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

**COUNCIL**

**Twenty-Eighth Extraordinary Session**  
**Geneva, April 8, 2011**

ADDENDUM  
EXAMINATION OF THE CONFORMITY  
OF THE DRAFT LAW ON THE PROTECTION OF PLANT BREEDER'S RIGHTS  
OF THE REPUBLIC OF SERBIA WITH THE 1991 ACT  
OF THE UPOV CONVENTION

*Document prepared by the Office of the Union*

1. The purpose of this Addendum is to transmit a copy of the reply of His Excellency Mr. Dušan Petrović, Minister for Agriculture, Trade, Forestry and Water Management of the Republic of Serbia (see Annex to this Addendum) of April 5, 2011, to the comments of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) on the Draft Law on Protection of Plant Breeders' Rights of the Republic of Serbia (see Annex II of document C(Extr.)28/2). The comments of CIOPORA of March 29, 2011 had been posted on the Consultative Committee and Council sections of the UPOV website. The Delegation of Serbia has informed the Office of the Union that it intends to amend Article 28 "Provisional Protection" of the Draft Law and paragraph 1 of Article 41 of the Draft Law on "Obsolescence of Lawsuit Due to Violation of Breeders' Rights", to read as follows:

"Provisional Protection

Article 28

"Throughout the period starting from the publication of the application for a breeder's right to the passing of the decision of a breeder's right, the applicant is considered to be the holder of the breeder's right shall be entitled to equitable remuneration from in

relation to any person who, during the above period, has carried out acts which, once the right is granted, require the right holder's authorization as provided in Article 25. Legal action in respect of provisional protection can only be initiated after the right is granted.

~~Amount, payment method and deadline for payment of remuneration referred to in paragraph 1 of this Article shall be determined by mutual consent of both parties.~~

~~If the parties fail to reach an agreement, the competent court shall determine the amount and the payment method as well as the deadline for the payment of fair remuneration."~~

“Obsolescence of Lawsuit Due to Violation of Breeders’ Rights

Article 41

“Lawsuit due to violation of breeders’ rights may be filed with the competent court within three years following the day of receiving information regarding violation of breeders' rights and of the identity of the party liable.  
[...]"

*2. The Council is invited to note the information contained in this document in relation to the consideration of document C(Extr.)28/2.*

[Annex follows]

ANNEX



**Republic of Serbia  
MINISTRY OF AGRICULTURE,  
TRADE, FORESTRY AND WATER  
MANAGEMENT**

Ref: 337-00-12/2011-08

Date: April 5, 2011

B e l g r a d e

Dear Mr Krieger,

We appreciate your detailed analysis of the draft Law on the Protection of Plant Breeders' rights of the Republic of Serbia and the opinion of CIOPORA that the draft Law is in general in conformity with the UPOV 1991 Convention. We have the pleasure to inform you that the Republic of Serbia prepared the Statement on the enforcement of plant breeders' rights. This document presents effective enforcement measures provided in the Republic of Serbia for the protection of plant breeders' rights according to Article 30 (1) (i) of the UPOV 1991 Convention. Your suggestions are very useful. We are willing to include any changes which bring the improvement to our PBR system. We have the pleasure to answer to your comments and proposals:

1.1 In the Article 25, paragraph 2,3,4 of the Law on the Protection of Plant Breeder's rights of the Republic of Serbia it is explained that in respect of the:

- propagating material of protected variety,
- harvested material including entire plants and part of plants obtained through unauthorized use of propagating material of the protected variety and
- product made directly from harvested material of the protected variety falling within the provision of paragraph 3 of Article 25 through the unauthorized use of said harvested material,

following acts shall require the authorization of the holder of the breeders' right:

- 1) production or reproduction (multiplication);
- 2) conditioning for the purpose of propagation;
- 3) offering for sale;
- 4) selling or other marketing;
- 5) exporting and importing;
- 6) stocking for any of the purpose referred to in subsection 1) to 5)

These paragraphs are conformed to Article 14 paragraph 1,2,3 of the 1991 Act of the UPOV Convention. Our intention was to provide protection for the whole variety.

1.2 Definition of propagating material was included in the Draft Law, which the Republic of Serbia sent to UPOV Office. However, advice of UPOV Office was to delete this definition. UPOV Office said "There is no such a provision in the 1991

Act of the UPOV Convention and may not correspond to other provisions of the 1991 Act of the UPOV Convention (see Articles 14 and 16 of the 1991 Act).”

- 1.3 Our intention was to harmonize our Law with 1991 UPOV Convention. Our aim is to establish a PVP system, which is standardized with the UPOV system. In order to achieve this aim and if UPOV Council agrees we are willing to change this description.
- 2 If other UPOV members agree with CIOPORA proposal for Article 27, we will accept it and include it in Draft Law on Law on the Protection of Plant Breeder's rights of the Republic of Serbia.
- 3 We agree with your suggestion.
- 4 According to Article 30 paragraph 3 of the Draft Law, where it is stated “At the request of one of the contractual parties, the license contract referred to in paragraph 1 of this Article shall be entered in the Register of License Contracts, which is kept by the Ministry”, one of contractual parties decide do they want to submit request for entering in Register of License Contracts. We believe that entering in Register is not obligatory.

