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EXAMINATION OF THE CONFORMITY OF THE LAWS OF
THE REPUBLIC OF MOLDOVA WITH THE 1991 ACT
OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated March 18, 1997, Mr. Gheorghe Lungu, Minister of Agriculture and Food of the Republic of Moldova, requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention of Law No. 915/1996 on the Protection of Plant Varieties (hereinafter referred to as "the Law") which was brought into force by Decree Number 113-p of the President of Moldova on November 7, 1996, and was published in the Official Gazette of Moldova on November 28, 1996. Annex I to this document contains the text of the said letter, while Annex II contains a copy of the Law.

2. Moldova did not sign the 1991 Act. Under Article 34(2) of that Act, it must deposit an instrument of accession in order to become a member State of UPOV on the basis of that Act. Under Article 34(3), an instrument of that kind can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1991 Act and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in Moldova

3. The protection of new plant varieties is governed in Moldova by the Law which provides for the grant of a variety patent. An analysis of the Law follows in the order of the substantive law provisions of the 1991 Act.

4. Article 38 of the Law (hereinafter called “the International Treaty Provision”) provides that where an international treaty to which Moldova is party contains provisions different from those specified in the Law, the former shall prevail. Accordingly, if Moldova accedes to the 1991 Act, any apparent lack of conformity between the Law and the 1991 Act will be remedied by the International Treaty Provision.

Article 1 of the 1991 Act: Definitions

5. Article 1 of the Law contains a definition of “variety” which resembles the definition in Article 1(vi) of the 1991 Act. However, it differs from the 1991 definition in important respects. It is, for example, limited to “varieties created by selection” which “conform to the criteria of “patentability.”

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

6. Article 2 provides that rights in a variety shall be recognized and protected by the State by the grant of a variety patent, thus mirroring Article 2 of the 1991 Act.

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

7. The introduction to the Law provides that the Law shall apply to genera and species appearing in a list approved by the Government of Moldova, thus enabling the Government of Moldova to conform with the obligations under Article 3 of the 1991 Act.

Article 4 of the 1991 Act: National Treatment

8. Article 36 extends national treatment to “foreign natural persons and legal entities of the States which are party to international conventions to which the Republic of Moldova is party.” National treatment is not, however, extended to residents of such States (if the quoted provisions is given a restrictive interpretation). This is a departure from the strict requirements of Article 4 of the 1991 Act. It should also be noted that under Article 40(4) foreign applicants (and not Moldovan applicants) are required to pay fees in foreign currency. This is contrary to the principle of national treatment.

Articles 5, 6, 7, 8 and 9 of the 1991 Act: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

9. Articles 5, 6, 7, 8 and 9 of the Law reproduce the substance of, and thus conform with, the provisions of Articles 5 to 9 of the 1991 Act. Article 46 of the Law contains transitional provisions concerning varieties of recent creation which fall within the spirit of Article 6(2) of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

10. Article 37(1) expressly states that Moldovan breeders may file applications in any State. The Law contains no provisions which conflict with the provisions of Article 10(2) of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

11. Article 19(2) to (5) of the Law provides for a right of priority in terms which satisfy the main elements of Article 11 of the 1991 Act. There are no provisions corresponding to Article 11(3) of the 1991 Act. This deficiency can, however, be remedied in implementing regulations.

Article 12 of the 1991 Act: Examination of the Application

12. Articles 20 and 21 of the Law make provisions for the examination of candidate varieties in terms which satisfy Article 12 of the 1991 Act. Supplementary provisions concerning the testing of varieties appear in Article 37(2) and (3).

Article 13 of the 1991 Act: Provisional Protection

13. Article 23 of the Law makes provision for provisional protection which satisfies the requirements of Article 13 of the 1991 Act.

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

14. Article 13 of the Law contains provisions which reproduce the substance of Article 14 of the 1991 Act. It should be noted that the expression "variety material" used in Article 13(1) is defined in Article 1 of the Law as including "entire plants, seeds, seedlings, bulbs, or parts of plants *intended for marketing for purposes other than reproduction of the variety.*" The words in italics have the effect of extending protection to the harvested material of the variety.

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

15. Article 14(1) of the Law contains exceptions to the breeder's right which satisfy Article 15(1) of the 1991 Act. It should be noted that the reference to Article 13(1) and (2) in Article 14(1)(c) of the Law should be a reference to Article 13(2) and (3). The Law contains no exception in favor of farmers who save seed of a protected variety.

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

16. Article 14(2) of the Law contains provisions concerning the exhaustion of the breeder's right which conform with Article 16 of the 1991 Act.

