



C(Extr.)/25/4

ORIGINAL: English

DATE: March 19, 2008

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

**COUNCIL**

**Twenty-Fifth Extraordinary Session**  
**Geneva, April 11, 2008**

EXAMINATION OF THE CONFORMITY OF  
THE LAW ON NEW VARIETIES OF AGRICULTURAL PLANTS  
OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA  
WITH THE 1991 ACT OF THE UPOV CONVENTION

*Document prepared by the Office of the Union*

Introduction

1. By Note dated February 18, 2008, addressed to the Secretary-General of 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 November 30, 2007, addressed to the Secretary-General of UPOV, by His Excellency Mr. Antonio Milošoski, Minister for Foreign Affairs, Ministry of Foreign Affairs of The former Yugoslav Republic of Macedonia, requesting 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 (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 Law provided by the Government of The former Yugoslav Republic of Macedonia. The accuracy of the translation and the terminology used will, in a number of cases, require verification with the original of the Law. Until that verification is completed, it will not be known whether apparent inconsistencies with the 1991 Act are a result of inaccurate translation or arise in the text of the original Law.

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 a letter dated September 4, 2000, in which Mrs. Verica Demirovska, Director, Ministry of Agriculture, Forestry and Water Economy, requested the advice of the Council of UPOV on the conformity of the “Law for seed, planting and propagating material, and recognition, approval and protection of the variety”, which was adopted in May 2000, with the 1991 Act.

5. At its thirty-fourth ordinary session, on October 26, 2000, the Council decided:

(a) to advise the Government of The former Yugoslav Republic of Macedonia that the Law for Seed, Planting and Propagating Material, and Recognition Approval and Protection of the Variety did not incorporate some important provisions of the 1991 Act;

(b) to request the Office of the Union to offer its assistance to the Government of The former Yugoslav Republic of Macedonia in drafting the necessary amendments to the Law of 2000, and the preparation of a more satisfactory translation into one or more of the official languages of UPOV;

(c) to further advise the Government of The former Yugoslav Republic of Macedonia that upon the adoption of the necessary amendments described in document C/34/13 to the satisfaction of the Office of the Union and the making of implementing regulations, it may deposit an instrument of accession to the 1991 Act.

6. The above decision of the Council of October 26, 2000, is no longer applicable since the Law of 2007 has declared the Law of 2000 (see Article 55 of the Law) to be invalid. 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 Law with the 1991 Act.

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

7. The protection of new plant varieties in The former Yugoslav Republic of Macedonia is governed by the Law. An analysis of the Law follows in the order of the substantive provisions of the 1991 Act.

#### Article 1 of the 1991 Act: Definitions

8. Some elements of the definition of “breeder” in Article 1(iv) of the 1991 Act, can be found in Article 3(1) and Article 12(1) and (3) of the Law. Article 12(3) of the Law contains contradictory provisions in relation to possible contents of an employment contract.

9. For clarity purposes, it is recommended to incorporate, in Article 3(1) of the Law, the elements of the definition of breeder of Article 1(iv) of the 1991 Act, such an incorporation will entail consequent changes in other provisions of the Law.

10. In order to reflect the definition of “variety” in Article 1(vi) of the 1991 Act, it is recommended to introduce the words “irrespective of whether the conditions of the grant of a breeder’s right are fully met” before “if it can be:” in Article 3(6) of the Law.

11. Clarification would be necessary in relation to the definition of “holder of a breeder’s right”, in Article 3(3) of the Law, and “owner of a breeder’s right”, in Article 3(5) of the Law, as they seem to relate to the same person and create confusion in relation to the definition of “breeder’s right” in Article 3(2) of the Law, and the definition of “breeder” with the proposed amendments (see paragraph 9, above). This clarification will entail consequent changes in other provisions of the Law (see in particular Articles 16(3), 23, 28(4), 51, 56(1) of the Law).

12. The Law provides for the definition of “public interest” in its Article 3(9): “‘Public interest’ is the state interest for protection and maintenance of new varieties”.

13. Other definitions in Article 3 of the Law, such as “protected sample” and “DUS test” may require clarification and/or verification of the translation with the original of the Law (see paragraphs 35 to 37, below).

14. Article 3(12) of the Law provides that the “Gen[e] Bank” is: “an institution in which the seed and propagating material of divergent populations and autochthonous types is permanently kept and maintained, in order to protect the biodiversity and keep definite samples of seed and propagating material of varieties registered in the National Variety List.” Measures taken to protect biodiversity, should be independent from the breeder’s right. It is recommended that Articles 3(12), 43 and 45, be clarified accordingly (see paragraphs 37 and 50, below).

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

15. Article 1 of the Law provides that “[t]his Law shall regulate the procedure for protection of new varieties of agricultural plants, except forest plants, as well as the manner of the procedure for acquisition and protection of the breeder’s right to the protected new variety of agricultural plants.”

16. The subject of the Law as presented in Article 1 seems to exclude certain groups of plants such as “forest plants” and seems to relate only to agricultural plants. The subject of the Law as presented in Article 1 is contrary to Article 3(2) of the 1991 Act.

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

17. Article 2 of the Law provides that “[t]he purpose of this Law shall be the protection of new variety of all types of agricultural plants, including hybrids among genera and species of agricultural plants.” Article 21(3) of the Law further provides: “The register of registered and protected new varieties shall keep records, for at least 15 types of agriculture plants, and after the membership of the Republic of Macedonia in UPOV within ten years records shall be kept for all species and varieties of agriculture plants.”

18. Article 3(2) of the 1991 Act provides for an optional transitional period to apply the provisions of the 1991 Act to “all plant genera and species” (a maximum period of 10 years), but does not permit the exclusion of genera and species. Under Article 2 of the Law, it seems that protection is available for agricultural plants only. This restriction can also be found in Article 21(3) of the Law. Furthermore, Article 1 of the Law excludes “forest plants” (see paragraph 16, above).

19. In conclusion, Articles 1, 2 and 21(3) of the Law contain provisions contrary to Article 3(2) of the 1991 Act.

#### Article 4 of the 1991 Act: National Treatment

20. Article 13 of the Law contains provisions on the persons entitled to file applications in line with Article 4 of the 1991 Act.

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

21. Article 4 of the Law identifies the criteria to be satisfied to obtain protection in line with Article 5(1) of the 1991 Act.

22. Article 5 of the Law contains provisions on the condition of novelty based on Article 6 of the 1991 Act.

23. It is requested that the accuracy of the translation of Article 5(1) of the Law be verified with the original of the Law, in particular, whether the words “sold or commercially exploited” correspond in the original to “sold or otherwise disposed of to others [...] for purposes of exploitation of the variety”. If the original of the Law does not reflect the words in Article 6(1) of the 1991 Act, Article 5(1) of the Law would need to be amended accordingly.

24. For compliance with Article 6(1)(ii) of the 1991 Act, “multi-annual fruit plants” should be replaced by “trees”.

25. It is further recommended to replace “holder of the right” or “right holder” by “breeder” in Article 5(2) of the Law.

26. Article 6(1) of the Law incorporates the first sentence of Article 7 of the 1991 Act concerning the condition of distinctness.

27. It is recommended to replace Article 6(2) of the Law by the second sentence of Article 7 of the 1991 Act. Reference to “In particular, the filing of an application for the granting of a breeder’s right [...], 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 ...” is missing in Article 6(2) of the Law.

28. Article 7 of the Law contains the elements of the condition of uniformity of Article 8 of the 1991 Act. In addition, the words “which are of relevant importance for differentiation

from other varieties” have been added at the end of Article 7 of the Law. It is recommended to reflect, in Article 7 of the Law, the wording of Article 8 of the 1991 Act.

29. Article 8 of the Law contains the elements of the condition of stability of Article 9 of the 1991 Act. It should be noted that the words “which are of relevant importance for differentiation from other varieties” appear instead of the word “relevant”, and that the words “permanent and” have been added before the word “unchanged”. It is recommended to reflect, in Article 8 of the Law, the wording of Article 9 of the 1991 Act.

#### Article 10 of the 1991 Act: Filing of Applications

30. Articles 25 and 26 of the Law contain provisions on the filing of applications.

31. In relation to the minimum requirements to be contained in the application, as provided in Article 25(3) of the Law, the requirement “data that the variety has been created by means of genetic engineering” needs to be clarified in order to comply with the 1991 Act. This sentence seems to indicate that protection is only available for varieties that have been created by means of genetic engineering. The 1991 Act is neutral in relation to the technology used to develop new plant varieties. In that regard, protection should be available for new plant varieties independently of the breeding methods used for their development. Furthermore, while the production and/or commercialization of genetically modified varieties might be subject to compliance with other measures, such measures should be independent from the breeder’s right (see Article 18 of the 1991 Act). Therefore, it is recommended that Article 25(3) of the Law be amended accordingly.