51,5.2,5.3 We refer to statement on enforcement on PBR in the Republic of Serbia.

5.4 In regard to CIOPORA-s comment on paragraph 1, we consider it acceptable. Regarding comment on paragraph 2, we believe that the period of 30 years would be too long and that it would lose the possibility of high-quality legal protection due to reduced opportunities for collecting evidence.

5.5 In the Republic of Serbia there are courts authorized for cases for infringements of intellectual property rights. Cases of infringement of Plant Breeders' Rights can be directed to these courts, although they are not specialized for PBR. In the next period, our intention is to initialize the changes of the Law on organisation of courts, where PBR cases would be recognized.

#### Fees

Currently, application fee is 600 dinars (approximately 6 Euros). For now, we buy, DUS tests for the purpose of PVP, which have already been done or organize performing DUS test in another UPOV member.

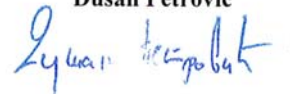
Application for PBR is attached.

Looking forward to your early reply.

Sincerely yours,

**Minister**

**Dušan Petrović**



Mr. Krieger  
Secretary General  
CIOPORA  
Administrative Office  
Gänsemarkt 45  
20354 Hamburg  
Germany

CC: UPOV Office  
UPOV Council



**Republic of Serbia**  
**MINISTRY OF AGRICULTURE,**  
**TRADE, FORESTRY AND WATER**  
**MANAGEMENT**

Ref: 337-00-12/2011-08

Date: April 5, 2011

Belgrade

**Statement on Enforcement of PBR in the Republic of Serbia**

Law on Protection of Plant Breeders' Rights (hereinafter: the Law) regulates conditions, manner and procedure for protection of plant breeders' rights

In addition to the Law and in order to protect breeders' rights, also the other positive regulations of the Republic of Serbia are being applied, in particular: the Law of Civil Procedure ("Official Gazette of RS", no. 125/04 and 111/09), Law on Enforcement Procedure ("Official Gazette of RS", No. 125/04), Law on General Administrative Procedure ("Official Journal of the SFRY", no. 33/97 and 31/01 and "Official Gazette of RS", No. 30/10), the Customs Law ("Official Gazette RS ", No. 18/10), Regulation on conditions and manner of application of measures for the protection of intellectual property rights on the border (" Official Gazette", No. 86/10) and Law on Contract and Torts/Law on Obligations (Official Gazette of SFRY no. 29/78, 39/85 and 57/89 and "Official Gazette", No. 31/93).

The application of these regulations depends on the type of violation of the breeders' rights, or type of proceeding brought before a court or other competent authority.

The Civil Procedure Code is procedural law regulating the rules of proceedings for providing court legal protection and these rules govern the procedures and decision-making in the course of settlement of civil disputes. This Law, as a procedural one, is applied in proceedings brought before the court in case of infringement of the plant breeders' rights. The Civil Procedure Code, among other issues, in Article 269 regulates the matter of obtaining of evidence. This Article provides that if there is a reasonable concern that certain evidence could not be presented or that its presentation at a later point would be difficult, a motion may be made to present such evidence during and/or prior to commencement of litigation. In some cases a motion for obtaining of evidence may be filed also after the final decision is passed and it may be proposed for evidence to be presented in the proceeding which shall be declared as urgent.



Enforcement Procedure Law governs the procedure under which courts conduct the enforcement of claims which are embodied in executive titles or authentic documents and conduct a securing of claim. The court is obliged to act urgently in proceeding for enforcement and security. By virtue of the Enforcement Procedure Law and for the purpose of protection of breeders' rights, a temporary measure may be ordered before or in the course of a court or administrative proceedings, as well as after the termination of such a proceeding. The reasons for determination of temporary measure, as well as the type of temporary measure which could be ordered, depend on whether in specific case is the enforcement process achievement of performance or authentic document and implement security claims. In the process of enforcement and security the court has to act urgently. According to the Enforcement Procedure Law may be, in order to protect breeders' rights, to determine interim measures, even before starting, during, and after completion of judicial or administrative proceedings. The reasons for determination of a temporary measure and the type of temporary measure that can be ordered, depend on whether in specific case securing regards monetary or non-monetary claims.