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

17. Article 31 of the Law contains provisions concerning the grant of compulsory licenses which satisfy the provisions of Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

18. The Law contains no provisions which conflict with Article 18 of the 1991 Act. It should be noted that the Register of Plant Varieties referred to in Article 42 is a register of plant varieties recommended for cultivation in Moldova. It is separate from the Register of Variety Patents.

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

19. Article 2(3) of the Law establishes a minimum duration of protection of 25 years for vines and trees and 20 years for other varieties which satisfies Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

20. Article 18 of the Law contains provisions which satisfy Article 20 of the 1991 Act.

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

21. Article 27 of the Law provides for a variety patent to be declared null and void in terms which satisfy Article 21 of the 1991 Act.

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

22. Article 28 of the Law provides for the cancellation of a variety patent in terms which satisfy Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

23. The Law makes comprehensive provisions for the implementation of the 1991 Act in Moldova. Thus:

(a) Article 32(8)(e), (f), (g) and (h) and Article 35 of the Law provide for appropriate remedies for the effective enforcement of the variety patent (Article 30(1)(i) of the 1991 Act);

(b) Article 4(1) establishes the National Council for Plant Varieties, the State Commission for Variety Testing and the State Agency of the Republic of Moldova for the Protection of Industrial Property as the competent authorities in the field of the legal protection of varieties in Moldova (Article 30(1)(ii) of the 1991 Act);

(c) Articles 20(7) (applications), 22(2) (grants), 29(3) (surrender), 31(6) (compulsory licenses) contain provisions for informing the public of matters concerning plant variety patents (Article 30(1)(iii) of the 1991 Act).

General Conclusion

24. The Law essentially conforms with the 1991 Act. The International Treaty Provision remedies the minor departures from conformity that are identified in this document.

25. The Office of the Union suggests that the Council may wish

(a) to advise that the Law essentially conforms with the 1991 Act;

(b) to request the Secretary-General to advise the Government of Moldova of this decision whilst drawing its attention to the departures from conformity referred to in paragraphs 5 and 8 of this document.

26. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.

[Two Annexes follow]

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ANNEX I

[Annex II follows]

ANNEX II

LAW

ON THE PROTECTION OF PLANT VARIETIES

This Law shall govern both the economic and the personal non-economic relations arising out of the creation, use and legal protection of plant varieties and shall apply to botanical genera and species of plants the list of which shall be approved by the Government of the Republic of Moldova.

CHAPTER I

GENERAL PROVISIONS

Article 1

Basic Terms

For the purposes of this Law:

“*variety*” means a plant grouping created by selection, which grouping:

- conforms to the criteria of patentability;
- presents the characteristics of a given genotype or combination of genotypes;
- can be distinguished from any other plant grouping of the same botanical taxon by the expression of at least one of the said characteristics;
- may be represented by a single plant or plants, or by a single part or parts thereof provided that such part or parts may be used for the reproduction of entire plants of the variety;

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

“*material of a variety*” means whole plants, seeds, seedlings, bulbs or parts of plants intended for reproduction or for marketing for purposes other than reproduction of the variety;

“*applicant*” means a natural person or a legal entity who has filed an application for the grant of a variety patent under this Law;

“*patent owner*” means a person to whom a variety patent has been granted;

“*Register of Plant Varieties*” means the register containing the plant varieties that have been approved by the National Council for Plant Varieties of the Republic of Moldova and recommended for cultivation in the Republic of Moldova;

“*Register of Variety Patents*” means the register containing the plant variety patents in which the rights are protected in the Republic of Moldova;

“*Member State*” means a State party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised on November 10, 1972, October 23, 1978, and March 19, 1991.

Article 2

Legal Protection of a Variety

- (1) Rights in a variety shall be recognized and protected on the territory of the Republic of Moldova and shall be certified by the grant of a variety patent (hereinafter referred to as “the patent”).
- (2) The patent shall certify the priority of the variety, the authorship of the breeder and the exclusive right of the patent owner to use the variety.
- (3) The term of the patent shall be
 - (a) 25 years from the date of the decision to grant the patent for varieties of trees, fruit trees and grapevine;
 - (b) 20 years from the date of the decision to grant the patent for varieties of other species.
- (4) At the request of the patent owner the term of the patent may be extended for a period of 10 years.

Article 3

Scope of the Legal Protection of a Variety

The scope of the legal protection of a variety conferred by a patent shall be determined by the sum of essential characteristics of the variety as specified by the applicant in the description thereof.

Article 4

Authorities Responsible for the Legal Protection of Varieties

- (1) The following authorities, established by the Government, shall carry out the State policy in the field of legal protection and use of varieties in the Republic of Moldova: the National Council of the Republic of Moldova for Plant Varieties (hereinafter referred to as “the Council”), the State Commission of the Republic of Moldova for Variety Testing (hereinafter referred to as “the State Commission), and the State Agency of the Republic of Moldova for the Protection of Industrial Property (hereinafter referred to as “the Agency”).