32. Article 26(3) of the Law requires clarification in relation to the filing date of the application.

#### Article 11 of the 1991 Act: Right of Priority

33. Article 27 of the Law contains provisions on the right of priority.

34. Article 27(5) of the Law provides for a period of two years for claiming the priority of the first application, instead of the 12 months required by Article 11(1) of the 1991 Act. In addition, the provisions of Article 11(3) of the 1991 Act concerning the period to provide the necessary information, documents and material for examination purposes has not been included in the Law. In conclusion, Article 27 of the Law needs to be amended in accordance with the provisions of Article 11 of the 1991 Act.

#### Article 12 of the 1991 Act: Examination of the Application

35. Articles 30 to 32 of the Law contain provisions on the examination of the application. The translation raises some issues in relation to conformity with the 1991 Act and internal consistency. For instance, in Article 30(1) of the Law, the word “permanent” is used while in Article 31(1) of the Law, the word used is “uniform”. Only the word “uniform” is correct. The word “conditions”, in Article 31(1) and in the title of Article 32 of the Law, is not appropriate. The word “conditions”, in Article 31(1), seems to refer to procedural steps and,

in Article 32, to the information, documents and material necessary for examination purposes. It is recommended to verify the translation with the original of the Law.

36. Article 31 (1) to (4) of the Law contain provisions on the examination of the application which contain additional requirements to the ones provided in Article 12 of the 1991 Act. For instance, “[t]he professional evaluation of the new variety shall be made on the basis of the results obtained in the examination of the variety on field and in laboratory (DUS – test) conducted in the Republic of Macedonia or in another state by an authority”. This is also the case, in the following provision: “the Directorate can use the results from the examination of the variety obtained from another country which has the adequate agro ecological conditions as in the Republic of Macedonia.”

37. It is recommended to clarify the provisions of Article 31 (1) to (4) of the Law in line with the provisions in Article 12 of the 1991 Act. This clarification may entail consequent changes in other provisions of the Law (Articles 3(7)(8)(11)(12), 22, 30, 32(1), 33(1), 43 and 45 of the Law).

#### Article 13 of the 1991 Act: Provisional Protection

38. Subject to the recommended amendments to the scope of the breeder’s right in Article 15 of the Law (see paragraph 43, below), Article 18(2) of the Law contains provisions of provisional protection in line with Article 13 of the 1991 Act. The words “suitable damage compensation”, in Article 18(2) of the Law, should be understood, at least, as “equitable remuneration”, as per the minimum requirement in Article 13 of the 1991 Act.

#### Article 14 of the 1991 Act: Scope of the Breeder’s Right

39. Articles 14(2) and 15 of the Law contain provisions on the scope of the breeder’s right.

40. Article 14(2) of the Law provides that “[t]he breeder’s right shall be right to economic use of the protected new variety”. As the right to commercialize the variety (produce, market, import, export, etc.) may depend on other measures, and such measures should be independent from the breeder’s right (see Article 18 of the 1991 Act), it is recommended to delete Article 14(2) of the Law.

41. In Article 15 of the Law, the accuracy of the translation should be verified with the original of the Law.

42. In addition to the need for a verified translation, the following elements of Article 14 of the 1991 Act should be incorporated in Article 15 of the Law:

- in paragraph (1): reference to “propagating material”; inclusion of the acts “conditioning for the purpose of propagation”, “offering for sale”, “or other marketing” after “selling”, “stocking for any of the purposes mentioned above”; and the inclusion of the provision “[t]he breeder may make his authorization subject to conditions and limitations”;
- in paragraph (2): reference to “harvested material”;

- in paragraph (3): “in the cases referred to in paragraph (1) of this Article an authorisation shall not be required for” should be replaced by “[t]he provisions of paragraphs 1 and 2 shall also apply in relation to”;
- in paragraph (4): the definition of “essentially derived variety” should be replaced by the definition in Article 14(5)(b) of the 1991 Act. The provisions of Article 14(5)(c) of the 1991 Act are also missing.

43. In conclusion, Article 14(2) of the Law should be deleted, and Article 15 of the Law should be replaced by the corresponding provisions of Article 14(1), (2) and (5) of the 1991 Act.

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

44. Article 16(1), first and second indents, and Article 16(3) of the Law contain provisions on two compulsory exceptions of the breeder’s right, in line with Article 15(1)(i) and (ii) of the 1991 Act. It is requested to verify if the translation of “[t]he breeder’s right can be used without the breeder’s authorization”, in Article 16(1) of the Law, corresponds to “[t]he breeder’s right shall not extend to” in the original of the Law.

45. In relation to Article 16(1), third indent, of the Law, “for acts done for the purpose of breeding other varieties”, the following should be added, for conformity with Article 15(1)(iii) of the 1991 Act, “, and, except where the provisions of Article 15(3) apply, acts referred to in Article 15(1) and (2) in respect of such other varieties”. In relation to this recommendation, see proposed amendments to Article 15 of the Law (paragraphs 42 and 43, above).

46. Article 16(1), fourth indent, and Article 16(2) and (4) of the Law seem to incorporate the optional exception to the breeder’s right under Article 15(2) of the 1991 Act. The translation of these provisions raises some questions. For instance, clarification is sought in relation to the words “separate species”, should they be understood as selected species, or a list of species. Further clarification of what is meant by “personal use” is requested in relation to the requirement to use the product of the harvest “for propagating purposes, on their own holdings”. These clarifications in relation to the original of the Law are necessary in order to assess if the Law complies with Article 15(2) of the 1991 Act.

#### Article 16 of the 1991 Act: Exhaustion of the Breeder’s Right

47. Certain provisions of Article 16(1) and (2) of the 1991 Act are missing in Article 17 of the Law. It is recommended to amend Article 17 of the Law, in line with Article 16(1) and (2) of the 1991 Act.

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

48. Article 42 of the Law contains provisions on a “forced license”. In Article 42(3) of the Law, reference is made to public interest, and to other reasons for granting a compulsory license. It is recommended to delete the additional reasons in order to comply with Article 17(1) of the 1991 Act.

49. The reference to “appropriate remuneration”, in Article 42(11) of the Law, complies with the requirement in Article 17(2) of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

50. Subject to the recommendations concerning Articles 3(12), 14(2), 25(3), 43 and 45 of the Law (see paragraphs 14, 31 and 40, above), the 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

51. Article 18(1) of the Law contains provisions on the duration of the breeder’s right. In order to comply with Article 19 of the 1991 Act, the word “trees” should be inserted in Article 18(1) of the Law to ensure that the duration of the breeder’s right for trees should be 25 years from the date of grant.

Article 20 of the 1991 Act: Variety Denomination

52. Articles 9 to 11 and 38 of the Law contain provisions on variety denominations.

53. It is recommended to clarify and/ or amend Articles 9 to 11, 21(5), 25(3) and 38 of the Law in accordance with the provisions of Article 20 of the 1991 Act, in particular:

- (a) the word “protected” should be deleted from Article 9 of the Law;
- (b) Article 10(2) of the Law should be replaced with the wording in Article 20(2) and (4) of the 1991 Act;
- (c) Articles 10(3) and (4) and 11(3) of the Law, should be modified in accordance with Article 20(2), (4) and (5) of the 1991 Act;
- (d) in Article 10(5) of the Law, clarification is requested on what is meant by “separate types of agricultural plants”;
- (e) in order to avoid creating confusion with provisions concerning the exceptions to the breeder’s right, it is recommended to delete Article 11(2) of the Law;
- (f) reference to “synonyms”, in Article 21(5) of the Law, should be clarified in accordance with the provisions in Article 20(5) of the 1991 Act;
- (g) in Article 25(3), fifth indent of the Law, “the Latin and Macedonian denomination of the species to which the new variety belongs”, the word “denomination” should be replaced by the word “name”; and
- (h) Article 38(1) of the Law, allows a change of a denomination, at the request of the holder of the breeder’s right. It is recommended to clarify such a provision in line with the requirements of Article 20(7) of the 1991 Act.



54. In conclusion, whilst certain provisions of Article 20 of the 1991 Act have been incorporated in Articles 9 to 11 and 38 of the Law, those Articles require amendments for internal consistency and compliance with the 1991 Act.

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

55. Article 35 of the Law "Procedure for Annuling the Decision for Protection of a New Variety" seems to relate to the reasons for nullity of Article 21 of the 1991 Act. It is recommended to verify the translation in relation to the original and to follow the language used in Article 21 of the 1991 Act. Furthermore, matters of internal consistency should also be verified in relation to Article 18(3) of the Law.