A temporary measure for securing monetary claims may be ordered if the enforcement creditor shows the probability of the existence of a claim and the risk that without such temporary measure the enforcement debtor would prevent or considerably hinder satisfaction of the claim by disposing of, hiding or otherwise making unavailable his property or means. The enforcement creditor shall not be required to prove risk if he shows the probability that the enforcement debtor would sustain only insignificant damage from the temporary measure. In order to secure a monetary claim, any means achieving the objective of such securing may be ordered, and in particular:

- 1) Prohibiting the enforcement debtor from disposing of chattels, as well as seizing such chattels from the enforcement debtor and entrusting them to the enforcement creditor or a third party for safekeeping, or for safekeeping in deposit with the court;
- 2) Prohibiting the enforcement debtor from disposing of or encumbering his immovable property or rights to immovable property recorded in his favor in the public book, with recordation of such prohibition in the public book;
- 3) Prohibiting the enforcement debtor's from paying the debtor's claim or from handing over objects to the enforcement debtor, and prohibiting the enforcement debtor from receiving such objects, collecting the claim or disposing of what is received or collected;
- 4) Ordering a bank or other financial institution where the enforcement debtor has an account to delay payment to the enforcement debtor or a third party on order of the enforcement debtor from such account the amount that is object of the injunction;
- 5) Seizure of cash or securities from the enforcement debtor and depositing them for safekeeping.

A temporary measure may be ordered to secure a non-monetary claim if the enforcement creditor has shown the probability of the existence of the claim and a risk that otherwise satisfaction of the claim would be prevented or considerably hindered. A temporary measure may also be ordered when an enforcement creditor shows the probability that the temporary measure is necessary to prevent use of force or infliction of

irreparable damage. In order to secure a non monetary claim, any measure that would achieve the objective of such security may be ordered, and in particular:

- 1) A ban on disposing of or encumbering chattels under claim, seizing of such chattels and entrusting them to creditor or a third person for safekeeping, or for safekeeping in deposit with the court;
- 2) A ban against the enforcement debtor taking actions that may cause damage to the enforcement creditor, as well as against the enforcement debtor altering objects under the claim;
- 3) A ban against the enforcement debtor's debtor handing over to the enforcement debtor objects under the claim;
- 4) Orders to the enforcement debtor to take specific actions necessary for protection of chattels or immovable property, and to prevent their physical alteration, damage or destruction;
- 5) Temporary regulation of a disputed relationship in order to prevent violence or infliction of irreparable damage.

The Law of Contract and Torts (The Law on Obligations) regulates, inter alia, the obligation relations arise on the basis of causing damage /torts/ (causing damage, liability, compensation for material and non-pecuniary damage). Law of Obligations governing, among other things, contractual (obligation) relations arising from causing damage (causing damage, liability, indemnification of material and immaterial damage). The provisions of this Law are applied by the Court applies when it acts upon a claim for damages in case of infringement of the breeder's rights.

The Customs Law ("Official Gazette RS ", No. 18/10), Regulation on conditions and manner of application of measures for the protection of intellectual property rights on the border

The Customs Law, among other things, provides measures for the protection of intellectual property rights on the border (Articles 280.-287.). On the basis of this Law Regulation on conditions and manner of application of measures for the protection of intellectual property rights on the border has been adopted. The present Regulation prescribes in detail the conditions for application of these measures. The Article 280 of the Customs Law stipulates that importation, exportation or transit of goods which infringe upon the intellectual property rights established by the related legislation and international agreements is not be permitted. The Article 281 of the Customs Law stipulates that the customs authority shall, upon request of the intellectual right property holder, suspend the customs procedures and withhold the goods in case of imported, exported or transited goods suspected to be in violation of the intellectual property rights. The Article 282 prescribes that the customs authority, ex officio, may suspend the customs clearance procedures and the release of imported or exported or transited goods, if the customs authority based on prima facie evidence is satisfied that any of the intellectual property rights are being infringed upon.



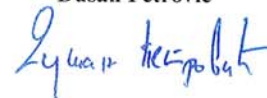
The Law on General Administrative Procedure regulates the rules of procedure of state and other competent authorities where they in administrative matters decide on rights, obligations or legal interests of the parties, as well as when they perform other activities stipulated by this Law. The provisions of this Law are applied in the proceedings of conferment of breeder's rights, for termination of the breeder's rights, as well as in other cases stipulated by this Law.

The Criminal Code contains general provisions defined in Articles 242 and 243, which can also be applied in the case of infringement of the plant breeders' rights. These articles prescribe fines and imprisonment, as well as seizure of goods, means of production and goods whose circulation is prohibited.

The courts specialized in protecting of plant breeders' rights do not exist in Republic of Serbia, but there are courts competent for conducting the proceedings in the field of protection of intellectual property rights, as well as judges trained to judge in this field.

**Minister**

**Dušan Petrović**

A handwritten signature in blue ink, appearing to read "Dušan Petrović", written in a cursive style.



**Republic of Serbia**  
**MINISTRY OF AGRICULTURE,**  
**TRADE, FORESTRY AND WATER**  
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**Minister**

**Dušan Petrović**