(2) The Council shall be the principal authority in determining the State policy in the field of plant variety approval. Its decisions shall constitute the basis for the authorizations to use the varieties in the Republic of Moldova.

(3) The State Commission shall be the working body of the Council and an expert body to the Agency, in charge of carrying out tests in order to determine the economic value of the varieties and their compliance with the conditions of patentability prescribed in this Law. The State Commission shall keep the Register of Plant Varieties.

(4) The Agency shall receive and process applications for the grant of variety patents (hereinafter referred to as “the application”), carry out the examination thereof, effect registration, publish official information, grant patents and keep the Register of Variety Patents.

CHAPTER II

PATENTABILITY OF VARIETIES

Article 5

Conditions of Patentability of Varieties

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

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

(2) The plant variety shall have a denomination in compliance with the conditions laid down in Article 18.

Article 6

Novelty

(1) A plant variety shall be deemed to be new if, at the date of filing of the application for the grant of a patent with the Agency, material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purposes of commercial exploitation of the variety:

- (a) in the territory of the Republic of Moldova, earlier than one year before that date;

(b) in the territory of any other State, earlier than six years in the case of varieties of trees, fruit trees and grapevines, or, in the case of varieties of other species, earlier than four years before the said date.

Article 7

Distinctness

(1) A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application with the Agency.

(2) The existence of a variety may be established by the fact that it has been used, entered in an official register or a reference collection, or has been the subject of a precise description in a publication or in an application for the grant of a patent, provided that the application leads to the grant of a patent.

Article 8

Uniformity

A plant variety shall be deemed to be uniform if, subject to the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 9

Stability

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

CHAPTER III

VARIETY AUTHORS AND PATENT OWNERS

Article 10

Author of a Variety

(1) A person whose creative work resulted in the breeding, discovery or improvement (hereinafter referred to as “breeding”) of a variety shall be recognized as the author (the breeder) thereof.

(2) Where a new variety is the result of joint creative work of two or more breeders, all such breeders shall be recognized as joint authors thereof. The conditions for exercising the rights in the variety shall be determined by agreement between them.

(3) The authorship of a variety shall be an inalienable personal right. That right shall enjoy protection of unlimited duration.

(4) The breeder shall have the right to be identified in the application for the grant of a patent, in the granted patent and in all publications relevant to his variety.

Article 11

Right to Obtain a Patent

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

(2) Where the variety has been bred by several breeders, the right to obtain a patent shall belong to all breeders jointly. The waiving of the right to obtain a patent by one or more of the breeders shall not affect the right of the others, provided that they take the actions specified in this Law.

(3) The right to obtain a patent for a variety bred under the conditions specified in Article 12 shall belong to the employer unless otherwise provided in the employment contract.

Article 12

Varieties Bred in the Line of Duty

(1) A variety shall be deemed to have been bred in the line of duty if, in breeding the variety, the breeder:

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

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

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

(2) Where the notion that a variety has been bred in the line of duty is applicable only with regard to one or several breeders, the provisions of this Article shall only apply to such breeders, their employers or the persons who commissioned the breeding of the variety.

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

- (4) The right of a staff member of the State Commission or the Agency either to obtain a patent or to be identified as a co-author shall require confirmation by a decision of the Council for the duration of his employment contract with these organizations and one year thereafter.
- (5) The person who has bred a new variety in the line of duty shall be entitled to be identified as author in conformity with Article 10 and shall have the right to an equitable remuneration. The amount of remuneration shall be determined on the basis of the profits derived from the use of the new variety during the term of the patent, as well as the economic value of the variety.
- (6) The amount of remuneration shall be stipulated in a contract between the breeder and the employer or the patent owner and may not be less than 15% from any proceeds derived by the employer or the patent owner from the use of the new variety, including earnings derived from the sale of licenses.
- (7) The remuneration shall be paid to the breeder by the employer or, where the employer is not the patent owner, by the employer and the patent owner jointly. Where the amount of remuneration has been found unreasonably inadequate in relation to the actual contribution by the breeder and the actual value of the variety, the amount of remuneration may be increased at the breeder's request. Where the employer fails to increase the remuneration, the dispute shall be referred to the courts.