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

56. Article 36 of the Law "Annulment of the Decision" seems to contain the reasons for cancellation of the breeder's right provided in Article 22 of the 1991 Act. It is recommended to verify the translation with the original and to use the language in Article 22 of the 1991 Act. Furthermore, matters of internal consistency should also be verified in relation to Article 18(3) of the Law.

57. Articles 43 to 45 of the Law should be clarified in order to avoid repetitions and the creation of additional obligations for the holder of the breeder's right to the ones contained in Article 22 of the 1991 Act.

#### Article 30 of the 1991 Act: Implementation of the Convention

58. 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), Articles 46 to 53 of the Law refer to the available civil remedies, sanctions and fines. As explained in the following paragraphs, some amendments are recommended for consistency with the recommended changes in other provisions of the Law.

59. Articles 46(1), 47(3) and 52(1) of the Law should be amended by making reference to the unauthorized acts as provided in Article 15 of the Law, once amended as per the recommendations in paragraphs 42 and 43 of this document.

60. It is recommended that reference be made in the Law to any legislation in The former Yugoslav Republic of Macedonia providing for provisional measures.

61. Articles 50 and 51 of the Law provides for measures taken at the border in relation to a potential violation of the breeder's right.

62. Article 53 of the Law would need to be amended, following the recommended changes in Articles 11 and 16 of the Law concerning variety denomination and exceptions to the breeder's right, respectively.

63. Article 3 of the Law provides that “‘Authority’ for the protection of new varieties of agricultural plants means the Seed and Propagating Material Directorate within the Ministry of Agriculture, Forestry and Water Economy”. Article 20(1) of the Law provides that: “[t]he procedure for protection of the new variety on the basis of the application and the submitted documentation shall be conducted by Expert Commission for Protection of New Varieties of Agriculture Plants.” Furthermore, Article 33(1) of the Law provides that if “the variety fulfils the conditions [...], the minister will adopt a decision for protection of the new variety.” It is recommended to clarify the role of the Directorate and the Commission in relation to the obligation under Article 30(1)(ii) of the 1991 Act. It is recommended to provide for the detailed information in Article 20(2) of the Law, concerning the Commission, in the implementing regulations.

64. Articles 19, 26(2) and 33(3) of the Law comply with the obligation to publish information concerning applications for and grants of breeder’s rights and proposed denominations, as required by Article 30(1)(iii) of the 1991 Act. It is recommended to clarify in the Law that the publication of the decision concerning breeder’s right will also contain the approved denomination, as required by Article 20(3) and Article 30(1)(iii) of the 1991 Act.

65. Article 28 of the Law concerning the publication of the application may benefit from clarification in relation to who is entitled to submit objections.

66. It is recommended, for internal consistency, to clarify Articles 21 and 22 of the Law in relation to the information to be published in the Official Gazette, information in the Register accessible to the interested persons and appropriate measures to safeguard the legitimate interests of the breeder.

### General Conclusion

67. The analysis in this document suggests that the Law incorporates some provisions of the 1991 Act. However, that analysis has identified a significant number of provisions in the Law which are not in conformity with the 1991 Act (see paragraphs 16, 19, 24, 25, 27, 31, 34, 40, 42, 43, 45, 47, 48, 51, 53, 54, 59 and 62 of this document). In addition, certain provisions in the Law appear to be internally inconsistent and others require clarification (see paragraphs 8, 9, 10, 11, 13, 14, 28, 29, 32, 37, 53, 54, 55, 56, 57, 60, 63, 64, 65 and 66 of this document). Furthermore, the accuracy of the translation and the terminology used will, in a number of cases, require verification with the original of the Law (see paragraphs 13, 23, 35, 41, 44, 46, 55 and 56 of this document). In conclusion, it is recommended that, in order for The former Yugoslav Republic of Macedonia to be in a position to give effect to the provisions of the 1991 Act, as required by its Article 30(2), the Law be amended as recommended in this document.

68. *The Council is invited to:*

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

*(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.*

[Annexes follow]

ANNEX I

Note from the Permanent Mission of The former Yugoslav Republic of Macedonia received on February 18, 2008, enclosing a letter from the Minister for Foreign Affairs to the Secretary-General of UPOV



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

No. 16-01-89

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 Secretary -General of International Union for the Protection of New Varieties of Plants (UPOV) and has the honour to present the original of the Letter dated 30 November 2007 sent by H.E. Antonio Milososki, Minister of Foreign Affairs of the Republic of Macedonia to H.E.Dr. Kamil Idris, Secretary -General of International Union for the Protection of New Varieties of Plants .

Official translation (English) of the Law on Protection of New Variety of Agriculture Plants of the Republic of Macedonia is herewith enclosed.

The Permanent Mission of the Republic of Macedonia to the United Nations Office-Geneva and Other International Organizations in Switzerland avails itself of this opportunity to renew to the Secretary -General of International Union for the Protection of New Varieties of Plants (UPOV) the assurances of its highest consideration.



Geneva, 18 February, 2008.

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

**GENEVA**



РЕПУБЛИКА МАКЕДОНИЈА  
**МИНИСТЕРСТВО ЗА НАДВОРЕШНИ РАБОТИ**  
REPUBLIC OF MACEDONIA  
**MINISTRY OF FOREIGN AFFAIRS**  
*Министарство / Minister*

Skopje, 30 November 2007

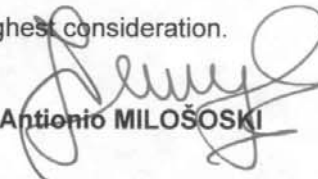
Dear Secretary-General D-r Idris,

I have the pleasure to inform you that on July 4, 2007 the Parliament of Republic of Macedonia adopted the Law on Protection of New Variety of Agriculture Plants.

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 Law on Protection of New Variety of Agriculture Plants of Republic of Macedonia with the provisions of the UPOV Convention.

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

  
Antonio MILOŠOSKI

**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]

LAW ON NEW VARIETIES OF AGRICULTURAL PLANTS  
OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Translation in English provided by the Government  
of The former Yugoslav Republic of Macedonia)

Pursuant to Article 75 paragraphs 1 and 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue this

**DECREE  
FOR PROMULGATION OF  
THE LAW ON NEW VARIETIES OF AGRICULTURAL PLANTS**

The Law on New Varieties of Agricultural Plants, adopted by the Assembly of the Republic of Macedonia on its session held on 20 June 2007, is hereby promulgated.

No. 07-2892/1  
20 June 2007  
Skopje

President of the  
Republic of Macedonia,  
**Branko Crvenkovski**

President of the  
Assembly of the Republic of  
Macedonia,  
**Ljubisha Georgievski**

**1. Law on Protection of New Varieties  
of Agricultural Plants**

**I. GENERAL PROVISIONS**

Article 1

**Subject**

This Law shall regulate the procedure for protection of new varieties of agricultural plants, except forest plants, as well as the manner of the procedure for acquisition and protection of the breeder's right to the protected new variety of agricultural plants.

Article 2

**Purpose of the Law**

The purpose of this Law shall be the protection of new variety of all types of agricultural plants, including hybrids among genera and species of agricultural plants.

Article 3

**Meaning of Terms**

The terms used in this Law shall have the following meaning:

1. "Breeder" means one or more national or foreign legal entities or natural persons who have bred, or discovered and developed, a variety;
2. "Breeder's right" means the rights of the breeder arising from this Law;
3. "Holder of a breeder's right" means a legal entity or natural person who has the right to submit an application for the protection of a new variety and has received a decision and a certificate for the protection of a new variety;
4. "Applicant" means a legal entity or natural person who has submitted an application;
5. "Owner of a breeder's right" means a legal entity or physical person who, by protecting the variety, acquires the breeder's right;
6. "Variety" means a plant grouping within the frames of the meaning of the botanical taxon of the lowest known rank, if it 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, if those characteristics remain unchanged in the reproduction;
7. "Protected variety" means a variety for which a decision has been issued for the protection of new variety, which contains a description of the variety;
8. "Protected sample" means a definite sample of seed material from the protected new variety;
9. "Public interest" is the state interest for protection and maintenance of new varieties;
10. "Authority" for the protection of new varieties of agricultural plants means the Seed and Propagating Material Directorate within the Ministry of Agriculture, Forestry and Water Economy;

11. DUS test means a procedure for recognition of the variety based on certification of distinctness, uniformity and stability of the variety according to the UPOV Convention;
12. Gen Bank means an institution in which the seed and propagating material of divergent populations and autochthonous types is permanently kept and maintained, in order to protect the biodiversity and keep definite samples of seed and propagating material of varieties registered in the National Variety List; and
13. UPOV means International Union for the Protection of New Varieties of Plants with headquarters in Geneva, Switzerland.

