular publication in the "Official Gazette of the Republic of Macedonia", of information concerning:

- i. application for and grants of breeder's rights, and
- ii. proposed and approved denominations.

(3) The Seed and Seedlings Directorate shall ensure access to documents and information concerning filed applications and granted breeder's rights to persons, who will prove the right to have an access to its documents and information, in written request, concerning

- i. documents filed with the applications; and
- ii. documents concerning granted breeder's rights.

(4) The form, content and the manner of keeping of the Breeder's Rights Register shall be prescribed by the act of the Minister of Agriculture, Forestry and Water economy.

## **VIII. ENFORCEMENT OF BREEDERS' RIGHTS**

### **Article 26 Legal remedies**

- (1) The physical person or the legal entity that has violated the breeder's right is responsible for compensation for damages according to the applicable legislation.
- (2) The breeder whose rights have been violated may, in addition to the legal action for compensatory damages, also request an injunction to prohibit the committing of, or continuation of committing, the infringement of the breeder's right by suspension of the activity act resulting in such infringement, and that the expenses of the proceedings for infringement be charged to the physical person or the legal entity who has violated the breeder's right.
- (3) Breeder's right infringement shall refer to acts contrary to Article 16 of this Law.

### **Article 27 Juridical Protection of the breeder's rights**

- (1) The juridical protection for infringement of the breeder's right provided in Article 16 of this Law shall be submitted within 3 (three) years from the date the plaintiff has notified the infringement to the defendant.
- (2) After the expiration of 5 (five) years after the violation occurred, a lawsuit can not be submitted.
- (3) The lawsuit referred to in paragraph 1 of this Article shall be submitted to the relevant Court.

## **IX. SUPERVISION**

### **Article 28 Implementation**

Supervision over the implementation of this Law and the Books of Rules adopted according this Law, shall be performed by the Ministry of Agriculture, Forestry and Water Economy through State Agriculture Inspectorate.

### **Article 29 Supervision of the State Agriculture Inspectorate**

- (1) Supervision over the implementation of the provisions from Articles 16 and 17 of this Law shall be performed by the State Agriculture Inspectorate through the state agriculture inspectors.
- (2) Should justified doubts about violation arise during the supervision, the State Agriculture Inspectorate shall temporary seize all items used, or intended for use, or resulted from the violation itself.

(3) The State Agriculture Inspectorate shall hand over all seized items with no delay, along with the proposal for initiating lawsuit.

## **X. OFFENSES AND PENALTIES**

### **Article 30 Penalties**

(1) A legal entity shall be fined with monetary penalty of 3,000 to 5,000 Euros in MKD: in the case of a violation of a breeder's right provided in Article 16 of this Law.

(2) A person responsible for a legal entity shall be fined with monetary penalty of 500 to 1,000 Euros in MKD for the violation referred to in paragraph (1) of this Article.

(3) A civil person shall be fined with penalty of 200 to 800 Euros in MKD for violation referred to in paragraph (1) of this Article.

### **Article 31 Penalties**

(1) A legal entity shall be fined with a penalty of 1,000 to 3,000 Euros in MKD if:

- contrary to paragraph (1) from Article 22 of this Law willfully makes use of a registered variety denomination of a variety protected in the Republic of Macedonia for another variety of the same plant species or closely related species
- contrary to paragraph (6) of Article 22 of this Law, offers for sale or markets propagating material of a protected variety, without using the registered denomination of the variety,

(2) A person responsible for a legal entity shall be fined with monetary penalty of 200 to 500 Euros in MKD for the violations referred to in paragraph (1) of this Article.

(3) A civil person shall be fined with penalty of 300 to 500 Euros in MKD for the violations referred to in paragraph (1) of this Article.

### **Article 32 Procedures, Settlement and Mediation**

Lawsuits for offences referred to in this Law shall be submitted to the relevant Court.

Prior to submission of claim for lawsuit for offences referred to in this Law, the Ministry conducts settlement procedures in accordance with the Law on penalties.

## **XI. TRANSITIONAL AND FINAL PROVISIONS**

### **Article 33 Book of Rules**

Book of Rules foreseen with this Law, shall be enacted within one year on the day of entering into force of this Law.

**Article 34**  
**Gradual application of the Law to additional genera and species**

In respect to the genera and species which are not part of the list mentioned in article 10 of this law, the provisions of this law will be applied to additional plant genera and species, as designated by the Minister, and to all plant genera and species before the expiration of a period of 10 years after the entry into force of this law.

**Article 35**  
**Provisions, which shall cease to apply**

On the day of entering into force of this Law, the Law for on protection of new varieties of agriculture plants shall cease to apply (“Official Gazette of Republic of Macedonia” No.84/2007).

**Entry into Force**  
**Article 36**

This Law shall enter into force on the 8th day of its publication in the “Official Gazette of the Republic of Macedonia”.

[End of Annex II and of document/  
Fin de l’annexe II et du document/  
Ende der Anlage II und des Dokuments/  
Fin del Anexo II y del documento]