Article 13

The Exclusive Right of the Patent Owner

- (1) The effect of the exclusive right of the patent owner is that no person shall perform the following acts with respect to material of the variety without the authorization of the patent owner:
 - (a) production or reproduction (multiplication),
 - (b) conditioning for the purpose of propagation,
 - (c) offering for sale,
 - (d) selling or other marketing,
 - (e) exporting,
 - (f) importing,
 - (g) stocking for any of the purposes mentioned in items (a) to (f).
- (2) The provisions of paragraph (1) of this Article shall also apply to:
 - (a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

- (b) varieties which are not sufficiently distinguishable from the protected variety;
 - (c) varieties whose seed production requires the repeated use of the protected variety.
- (3) A variety shall be deemed to be essentially derived from another (initial) variety when, being clearly distinguishable from the initial variety,
- (a) it is predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
 - (b) it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except for the differences caused by the use of such methods as selection of a natural or induced mutant, selection of a variant plant from the initial variety, backcrossing, or transformation by genetic engineering.
- (4) Where there are several owners of the same patent, their relations with regard to the use of the protected variety shall be determined by agreement between them. Where no such agreement exists, each of the owners shall be entitled to use the variety at his discretion and to institute infringement proceedings against any person who uses the variety without the authorization of the patent owners, but may not renounce, assign or license the patent without the consent of the other owners.

Article 14

Limitation of Patent Owner's Rights

- (1) The right of the patent owner shall not extend to the use of the material of the protected variety:
- (a) for private and non-commercial purposes;
 - (b) for experimental purposes;
 - (c) as initial material for the purpose of breeding other varieties, and, except where the provisions of Article 13(1) and (2) apply, acts in respect of such other varieties.
- (2) The right of the patent owner shall not extend to the material of the protected variety, or of a variety referred to in Article 13(2), or any part of the plants of such a variety obtained directly from the material of that variety, which has been sold or otherwise marketed by the breeder or with his consent, unless such acts
- (a) involve further propagation of the variety in question, or
 - (b) involve an export of material of the variety which enables propagation of the variety in a country which does not protect the varieties of the genus or species to which the variety belongs, except where the exported material is intended for processing for final consumption purposes.

Article 15

Assignment of Rights

- (1) The right to obtain a patent, the right to own a patent, the rights arising out of the registration of a patent application with the Agency and the rights afforded by a patent may be assigned to any natural person or legal entity.
- (2) The rights specified in paragraph (1) may be transmitted on the basis of a contract of assignment or a license contract, or may be inherited by right or will.
- (3) The contract of assignment of rights shall enter into force from the date of its signature by the parties thereto.
- (4) The contract of assignment as well as the license contract shall be registered with the Agency. The rights of third parties in relation to the said contracts shall only arise where the contracts have been registered with the Agency.

CHAPTER IV

OBTAINING A PATENT

Article 16

Filing of the Patent Application

- (1) The application shall be filed with the Agency by the person entitled to obtain a patent under Article 11 of this Law.
- (2) The applicant may file a patent application with the competent authorities of other member States prior to the grant of a patent by the competent authority of the member State where he filed the first application.
- (3) Applications may be filed in person or through representatives.

Article 17

Patent Application

- (1) The patent application shall relate to one variety only. It shall be filed on an official form and shall state the particulars of the breeder and the applicant.
- (2) The patent application shall include:
 - (a) a proposal for a denomination for the variety;
 - (b) the description of the variety (technical questionnaire);

- (c) the applicant's declaration, on his responsibility, that the claimed variety satisfies the requirements of Article 6;
 - (d) an evidence of the priority claimed, where relevant;
 - (e) a power of attorney, where the application is filed through a representative;
 - (f) proof of payment of the prescribed fee.
- (3) The filing date of an application shall be deemed to be the date of receipt by the Agency of the request and the documents specified in paragraph (2)(a) and (b) of this Article.
- (4) The documents specified in paragraph (2)(c) to (f) of this Article may be submitted by the applicant within two months from the filing date of the patent application.
- (5) The patent application and the documents shall be written in Moldavian.

Article 18

Variety Denominations

- (1) The variety shall be designated by a denomination which will be its generic designation.
- (2) The denomination must enable the variety to be identified. It
- (a) may not consist solely of figures except where this is an established practice for designating varieties;
 - (b) must not be liable to be misleading or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder;
 - (c) must be different from every denomination which designates an existing variety of the same plant species or of a closely related species;
 - (d) must be used even after the expiration of the term of the patent.
- (3) Where a patent application is filed for the same variety in the Republic of Moldova and in other countries, the variety must be submitted under the same denomination to all the countries concerned.
- (4) If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (5) of this Article, is obliged to use it, the Agency may require the breeder to submit another denomination for the variety.
- (5) Any person who, within the territory of one of the member States, offers for sale or markets the material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the term of the patent protecting that variety, except where the provisions of paragraph (4) of this Article apply.