## II. CONDITIONS FOR VARIETY PROTECTION

### Article 4

#### **Protection Criteria**

- (1) The variety shall be protected by gaining the breeder's right.
- (2) Every variety can be protected if it is:
  - new,
  - distinct,
  - uniform,
  - stable and
  - designated by a denomination in accordance with the provisions of Article 10 of this Law.

### Article 5

#### **New Variety**

- (1) The variety shall be deemed to be new if, at the date of submitting of the application for variety protection, it has not been sold or commercially exploited by or without the consent of the breeder of the variety in the Republic of Macedonia earlier than one year before the date of submitting the application for protection of the new variety at most, and in another country earlier than four years before the date of submitting the application for protection of new variety, while for multi-annual fruit plants and grapevine earlier than six years before the date of submitting the application for protection of new variety.
- (2) Within the meaning of paragraph (1) of this Article, the following shall not be deemed as selling or commercial exploitation of the new variety:
  - transfer of the rights to the variety by an agreement,
  - contracted production, reproduction, finalisation or storing the propagating material or the products from that variety at the expense of the holder of the right, under the condition that the holder of the right keeps the exclusive ownership right to reproduction of the propagating material, the variety products or the products thereof,
  - examination of the variety on the field or in a laboratory, i.e. in an experimental production, in order to determine the variety use value if that is done by the right holder or a person authorized by the right holder,
  - official variety examination for the purpose of registration in the National Variety List, i.e. risk assessment for genetically modified varieties and
  - selling agricultural products created as side-products, i.e. as surplus during the development of the new variety, under the condition that those products be intended for end use and that the denomination of the variety not be given.



Article 6  
**Distinct variety**

- (1) 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 on the day of submitting the application for protection of a new variety.
- (2) The variety shall be deemed to be a matter of common knowledge if on the day of submitting the application in the Republic of Macedonia:
  - it is registered in the National Variety List in any country by the day of submitting the application,
  - an application is submitted and the procedure is completed by which the variety is registered in the National Variety List in any country; and
  - the propagating material of the variety or a product of the variety has already been traded or it has been used for making profit.

Article 7  
**Uniform variety**

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, which are of relevant importance for differentiation from other varieties.

Article 8  
**Stable variety**

The variety shall be deemed to be stable if its characteristics, which are of relevant importance for differentiation from other varieties, remain permanent and unchanged after repeated propagation or, in case of a particular cycle of propagation, at the end of each such cycle.

Article 9  
**Designation of New Variety**

The protected variety should be designated by a denomination which will be its generic designation for differentiation from other protected varieties, pursuant to Article 10 of this Law.

Article 10  
**Denomination of Protected New Variety**

- (1) Any designation can be registered as denomination of a protected new variety, which enables differentiation of the variety from another variety and can be a word, a word combination, a combination of words and figures or a combination of letters and figures unless it is not otherwise agreed upon this law.
- (2) A designation cannot be registered as a denomination of a protected new variety if it:
  - is not adequate in terms of the language,
  - disables the variety to be identified,
  - consists solely of figures, unless otherwise provided in the country,

- is equal or similar to the denomination of any other variety whose existence is a matter of common knowledge of a group of plants species, while it is in use,
  - is liable to mislead or to cause confusion concerning the origin, characteristics, values, use, and recognition of the geographical origin,
  - consists of a botanical or a denomination whose existence is a matter of common knowledge of a genus or species or includes such denomination which is liable to mislead,
  - includes words such as genus, species, variety, form, hybrid or a translation of those words into another language,
  - is liable to mislead concerning the breeder or the holder of the breeder's right,
  - is against the public order and moral; and
  - is against the industrial property regulations.
- (3) In case a certain variety has already been registered in the National Variety List or an application has been submitted for such an entry in any signatory country of international agreements or conventions which are signed i.e. acceded by the Republic of Macedonia, in the Republic of Macedonia only the denomination of the variety that was registered can be registered, entered in the National Variety List or listed in the application in another state.
- (4) As an exception of paragraph (3) of this Article in the Republic of Macedonia a certain variety can be registered under another denomination only if the use of the first denomination was not adequate in the terms of the language or because that would be against the public order and moral.
- (5) The manner of registering the denomination of the protected new variety of the separate types of agricultural plants referred to in paragraph (4) of this Article shall be prescribed by the Minister for Agriculture, Forestry and Water Economy (hereinafter referred to as: the Minister).

#### Article 11 **Use of the Denomination**

- (1) The use of the denomination of the protected new variety shall be mandatory. The propagating material of the protected new variety can be released in trade only if the denomination has been attached on the protected new variety. The obligation for use of the denomination of the protected new variety continues even after the termination of the protection of the variety pursuant to Article 21 paragraph (6) of this Law.
- (2) The provision of paragraph (1) of this Article shall not apply if the propagating material of the protected new variety is used for non-commercial purposes.
- (3) The protected new variety must be designated by the same registered denomination in all states, except in the case referred to in Article 10 paragraph (4) of this Law.
- (4) In trade in propagating material of the protected new variety, apart from the registered denomination, the denomination of a trade mark can be used i.e. another designation provided that the registered denomination is clearly visible and recognisable.
- (5) The denomination of the protected new variety or a denomination which can be replaced with that denomination must not be used for another variety of the same or closely related species of agriculture plants.

### III. EXERCISING THE RIGHT TO PROTECTION

#### Article 12

##### **Right to Protection**

- (1) The breeder shall be entitled to ask for a protection of the new variety, as well as his/her legal successor or legal heir.
- (2) If during the process of creating the variety several breeders have participated together, the collective right of protection shall belong to them or to their legal heirs. In case when one or more persons who participated in the creation of the new variety waive the right to protection the other persons, who participated in the creation of the variety may exercise that right.
- (3) If the variety creation is based on an employment agreement between the employee and the employer, in accordance with the tasks, the employee to create new varieties, the right to protection of the new variety shall belong to the employer. When the mutual rights and obligations have been regulated by this agreement, the right to protection of the new variety shall be determined by this agreement.

#### Article 13

##### **Persons Entitled to Submit an Application for Protection of New Variety**

- (1) An application for protection of new variety can be submitted, pursuant to Article 12 paragraph (1) of this Law, by a person or a breeder, which is a citizen of the Republic of Macedonia, other natural persons with permanent stay in the Republic of Macedonia or legal entities established in the Republic of Macedonia.
- (2) The foreign legal entities and natural persons as far as the breeder's right is concerned in the Republic of Macedonia shall have the same rights as the national persons, if it derives from the international agreements signed or acceded by the Republic of Macedonia, or on the grounds of reciprocity. The reciprocity shall be proved by the person referring to the reciprocity.
- (3) The foreign legal entities and natural persons, in the action before the authority, pursuant to Article 19 form this Law, shall exercise their rights by submitting an application through authorised representatives who are national legal entities or natural persons and who deal with representing in the procedure for new variety protection.

### IV. THE RIGHTS OF THE BREEDER

#### Article 14

##### **Acquiring the Breeder's Right**

- (1) The breeder shall acquire the breeder's right for new variety protection by entry of that right in the register for protected novelties referred to in Article 21 of this Law.
- (2) The breeder's right shall be right to economic use of the protected new variety.

#### Article 15

### **Authorisation of the Breeder**

- (1) The authorisation of the breeder shall be required when the protected new variety is used by legal entities and natural persons for:
  - production or reproduction,
  - selling; and
  - exporting and importing.
- (2) The authorisation referred to in paragraph (1) of this Article shall be required when:
  - the propagating material has been obtained without the authorisation for reproduction of the protected new variety; and
  - the breeder has not had reasonable opportunity to require breeder's right for the material for the propagating material of that variety due to justified reasons.
- (3) In the cases referred to in paragraph (1) of this Article an authorisation shall not be required for:
  - varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
  - varieties which are not clearly distinguishable from the protected variety; and
  - varieties i.e. hybrids whose production requires the repeated use of the protected variety.
- (4) A variety shall be deemed to be essentially derived from another variety when:
  - it is mostly predominantly derived from the initial (original) variety, or from a variety which is itself predominantly derived from the initial variety; and
  - it is clear distinguishable from the initial variety by at least one characteristic.

#### Article 16

### **Exceptions to the Breeder's Right**

- (1) The breeder's right can be used without the breeder's authorisation:
  - for acts done privately and for non-commercial purposes,
  - for acts done for experimental purposes,
  - for acts done for the purpose of breeding other varieties and
  - if the protected new variety from separate species of agriculture plants is produced on the producer's own property for personal use and he/she pays a certain fee to the holder of the breeder's right, with the exception of the small producers of propagating material.
- (2) The fee referred to in paragraph (1) indent 4 of this Article shall be less than the licensed production of the reproduction material from that variety on the same territory.
- (3) The producer who uses it for further harvest pursuant to paragraph (1) indent 1 of this Article shall be bound to provide all data concerning the further reproduction to the breeder upon request of the holder of the breeder's right.
- (4) The small producers of propagating material from the protected new variety shall be determined by the minister depending on the genera and species of the plants.

#### Article 17

### **Exhaustion of the Breeder's Right**

The authorisation of the breeder shall not be required for the use of certain parts of plants for further multiplication with the exception when it:

- involves further propagation of the variety; or
- involves an export into a country which does not protect the new varieties of the plant genus or species to which the variety belongs.

#### Article 18

#### **Duration and Termination of the Right to Protection**

- (1) The breeder's right for grapevine, fruit plants, hop and potato shall last for 25 years, while for all other genera or species it shall last for 20 years from the day of obtaining the breeder's right by the end of the calendar year.
- (2) If during the procedure for protection of the new variety it has been used for commercial purposes, contrary to Article 15 of this Law, the person who submitted an orderly application for granting a breeder's right shall be entitled to a suitable damage compensation, according to the general regulations for damage compensation, but only for the period from the date of publication of the application in the Official Gazette of the Republic of Macedonia by the date of recognition of the breeder's right.
- (3) The breeder's right shall cease to be valid if:
  - the holder of the breeder's right has cancelled,
  - the time frame referred to in paragraph (1) from this Article has expired; and
  - the decision with which the right was gained is annulled.

### V. PROCEDURE FOR VARIETY PROTECTION

#### Article 19

#### **Authority**

The Directorate shall be authorised to:

- conduct an administrative procedure for protection of the new variety and registration of the denomination of the new variety ,
- keep a register of applications for protection of novelties and a register for the protected novelties,
- publish data in the Official Gazette of the Republic of Macedonia concerning the applications, including the proposal for the variety denomination, the rejection of the applications, the entry and possible changes of the registration in the register of applications, the withdrawal of the applications, the decisions for protection of the new variety and its possible changes, as well as other official notifications,
- cooperate with other state bodies within the Directorate, international organisations and associations, with associations of citizens, as well as with nongovernmental organisations in the area of protection of the new variety,
- exchange results from the examinations of the varieties and other information within their competences with the authorities from other states,
- control the fulfilment of the obligations of the holders of the breeder's right; and
- perform other activities laid down by this Law.

Article 20

**Commission for Protection of New Varieties**

- (1) The procedure for protection of the new variety on the basis of the application and the submitted documentation shall be conducted by Expert Commission for Protection of New Varieties of Agriculture Plants.
- (2) The commission for protection of new varieties of agriculture plants (hereinafter referred to as: the Commission) shall be appointed by the Government upon a proposal of the minister. The Commission shall consist of five members, of which four members are selected from among experts with at least seven years of work experience in the area of plant production and one member of the Directorate's employees which elect a president and his/her deputy from among themselves.  
The president of the Commission shall be elected by the members. The president and members of the Commission shall be elected for a period of four years with the right to re-election. The president and the members shall be entitled to remuneration in the amount determined by the minister, and provided in accordance with the Programme for Protection of New Varieties of Agriculture Plants.
- (3) The manner of operation of the Commission shall be laid down by the Commission's Rules of Procedure.
- (4) The Commission shall submit a report for its operation to the minister at least once a year.

Article 21

**Registers**

- (1) The Directorate shall keep a register of application for protection of new varieties and a register for protected new varieties.
- (2) Data concerning the submitted applications and the granted rights shall be entered in the register.
- (3) The register of registered and protected new varieties shall keep records, for at least 15 types of agriculture plants, and after the membership of the Republic of Macedonia in UPOV within ten years records shall be kept for all species and varieties of agriculture plants.
- (4) The register of applications shall keep records on the following:
  - data on the applicant, breeder or the authorised representative,
  - date of submission of the application,
  - plant genera and species,
  - proposal for temporary designation on the variety i.e. application for the denomination of the variety,
  - application for stopping i.e. termination of the action and
  - comments on the court decision in terms of the right of submitting an application.
- (5) The register of protected new varieties shall keep records on the:
  - plant genera and species and the registered denomination of the variety with all synonyms,
  - variety description and appropriate documents,
  - varieties the breeding of which requires constant use of certain ingredients for the production of propagating material of the protected variety, those ingredients are also stated,
  - the name and surname of the holder of the breeder's right, the breeder and the authorised representative,

- the date of the commencement and termination of the variety protection with the reasons for the termination,
  - the name and address of the person who has transferred the right for commercial use of the variety by a license agreement,
  - the name and address of the person who has been granted a forced license, followed by the conditions under which it has been granted and the date of termination of that right; and
  - comments on the court decisions concerning the breeder's right.
- (6) The Directorate must keep the collection of documents for individual cases in original and copies for at least five more years after the withdrawal or rejection of the application, i.e. five years after the termination of the breeder's right.
- (7) The species and varieties subject to mandatory protection, the form and contents and the manner of keeping the register of applications for protection of new variety and the register for protected new varieties shall be prescribed by the minister.

#### Article 22

#### **Public Access to Registers**

- (1) The register of applications and the register of protected new varieties shall be public. The registers shall be available to the public only in the presence of an official person. Upon written request of the interested persons, the Directorate shall issue a statement from the registers within 30 days from the submission of the application.
- (2) The Directorate shall be bound to provide access to its documentation and the information on the submitted applications and the recognised rights i.e. granted rights upon written request of every person who will prove to be entitled, with the exception of the documentation which is not published in the Official Gazette of the Republic of Macedonia and concerning the following:
- documents which are submitted with the applications,
  - documents which refer to the breeder's rights that have been obtained, and
  - documentation on official examinations of the varieties.
- (3) The applicant can request for the data concerning the composition of the variety not to be available to the public.
- (4) With the exception of paragraph (1) of this Article it can be requested for the data not to be available to the public in case of hybrid, in the course of the duration of the procedure for protection of the new variety, as well as after the protection has been performed.
- (5) The documentation and information referred to in paragraph (2) of this Article, as well as other services connected to protection of the new variety protection and obtaining the breeder's right shall be available if the claimant has borne all costs incurred.

#### Article 23

#### **Costs for Procedure**

- (1) In a procedure for protection of new variety and maintaining the breeder's right, the applicants i.e. the holder of the breeder's right shall pay the costs for the conducted procedure for recognition i.e. granting the right.
- (2) The amount of the separate costs of the procedure referred to in paragraph (1) of this Article and the amount of the costs for providing informative services referred to in Article 22 paragraph (5) of this Law depending on the type of the plant, the complexity of the procedure and the time needed for professional evaluation of the variety shall be

determined by the Government of the Republic of Macedonia upon proposal of the Minister of Finance and they will be revenues in the Budget of the Republic of Macedonia.

#### Article 24

##### **Administrative procedure for Protection of New Variety**

- (1) The Directorate shall make initial decision in the procedure for protection of the new variety and for obtaining the breeder's right.
- (2) In the administrative procedure the Directorate shall act according to the provisions of this Law and the regulations adopted on the basis of this Law, and the Law on General Administrative Procedure will apply for all that has not been provided for with this Law.
- (3) Against the decision adopted by the Director of the Directorate, the party shall be entitled to file a complaint to the minister.
- (4) The complaint shall be submitted within 30 days from the day of delivery of the decision to the party.

#### Article 25

##### **Commencement of the Procedure for Protection of New Variety**

- (1) The procedure for protection of new variety shall commence with the submission of an application to the Directorate:
- (2) For every new variety for which protection has been requested a separated application shall be submitted.
- (3) The orderly application should contain at least the following data:
  - data on the variety the protection of which has been requested,
  - data on the applicant i.e. a orderly power of authority from his/her representative,
  - data on the breeder in case he/she is not the applicant himself/herself,
  - data on the mutual representative, in case several breeders have participated in the creation of the variety,
  - the Latin and Macedonian denomination of the species to which the new variety belongs,
  - proposal on the denomination of the new variety i.e. a temporary designation of the new variety,
  - technical description of the variety,
  - data that the variety has been created by means of genetic engineering. In that case, in addition to the application previous consent for examination of that variety should be enclosed, in accordance with the regulations of the genetically modified organisms; and
  - paid prescribed tax for the application and evidence for completion of the payment.
- (4) In addition to the application referred to in paragraph (1) of this Article other data and attachments are also enclosed upon request of the Directorate.
- (5) If the Directorate finds that the application is not orderly, it shall summon the applicant to eliminate the determined drawbacks within 30 days from the day of summoning.
- (6) Upon an explained request of the applicant, for justified reasons, the time limit referred in paragraph (1) of this Article may be prolonged for 60 days.
- (7) If the applicant fails to eliminate the determined drawbacks and fails to pay the costs within the set time limit referred to in Article 23 paragraph (1) of this Law, the application shall be rejected with a conclusion.