- (6) When a variety is offered for sale or otherwise marketed, it shall be permitted to associate a trademark, trade name or other similar indication which enables the variety to be identified.
- (7) The denomination of the variety shall be entered into the Register of Plant Varieties at the same time as the patent is granted.

Article 19

Right of Priority

- (1) The priority of the variety shall be determined by the filing date of the application with the Agency.
- (2) Priority may be determined by the filing date of the first application in a member State where the application for which priority is claimed (subsequent application) has been filed with the Agency within 12 months from the said date.
- (3) In order to establish priority, the applicant shall have to furnish to the Agency, within three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.
- (4) Failure to comply with the time limits provided for in paragraphs (2) and (3) of this Article or to pay the prescribed priority fee shall cause the priority claim not to be recognized.
- (5) The filing of another patent application, the publication of information on the variety or the use of the variety that is the subject of the first application, within the period provided for in paragraph (2) of this Article, shall not constitute a ground for rejecting the subsequent application and shall not give rise to any third-party right.

Article 20

Examination of the Patent Application

- (1) The Agency shall, within the framework of the examination of the patent application, carry out a preliminary examination of the application.
- (2) Within the framework of the preliminary examination, the Agency shall, within a period of three months following the filing date of the patent application:
 - (a) verify that the application includes all the documents specified in Article 17;
 - (b) verify that the documents comply with the prescribed conditions;
 - (c) verify that the claimed variety complies with the conditions prescribed in Article 6;

(d) verify that the variety denomination complies with the conditions prescribed in Article 18;

(e) determine the priority attaching to the variety, if applicable.

(3) The Agency may invite the applicant to furnish the missing documents or further elements of information, and the applicant shall be obliged to furnish them within two months from the date of receipt of the invitation. If the applicant fails to do so within the prescribed time limit and does not file a request for extension of the said time limit, the application shall be deemed to have been withdrawn.

(4) Where the preliminary examination finding is that the denomination of the variety does not comply with the conditions prescribed in Article 18, the applicant shall be invited to submit to the Agency another denomination within two months.

(5) If the patent application complies with the prescribed conditions, the Agency shall register it and the applicant shall be notified accordingly.

(6) Where the applicant disagrees with the decision taken by the preliminary examiners, he may, within three months following the date of receipt of the decision, lodge an appeal with the Board of Appeals of the Agency.

(7) The Agency shall publish the particulars of the application in the Official Gazette of Industrial Property (hereinafter referred to as “the Official Gazette”) after the expiration of three months from the date of registration of the patent application. The list of the particulars to be published shall be determined by the Agency.

(8) The Agency shall, within one month from the date of registration of the patent application, submit the documents thereof to the State Commission.

Article 21

Testing of the New Variety

(1) The State Commission shall carry out the testing of the new variety as to its compliance with the conditions of distinctness, uniformity and stability in its variety testing centers, experimental stations, specialized institutes, laboratories and specialized services in accordance with methodologies and within the periods prescribed by the State Commission in conformity with international standards.

(2) The applicant shall furnish to the State Commission, free of charge, any seeds and propagating material required for the purposes of testing.

(3) The applicant shall be required to pay the prescribed fee for carrying out the testing of the variety.

(4) Where the testing finding is that the new variety does not comply with the conditions prescribed in Articles 7 to 9, the State Commission shall decide not to recognize the variety;

the breeder and the Agency shall be notified of the decision in writing. The breeder shall have the right to lodge, within three months from the date of receipt of the notification, an appeal with the Council, stating reasons therefor, against the decision of the State Commission.

(5) If the applicant fails to lodge the appeal within the prescribed time limit, the decision of the State Commission shall become final. In that case the Agency shall take the decision to reject the patent application.

(6) Where the new variety complies with the conditions prescribed in Articles 7 to 9, the State Commission shall provide the applicant with a precise official description of the new variety and a certificate attesting the compliance of the variety with the conditions of patentability. The State Commission may, wherever necessary, correct the official description of the variety within the entire life of the patent. Requirements as to layout and contents of the certificate shall be specified by the State Commission.

(7) The State Commission may, for the purposes of variety testing, use the results of other official tests which have already been carried out.

Article 22

Publication of the Decision to Grant a Patent

(1) The Agency shall, within three months from the date of receipt of the certificate issued by the State Commission, and on the basis of the said certificate, take the decision to grant a patent.

(2) The Agency shall publish the decision to grant a patent in the Official Gazette.

Article 23

Provisional Legal Protection

(1) During the period between the date of publication of the patent application and the date of publication of the decision to grant a patent, the variety shall be afforded provisional legal protection.

(2) Any person who, during the period of the provisional legal protection, uses the variety without the authorization of the patent owner, shall be liable to sanctions under Article 35.