- (8) The data from the rejected or withdrawn application shall be entered in the register of applications and published in the Official Gazette of the Republic of Macedonia.
- (9) The manner and form of the application referred to in paragraph (3) of this Article shall be prescribed by the minister.

#### Article 26

#### **Date of Submitting and Publishing the Applications**

- (1) The date of receipt of the completed application in the Directorate shall be deemed as date of submission of the application.
- (2) The data in the completed application shall be entered in the register of applications and the applicant is issued the application, while the Directorate publishes the application in the Official Gazette of the Republic of Macedonia.
- (3) If the applicant eliminates the drawbacks on the application within the time limit set out in Article 25 paragraph (5) and (6) of this Law, the Directorate shall determine the date of submitting the application.

#### Article 27

#### **Right of Priority**

- (1) The legal entity or natural person who has submitted an orderly application for protection of a new variety in a member state of international agreements and treaties signed and acceded to by the Republic of Macedonia, shall be recognised the right of priority in the Republic of Macedonia from the day of submission of the application.
- (2) An orderly application shall be deemed to be an application whose date of submission is determined according to the national legislation of the country where the application has been submitted.
- (3) If the applicant claims right of priority pursuant to paragraph (1) of this Article, he/she shall be bound to enter all data for the application to which the applicant refers to (state, date and application number) in the application submitted in the Republic of Macedonia and within 12 months from the submission of the application to enclose a transcript of the first application certified by the authority of the member state where the first application has been submitted, as well as translation of the first application into Macedonian language.
- (4) The applicant must explicitly claim the right of priority referred to in paragraph (1) of this Article in the application.
- (5) The applicant may claim right of priority in the Republic of Macedonia within two years from the day of submitting the first orderly application in the member state.

#### Article 28

#### **Appeal to the Published Application**

- (1) The appeal to the published application in the Official Gazette of the Republic of Macedonia pursuant to Article 26 paragraph (1) of this Law can be submitted by a person who is entitled to this. The appeal can be submitted to the Directorate while the procedure for submitting the right to protection of new variety is in progress.
- (2) The appeal can be submitted only regarding the fulfilment of the conditions for protection of the new variety pursuant to Articles 4, 5, 6, 7, 8 and 10 of this Law, i.e. the legitimacy for protection pursuant to Article 12 of this Law.

- (3) The appeal shall be submitted in a written form with an explanation. Appropriate evidence concerning the appeal shall also be enclosed in addition to the appeal.
- (4) For every published application, a separate appeal shall be submitted if the rights of the owner have been violated.

#### Article 29

##### **Examination of the Appeal**

- (1) The Directorate shall examine whether the appeal has been submitted by a person who has the right to file an appeal pursuant to Article 28 paragraph (1) of this Law and whether the appeal has been submitted within the prescribed time limit.
- (2) If the conditions referred to in paragraph (1) of this Article have not been fulfilled, the Directorate shall make a conclusion for rejection of the appeal.
- (3) If the conditions referred to in paragraph (1) of this Article have been fulfilled, the Directorate shall submit the appeal to the applicant and shall summon applicant within 30 days to explain the reasons stated in the appeal.
- (4) If the applicant does not explain the reasons stated in the appeal within the determined time limit referred to in paragraph (3) of this Article, the Directorate will decide on the grounds of the findings in the appeal.
- (5) The Directorate shall inform the applicant of his/her opinion for a period no longer than 90 days.

#### Article 30

##### **Examination of the Contents of the Application and the Denomination of the Variety**

- (1) The Directorate shall examine the contents of the application and on the basis of the data stated in the application it shall check whether the variety is new, stable, permanent and whether the applicant has the right to obtain a breeder's right. If it is found that the conditions for obtaining a breeder's right have not been fulfilled, the application shall be rejected pursuant to the Articles 5 and 12 of this Law.
- (2) The Directorate shall examine the adequacy of the denomination of the new variety. In case the proposed denomination of the new variety is contrary to the provisions of Article 10 of this Law, the Directorate shall summon the applicant to propose a new denomination for the variety within 60 days from the summoning.
- (3) The Directorate will use solely the denomination of the variety, in the procedure for protection of the new variety, which has been entered in the register of applications for protection of the new variety.

#### Article 31

##### **Professional Evaluation of the Variety**

- (1) If the conditions provided for in Articles 26 and 29 of this Law have been fulfilled, professional assessment shall be made of the new variety in order to:
  - check whether the variety belongs to the systematic unit, i.e. plant genera or species which is stated in the application,
  - determine whether the variety is distinct, uniform and stable pursuant to Articles 6, 7 and 8 of this Law; and
  - prepare a description of the variety if it fulfils the conditions referred to in indents 1 and 2 of this paragraph.

- (2) The professional evaluation of the new variety shall be made on the basis of the results obtained in the examination of the variety on field and in laboratory (DUS – test) conducted in the Republic of Macedonia or in another state by an authority.
- (3) The professional evaluation of the new variety can be made by:
  - the Directorate or the Professional Commission referred to in Article 20 of this Law or the authority abroad,
  - in case the examinations are made in comparative agro climate, i.e. agro ecological conditions according to the prescribed procedures and methods; and
  - upon request of the registrator and applicant after the consent of the Directorate.
- (4) In the course of the professional evaluation of the new variety, the Directorate can use the results from the examination of the variety obtained from another country which has the adequate agro ecological conditions as in the Republic of Macedonia, if the examination has been made within the frames of the international examination systems and if the evidence for the results have been derived on the basis of the international agreements signed or acceded to by the Republic of Macedonia.
- (5) The manner of operation and the procedures for professional evaluation shall be prescribed by the minister.

#### Article 32

#### **Providing Conditions for the Professional Evaluation of the Variety**

- (1) The applicant has to deliver the necessary data, documents and propagating material within the time limit referred to in Articles 26 and 29 of this Law for professional evaluation of the new variety pursuant to Article 31 paragraph (1) of this Law.
- (2) If the applicant does not fulfil the requirements referred paragraph (1) of this Article for justified reasons, the Directorate shall reject the application with a decision.

#### Article 33

#### **Decision and Certificate for Protection of a New Variety**

- (1) If the professional evaluation determines that the variety fulfils the conditions referred to in Article 31 of this Law and the applicant fulfils all the necessary conditions, the minister will adopt a decision for protection of the new variety.
- (2) The data from the effective decision for protection of the new variety shall be entered in the register of applicants and in the register for protected new varieties and published in the Official Gazette of the Republic of Macedonia.
- (3) With the effectiveness of the decision for protection of a new variety the minister shall issue a certificate for obtaining a breeder's right to the holder of the breeder's right. The certificate for obtaining the breeder's right shall be valid from the day the decision for protection of a new variety becomes effective, and is issued within six months from the day the decision becomes effective and it is published in the Official Gazette of the Republic of Macedonia.
- (4) An appeal can be submitted to the Government of the Republic of Macedonia – Second Instance Commission for Settling Administrative Affairs in the field of Agriculture, Forestry, Water Economy and Veterinary against the decision referred to in paragraph (1) of this Article.
- (5) The form and contents of the decision and the certificate for protection of a new variety shall be prescribed by the minister.

Article 34

**Termination of the Breeder's Right**

- (1) The breeder's right shall be terminated before the expiry of its validity if that is requested with a written statement of the holder of the breeder's right.
- (2) If the holder of the breeder's right submits a written statement to the Directorate by which he waives the breeder's right pursuant to Article 18 paragraph (3) indent 1 of this Law, the Directorate shall issue a decree for termination of the breeder's right.
- (3) The breeder's right shall be terminated the following day from the day of orderly submission of the statement of the holder of the breeder's right referred to in paragraph (2) of this Article.
- (4) On the basis of the effectiveness of the decision, the termination of the breeder's right shall be entered in the register of new protected varieties and published in the Official Gazette of the Republic of Macedonia.

Article 35

**Procedure for Annuling the Decision for Protection of a New Variety**

- (1) The decision for protection of the new variety will be annulled if it is found that there were no conditions provided for with this Law for recognition of that right, i.e. if it is found that:
  - on the day of receipt of the completed application pursuant to Article 5 of this Law the variety was not new or pursuant to Article 6 of this Law it was not different,
  - the variety that was protected, above all, on the basis of the data which were delivered by the applicant on the day of receipt of the completed application pursuant to Article 7 of this Law or it was not uniform or pursuant to Article 8 of this Law was not stable; and
  - the breeder's right is granted to a person without legal basis to be holder of the right, while the person was entitled to this, pursuant to Article 37 of this Law did not ask for a forced transfer of the breeder's right.
- (2) The decision for protection of the new variety can be annulled for the entire duration of the protection ex officio, upon proposal of the interested person or in by a court decision.
- (3) The proposal for annulment of the decision shall be submitted in written form to the Directorate.
- (4) In addition to the proposal referred to in paragraph (2) of this Article the applicant shall be bound to provide the necessary evidence.
- (5) The Directorate shall be bound to provide the proposal to the holder of the right within 15 days from the receipt of the proposal and to summon him/her to make a statement within a determined period which cannot be longer than 60 days from the day of receiving the announcement.
- (6) The decision for annulment of the decision for protection of a new variety shall be entered in the register of the protected new varieties and published in the Official Gazette of the Republic of Macedonia.
- (7) If it is found that there were no conditions provided for in paragraph (1) of this Article, the minister shall annul the previously adopted decision for protection of the new variety by a decision.

Article 36

**Annulment of the Decision**

The Directorate shall annul the decision for protection of the new variety without the consent or upon request of the parties if it claims that the holder of the breeder's right:

- has not fulfilled the obligations pursuant to Article 44 of this Law or pursuant to Article 7 of this Law the variety is no longer uniform or pursuant to Article 8 of this Law the variety is not stable.
- upon written request to the Directorate within the determined time limit, fails to provide material for multiplication and other documents as confirmation for maintenance of the variety pursuant to Article 44 of this Law,
- upon written request to the Directorate within the determined time limit, fails to provide a new proposal on the denomination of the variety pursuant to Article 38 paragraph (1) of this Law; and
- fails to pay the tax for maintaining the validity of the breeder's right pursuant to Article 43 of this Law.

Article 37

**Transfer of the Breeder's Right**

- (1) If a person which did not have the right to submit an application for protection of a new variety, has submitted an application or has been recognised the breeder's right, the person who had the right to submit an application for protection of a new variety may initiate a procedure to transfer the breeder's right to himself/herself and to claim damage compensation from that person.
- (2) The request referred to in paragraph (1) of this Article may be submitted the following day after publication of the application but no longer than five years from the publication of the application in the Official Gazette of the Republic of Macedonia.
- (3) If the right obtained without legal grounds pursuant to paragraph (10) of this Article has been transferred to a third person, the decision for transfer of the right will be revoked by the Directorate upon request of the person who has legal grounds.
- (4) An appeal can be submitted to the Government of the Republic of Macedonia – Second Instance Commission for Settling Administrative Affairs in the field of Agriculture, Forestry, Water Economy and Veterinary against the decision referred to in paragraph (1) of this Article.

Article 38

**Deletion of Variety Denomination**

- (1) The registered denomination of the new variety shall be deleted from the register of applications for protection of a new variety and the register of protected new varieties in cases when:
  - the applicant or the holder of the breeder's right request so, while the request for deletion of the variety denomination must state the reasons for deletion and proposal for a new denomination,
  - it is additionally determined that the variety denomination is registered despite the existence of reasons for rejection pursuant to Article 10 of this Law; and
  - the holder or another person has been prohibited to use that denomination.
- (2) The Directorate shall inform in written form the applicant or the holder of the breeder's right of the proposal or of the request for deletion of the denomination of the new

variety and shall summon him/her to submit a proposal for a new denomination within three months from the receipt of the request.

- (3) After the conducted procedure pursuant to Article 30 of this Law, the proposed denomination shall be entered in the appropriate register and published in the Official Gazette of the Republic of Macedonia, while at the same time the previous denomination shall be deleted from the register.

#### Article 39

##### **Return to Previous Condition**

- (1) If the application, the holder of the breeder's right or a third person fails to pay the costs and taxes or fails to fulfil the other liabilities to the Directorate in the procedure for protection of a new variety, due to justified reasons, within the prescribed period, due to which he/she has lost his/her rights pursuant to Article 36 of this Law, he/she may request return of those rights.
- (2) The request shall be submitted within two months after the reasons for non-fulfilment, non-settlement and non-performance of the liabilities have ceased, but no longer than one year from the expiry of the time limit for non-fulfilment, non-settlement and non-performance of the liabilities.
- (3) In addition to the request, an explanation for the non-fulfilment, non-settlement and non-performance of the liabilities shall be enclosed, as well as evidence for non-payment of tax and costs.
- (4) If the request for return in previous condition is accepted, the Directorate shall set a new time limit within which the non-settled liabilities should be completed or settled, which may not be longer than one year, starting from the day of receipt of the decision for acceptance of the request.
- (5) The person submitting the request for return in previous condition shall not be entitled to claim damage compensation, if during the time between losing the right and its return, the protected new variety was not subject to use or to a concluded agreement for use of the protected new variety.

## VI. TRANSFER AND CONCESSION OF THE BREEDER'S RIGHT

#### Article 40

##### **Agreement for Transfer of the Breeder's Right**

- (1) The holder of the breeder's right may be entirely or partially transfer the breeder's right to another person.
- (2) The person who has the right to submit an application, i.e. the applicant may transfer the right for submission of an application for protection of a new variety or the rights deriving from the submitted application for protection of the new variety to another person.
- (3) The agreement for transfer of the breeder's right must be drawn up in written form and the signatures of the contracting parties must be certified by a public notary.
- (4) The agreement referred to in paragraph (3) of this Article shall be entered in an appropriate register kept in the Directorate.
- (5) The agreement referred to in paragraph (3) of this Article which has not been drawn up in written form and not certified by a public notary shall not have legal effect.

- (6) The agreement for transfer of the breeder's right which has not been entered in the appropriate register referred to in Article 21 of this Law shall not have legal effect towards third persons.

#### Article 41

##### **License Agreement**

- (1) The holder of the breeder's right may transfer the breeder's right for commercial use of the protected new variety to a third person with a license agreement. The license agreement must be drawn up in written form.
- (2) If several persons are holders of the breeder's right, consent from all persons shall be necessary for conclusion of the license agreement.
- (3) If there is no consent for conclusion of the license agreement referred to in paragraph (2) of this Article for concession of the breeder's right for usage, the regulations in the area of the ownership shall apply.
- (4) The license agreement which has not been drawn up in written form shall not have legal effect.
- (5) The license agreement, upon request of one of the parties, shall be entered in the appropriate register kept in the Directorate.
- (6) The license agreement which has not been entered in an appropriate register referred to in Article 21 of this Law shall not have legal effect towards third persons.

#### Article 42

##### **Contents of the Agreement for Forced License and Granting a Forced License**

- (1) The license agreement must contain provisions on the case, duration of the license, scope of the license, determination whether the license is exclusive, as well as provisions on the amount of the compensation for the conceded use of the breeder's right, if the compensation has been agreed.
- (2) In the license agreement, every provision which determines limitations to the user of the license shall be null and void, which do not derive from the breeder's right which is subject to an agreement or is necessary for retaining that right.
- (3) If there is public interest, and the protected new variety is not used for commercial purposes or is insufficiently used by the holder of the breeder's right or with his authorisation by other persons and there is no interest for conclusion of an agreement for transfer of the right to another person for the purpose of using or unjustified conditions are set, a forced license may be granted to another person.
- (4) The forced license may be granted only to a person which will prove to have at disposal material for reproduction, as well as professional, technical and financial conditions for use of the breeder's right.
- (5) The forced license shall not be granted if the holder of the breeder's right proves that there are justified reasons for non-utilisation or insufficient utilisation of the protected new variety.
- (6) The forced license shall not be granted if from the day of granting the breeder's right by the day of submitting the request for granting the forced license at least three years have not passed.
- (7) With the forced license, only the holder of the license shall have the right for full or partial performance of the activities referred to in Article 15 of this Law, partially or as a whole, for the purpose of supplying the domestic market.

- (8) A forced license may be granted for a period of at least three years, but no longer than five years.
- (9) The forced license may be continued if when re-examining the conditions referred to in paragraph (1) of this Article it is determined that there are reasons to grant a forced license. The Directorate shall make decisions concerning the request for granting, i.e. continuing the forced license.
- (10) Prior to adopting the decision to grant a forced license, the Directorate may ask for opinion from the interested associations.
- (11) In case of granting a forced license, the owner of the breeder's right shall be entitled to appropriate remuneration.
- (12) The holder of the breeder's right shall determine the amount of the remuneration referred to in paragraph (11) of this Article with the person who has been granted the forced license.
- (13) If no agreement is reached on the amount of the remuneration referred to in paragraph (12) of this Article, it shall be determined by the Directorate depending on the genera and species and the category of the propagating material.
- (14) On the basis of the forced license, the Directorate may require the holder of the breeder's right to provide a sufficient quantity of propagation material for reproduction and use of the variety to the holder of the forced license. The holder of the breeder's right shall receive an appropriate remuneration for the reproduction material from the holder of the forced license depending on the genera and species and the category of the propagating material.
- (15) In the case of a forced license, the holder of the breeder's right may request information on the production of the material for reproduction of the protected variety from a professional institution, authorised to perform professional control of the production of the reproduction material.