(3) The patent owner shall be entitled to equitable compensation for damages from any person who, during the period of the provisional legal protection, has carried out without the authorization of the patent owner, any acts set out in Article 13.

(4) The provisional legal protection shall be deemed to have existed only where the patent has been granted.

Article 24

Withdrawal of the Patent Application

- (1) The patent application may be withdrawn by the applicant by means of a written request before a decision to grant or to refuse to grant a patent has been taken.
- (2) Where there are several applicants, the patent application may be withdrawn only with the consent of all applicants.

Article 25

Extension of the Time Limits

- (1) The time limits prescribed for the examination of the patent application by the Agency may, at the request of the applicant, be extended for a period of three months; such extension shall not be granted more than twice.
- (2) The request for extension of the time limits shall be subject to the payment of the prescribed fee.

Article 26

Grant of the Patent

- (1) At the same time as it publishes the decision to grant a patent, the Agency shall enter the patent into the Register of Variety Patents and shall, within three months, issue the patent to the person in whose name it was sought.
- (2) The layout of the patent shall be established by the Agency in agreement with the State Commission.
- (3) After the decision to grant a patent has been taken, the patent owner shall deposit the quantity of material of the protected variety that is required for deposit at the address indicated by the State Commission.

CHAPTER V

LAPSE OF THE PATENT

Article 27

Invalidation of the Patent

- (1) A patent shall be invalidated where:
 - (a) the conditions prescribed in Articles 6 and 7 were not complied with at the time of the grant of the patent;

- (b) the name of the breeder or that of the patent owner contained in the patent is not correct.
- (2) No patent shall be invalidated for other reasons.

Article 28

Premature Termination of the Patent

- (1) The validity of the patent shall expire prematurely where
 - (a) the variety no longer complies with the conditions of uniformity and stability;
 - (b) the patent owner refuses to provide, at the request of the State Commission, the information, documents or material of the variety deemed necessary for verifying the maintenance of the protected variety;
 - (c) the patent owner does not propose, where the denomination of the variety is cancelled after the grant of the patent, another denomination;
 - (d) the patent owner fails to pay the prescribed maintenance fee.
- (2) Where a patent is cancelled owing to failure to pay the prescribed maintenance fee, the patent may be restored provided that, within six months from the date of cancellation, the maintenance fee is paid.

Article 29

Surrender of the Patent

- (1) The patent owner may surrender the patent by means of a written request.
- (2) The surrender of the patent by one or more of the owners shall not terminate the validity of the patent, which shall remain the property of the other owners.
- (3) The surrender of the patent shall take effect on the date of receipt by the Agency of the written request. A record of the surrender of the patent shall be entered into the Register of Variety Patents and published in the Official Gazette.
- (4) The patent owner shall be obliged to notify the breeder of his intention to surrender the patent. In such a case the breeder shall, for a period of three months from the date of the notification, have a preferential right to obtain the patent in his name.
- (5) Where the patent is the subject of a license contract, the surrender of the patent shall only be possible with the agreement of the license holder unless otherwise provided in the license contract.

CHAPTER VI
THE USE OF THE PROTECTED VARIETY

Article 30

License Contract

- (1) A variety for which a patent application has been filed or a patent has been granted may be the subject of a license contract (exclusive or non-exclusive license contract).
- (2) Under a license contract the patent owner (the licensor) grants, within the limits specified in the contract, the right to use the protected variety to another natural person or legal entity (the licensee). In such a case the licensee undertakes to make payments to the licensor and perform any other acts specified in the contract.
- (3) Under an exclusive license the licensor transfers to the licensee the exclusive right to use the variety, within the limits specified in the license contract, beyond which the licensor retains the said right.
- (4) Under a non-exclusive license the licensor, while granting the licensee the right to use the variety, retains all rights afforded by the patent, including the right to grant licenses to third parties.

Article 31

Compulsory License

- (1) Where the patent owner has failed to use the protected variety in the Republic of Moldova within five years following the date of the grant of the patent and has refused to conclude a license contract, and where it affects public interest, any person wishing to use the variety may apply with the Council for the grant of a compulsory non-exclusive license.
- (2) The compulsory license shall only be granted to a person who is in a position to use the variety in a competent manner and within the scope specified in the license contract, which shall confer on its owner the right to receive initial material from the patent owner.
- (3) The grant of a compulsory license shall not prejudice the right of the patent owner to use the protected variety or to grant licenses to others.
- (4) The Council shall fix the limits of the use of the variety and the amount of compensation payable to the patent owner, as well as the other terms and conditions of the license contract.
- (5) If warranted by the circumstances, the Council may, on the proposal of the patent owner, either cancel the compulsory license or grant a new license.

- (6) The Agency shall enter the particulars of the grant of a compulsory license into the Register of Variety Patents and publish them in the Official Gazette.

CHAPTER VII

DISPUTES

Article 32

Settlement of Disputes

- (1) Disputes between natural persons and legal entities arising from the implementation of this Law shall be examined by the Board of Appeals of the Agency, the Council or in court.
- (2) The Board of Appeals of the Agency shall consider appeals against:
- (a) the decision to grant or to refuse to grant a patent;
 - (b) the decision determining the priority date;
 - (c) the decision to invalidate a patent;
 - (d) the decision to prematurely terminate a patent.
- (3) The appeals shall be examined within three months from the date of their lodging.
- (4) The Board of Appeals of the Agency shall notify the parties to the dispute of its decision within 15 days from the date thereof.
- (5) The decision of the Board of Appeals of the Agency may be challenged, within three months from the date of its notification, in court.
- (6) Any appeal against the decision taken by the State Commission under Article 21 of this Law shall be considered by the Council in accordance with the procedures and within the time limits established by the Council.
- (7) The decision of the Council may be challenged in court.
- (8) The competence of the court shall extend to disputes arising from:
- (a) the authorship of a variety;
 - (b) varieties bred in the line of duty;
 - (c) the identification of the patent owner;
 - (d) the conclusion and execution of license contracts;
 - (e) infringements of the exclusive right of the patent owner;

- (f) the establishment of the act of unauthorized use;
- (g) the payment of compensation under this Law;
- (h) other disputes arising out of the protection of rights conferred by a patent.

CHAPTER VIII
LIABILITY FOR INFRINGEMENT OF THE RIGHTS
OF THE PATENT OWNER

Article 33

Infringement of the Exclusive Right of the Patent Owner

Any act in respect of the protected variety for which the authorization of the patent owner is required under Article 13 and which is done without such authorization shall be deemed to constitute an infringement of the exclusive right of the patent owner.

Article 34

Action for Infringement of the Exclusive Right of the Patent Owner

- (1) The patent owner or the owner of an exclusive license may bring an action for infringement of the exclusive right of the patent owner.
- (2) The owner of a compulsory license may bring an action for infringement of the exclusive right of the patent owner where the latter has not exercised his right to bring an action within six months after having been notified by the licensee.
- (3) Any licensee shall have the right to participate in the infringement proceedings if the action has been brought by the patent owner. The same shall apply to any patent owner where the action has been brought by a licensee.
- (4) The action for infringement of the exclusive right of the patent owner may include:
 - (a) an action for establishment of the act of infringement,
 - (b) an action for compensation for damages sustained,
 - (c) an action for identification of the infringer.
- (5) Damages may be claimed within a period of five years from the date on which the prejudice was sustained, beyond which the right to claim damages shall cease to exist, except where the said time limit has been extended.

Article 35

Liability for Infringement of the Rights of the Patent Owner

- (1) Whoever infringes the rights of the patent owner shall be liable therefor in accordance with the legislation in force.
- (2) At the request of the patent owner, the infringer shall cease the infringement and compensate the owner for the damages sustained, including lost profits.
- (3) In the course of court proceedings concerning the infringement of the rights of a patent owner, the court may, at the request of any party or on its own initiative, decide to apply the following measures in support of the suit:
 - (a) to order the seizure of the infringing seeds or any other plant material, or of the property of the infringer,
 - (b) to prohibit the use, production or sale of material of the protected variety.
- (4) The following acts shall be deemed to infringe the rights of the patent owner:
 - (a) the disclosure of information constituting a trade secret in relation to any variety for which an application has been filed if the information is acquired in the performance of acts under this Law, except where such information is disclosed by the Board of Appeals of the Agency or a person carrying out his official duties with a view to secure protection for the variety under this Law;
 - (b) the use, for material of the variety that is produced and sold, of a denomination which is different from the registered denomination of the variety;
 - (c) the use, for material of a variety that is produced and sold, of the denomination of a registered variety, where it is known that the said material is not from the registered variety;
 - (d) the use, for material that is produced and sold, of a denomination which corresponds so closely to a registered denomination that it is misleading;
 - (e) the sale of material of a variety in respect of which a patent has not been granted, thus willfully misleading the user.
- (5) The following acts shall also be deemed to infringe the rights of the patent owner, where they are committed willfully:
 - (a) making a false statement;
 - (b) making a false entry in the Register of Variety Patents or in reporting documents or causing it to be made therein,

- (c) forging or causing forgery of the documents required under the provisions of this Law,
- (d) furnishing documents containing false information.