## VII. LIABILITIES OF THE HOLDER OF THE BREEDER'S RIGHT

### Article 43

#### **Means for Performing Activities for Maintaining the Breeder's Right**

- (1) The means for financing the setup of comparative examinations and keeping the definite samples in Gen bank shall be provided in accordance with the annual Programme for Protection of New Varieties.
- (2) Besides the funds referred to in paragraph (1) of this Article for maintaining the breeder's right, the funds shall also be provided from the remuneration paid by the holder of the breeder's right.
- (3) The remuneration referred to in paragraph (2) of this Article shall be paid at the beginning of the calendar year, by 31 January at the latest.
- (4) The time limit referred to in paragraph (3) of this Article may be extended up to six months from the orderly submission of the notification upon an explained request of the holder of the breeder's right.
- (5) If the remuneration for maintaining the breeder's right has not been paid even after the expiry of the additional time limit referred to in paragraph (3) of this Article, the right shall cease to be valid.
- (6) The amount of the remuneration referred to in paragraph (2) of this Article shall be determined by the Government of the Republic of Macedonia, upon proposal of the



Minister for Finance depending on the plant genera and species and the category of the propagating material and they are revenue of the Budget of the Republic of Macedonia.

#### Article 44

#### **Maintaining the Protected Variety**

- (1) While the protection of the new variety is ongoing, the holder of the breeder's right shall be bound to maintain the protected variety, i.e. to keep its inherited characteristics unchanged.
- (2) Upon request of the Director, the holder of the breeder's right must provide the Directorate with documents or material for reproduction necessary to examine the maintenance of the variety.
- (3) If during the examination it is found that the holder of the breeder's right does not maintain the variety the Directorate shall initiate a procedure for repealing i.e. annulling that breeder's right.

#### Article 45

#### **Protected Variety**

- (1) The holder of the breeder's right must provide a protected variety from the propagating material for reproduction of the protected new variety to the Directorate within a determined time limit, for:
  - renewal of the protected sample,
  - conducting comparative examinations with the other varieties which are in procedure for protection; and
  - storing in a Gen bank.
- (2) The Directorate may authorise the holder of the breeder's right to keep or renew the protected material for reproduction himself/herself, if there are appropriate storing conditions.

#### Article 46

#### **Right to Information in Case of Violation of the Right**

- (1) If a person economically exploits and produces reproducing material of a protected new variety with no agreement to that purpose in place i.e. contrary to an agreement concluded with the holder of the breeder's right, this person shall be bound to provide all necessary data upon request from the holder of the right.
- (2) If data is not provided voluntarily, the holder of the breeder's right may request that the Inspectorate adopt a decision ordering the violator to submit the data requested.
- (3) The decision referred to in paragraph (2) hereunder may be appealed in front of the Minister.
- (4) The appeal shall not delay the enactment of the decision.

## VIII. COURT PROTECTION

### Article 47

#### **Damage Compensation Lawsuit**

- (1) A person having violated the right with the reported i.e. protected new variety shall be considered responsible for the damage in accordance with general damage compensation regulations.
- (2) A person whose rights have been violated may, in addition to damage compensation, request that further violation of rights be prohibited to the person having violated the rights.
- (3) Breeder's right violation shall refer to any unauthorised economic exploitation of a protected new variety i.e. production, finishing, release in trade, export or import, without previous consent thereto from the holder of the breeder's right to the specific protected new variety.

### Article 48

#### **Lawsuit for Breeder's Right Violation**

- (1) A lawsuit for breeder's right violation may be launched within three years following the date on which the plaintiff learned about the violator i.e. the violation. No lawsuit may be launched if more than five years have passed the date of the violation.
- (2) The lawsuit referred to in paragraph (1) of this Article shall be launched with the competent court.

## IX. SUPERVISION

### Article 49

#### **Enactment**

Supervision over the enactment of provisions contained in the present Law and of regulations adopted on the basis of the present Law shall be performed by the Ministry of Agriculture, Forestry and Water Economy.

### Article 50

#### **Supervision Performed by Agriculture Inspectors**

- (1) Supervision over the enactment of provisions contained in Articles 11, 15, 16 and 46 of the present Law shall be performed by the State Agricultural Inspectorate via state agriculture inspectors and by phytosanitary inspectors located on border crossings.
- (2) Should justified doubt arise with the state agriculture inspector during supervision of a violation having been done, the state agriculture inspector shall temporarily seize objects having been used or intended to be used within the violation or objects having been obtained with the violation as such.
- (3) The state agriculture inspector shall with no delay hand over objects he/she has temporarily seized, accompanied by a proposal for initiating a misdemeanour procedure.

Article 51  
**Supervision Performed by Phytosanitary Inspectors**

- (1) In case an owner of a breeder's right draws attention to the possibility of his/her breeder's right being violated with the export of certain protected new varieties from the Republic of Macedonia or during import to the Republic of Macedonia, the phytosanitary inspector may, upon proposal from this breeder's right owner, order that the following be done at the border crossing:
  - that the owner or owner's representative inspect the material in question; and
  - that the material in question be seized, removed from trade and stored.
- (2) Within the proposal referred to in paragraph (1) of this Article, the breeder's right holder shall have to submit the following to the phytosanitary inspector: a more detailed description of the protected new variety material, satisfactory evidence towards the existence of the breeder's right and of potential violation thereof;
- (3) Upon request from the phytosanitary inspector, the breeder's right owner shall be bound to deposit security for any damage likely to occur with the enactment of such measures.
- (4) The phytosanitary inspector shall immediately inform the importer, exporter or receiver of the protected new variety propagating material on measures undertaken if import is involved of a protected new variety propagating material to the Republic of Macedonia;
- (5) The phytosanitary inspector shall revoke measures undertaken if the holder of the breeder's right does not launch an appeal thereto within seven days.

**X. MISDEMEANOUR PROVISIONS**

Article 52  
**Fines**

- (1) A fine of EUR 3,000 to 5,000 in denar countervalue shall be imposed for a misdemeanour to a legal entity in the following cases:
  - it has, without any previous permission from the owner of the breeder's right, produced or reproduced propagating material of the protected reproduction variety (Article 15, paragraphs (1) and (2)); and
  - it has released into trade, imported or exported any propagating material of the protected new variety without having fulfilled conditions pursuant to the present Law (Articles 14, 15, 16, 17 and 18).
- (2) A fine of EUR 500 to 1,000 in denar countervalue shall be imposed for the misdemeanour mentioned in paragraph (1) of this Article also to the responsible person at the legal entity.
- (3) A fine of EUR 200 to 800 in denar countervalue shall be imposed to a natural person for the misdemeanour referred to in paragraph (1).

Article 53  
**Fines**

- (1) A fine of EUR 1,000 to 3,000 in denar countervalue shall be imposed for a misdemeanour to a legal entity in the following cases:
  - it has, contrary to Article 11, paragraph (1) of the present Law, released in trade propagating material of the protected new variety, in case the variety's registry

- denomination has not been specified or in case the specific denomination has not been stated correctly,
- it has, contrary to Article 11, paragraph (5) of the present Law, used the denomination of a new variety protected by the present Law or another denomination that may easily be confused with the denomination of another variety belonging to the same or related species, and
  - it has, contrary to Article 16, paragraph (3) of the present Law i.e. Article 46 of the present Law, fail to issue requested data to the owner of the breeder's right.
- (2) A fine of EUR 200 to 500 in denar countervalue shall be imposed for the misdemeanour referred to in paragraph (1) of this Article also to the responsible person at the legal entity.
- (3) A fine of EUR 300 to 500 in denar countervalue shall be imposed to a natural person for the misdemeanour referred to in paragraph (1).

## XI. TRANSITIONAL AND FINAL PROVISIONS

### Article 54

#### **Coordination of Work**

- (1) A breeder's right over a variety having been protected prior to the entry into force of the present Law shall continue to exist by the expiration of the obtained breeder's right validity.
- (2) A breeder's right over a variety referred to in paragraph (1) of this Article may be annulled or cancelled prior to the expiration of its validity period only if it be found that conditions in terms of distinctness, uniformity and stability have not been fulfilled with the granting of such right.

### Article 55

#### **Cessation of Validity of the Previous Law**

The day this Law enters into force, the provisions of Articles 61 through 85 of the Law on Seeds, Seedlings and Propagating Materials, and Variety Recognition, Approval and Protection (Official Gazette of the Republic of Macedonia No. 41/2000) shall cease to be valid.

### Article 56

#### **Entry into Force**

This Law shall enter into force on the eighth day from the date 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]