CHAPTER IX INTERNATIONAL COOPERATION

Article 36

Rights of Foreign Natural Persons and Legal Entities

Foreign natural persons and legal entities from States which are party to international conventions to which the Republic of Moldova is party shall enjoy the rights provided for in this Law on the same footing as natural persons and legal entities from the Republic of Moldova. The provisions of this Law shall also apply to bilateral agreements or on the basis of reciprocity.

Article 37

Testing and Protection of New Varieties Abroad

- (1) Natural persons and legal entities from the Republic of Moldova shall have the right to choose the State in which they wish to file an application for the grant of a variety patent.
- (2) The State Commission may decide that the variety for which protection is sought will be tested in another State or by an international organization provided that a corresponding bilateral or international agreement has been concluded with such State or organization.
- (3) The applicant who has filed his first application in a foreign State shall be required to furnish information on the tests carried out in conformity with the conditions for protection prescribed by the legislation of that State.
- (4) The cost of protection of a new variety abroad shall be borne by the applicant.

Article 38

International Treaties

Where an international treaty to which the Republic of Moldova is party contains provisions different from those specified in this Law, the former shall prevail.

CHAPTER X
FINAL PROVISIONS

Article 39

Representation

- (1) Natural persons and legal entities having their permanent residence in the Republic of Moldova shall act either on their own or through an authorized representative in all proceedings concerning the protection of varieties.
- (2) Natural persons and legal entities having their residence or seat outside the territory of the Republic of Moldova, and foreign legal entities and their representatives, shall be required to act through patent agents registered in the Republic of Moldova in all proceedings concerning the protection of varieties, unless otherwise provided in the treaties to which the Republic of Moldova is party.
- (3) The activities of the patent agents shall be governed by the Statute approved by the Government.

Article 40

Fees

- (1) The performance of any legal acts under this Law shall be subject to the payment of fees.
- (2) The list of acts for which fees are payable, the amounts of fees and the time limits for the payment thereof, and also the conditions governing exemption from fees and the reduction or reimbursement of fees, shall be determined by the Government.
- (3) The fees shall be payable by the applicant, the patent owner or any other natural person or legal entity concerned.
- (4) Foreign natural persons or legal entities shall be required to pay the fees in foreign currency.

Article 41

Maintenance of the Variety

- (1) The patent owner shall, throughout the life of the patent, maintain the variety in such a way that all characteristics defined in the description of the variety at the date of the grant of the patent are maintained.
- (2) The State Commission may, for the purposes of testing the uniformity and stability of the protected variety, require the patent owner to furnish material of the variety, documents or any other necessary information.

Article 42

Use of the Variety for Production Purposes

Varieties shall be used for production purposes only in conformity with the provisions of this Law and where the prescribed certificate has been issued by the State Commission after the official testing of the variety has been carried out and where the variety has been entered in the Register of Plant Varieties.

Article 43

Promotion by the State of the Breeding and Use of Protected Varieties

The State shall promote the breeding and use of new plant varieties. The methods and means for the promotion shall be defined in the relevant legislative acts.

CHAPTER XI

TRANSITIONAL PROVISIONS

Article 44

This Law shall enter into force on the date of its publication.

Article 45

For the period until the legislation is brought into line with the provisions of this Law, the existing normative acts shall apply, provided that they are not contrary to the said provisions.

Article 46

It is hereby determined that:

(a) authors' certificates granted in respect of varieties in the former Soviet Union shall be recognized as valid in the Republic of Moldova in accordance with the legislation in force on the date of the grant;

(b) any person who uses in the Republic of Moldova, for his entrepreneurial purposes or for the purposes of his enterprise, a variety protected by an author's certificate granted in the former Soviet Union may proceed with such use. In such a case the breeder shall be entitled to remuneration according to the procedure and in the amount specified in Article 12 of this Law;

(c) applications for the grant of a variety patent with respect to which the office procedure has not been completed on the date of entry into force of this Law shall be processed in accordance with the procedure prescribed by this Law;

(d) patents for the varieties of the protected genera and species granted in the Republic of Moldova prior to the entry into force of this Law shall have a legal status equivalent to that of the patents granted under this Law.

Article 47

The Government of the Republic of Moldova shall:

- submit to the Parliament proposals on bringing the existing legislation into line with this Law,
- ensure the revision or abrogation by the ministries and departments concerned of the existing normative acts that are contrary to the provisions of this Law,
- approve the list of botanical genera and species the varieties of which are protected under this Law,
- approve the Statute and composition of the National Council of the Republic of Moldova for Plant Varieties, as well as the Statute and composition of the State Committee of the Republic of Moldova for Variety Testing,
- approve a list of acts for which fees are payable, the amounts of the fees and the time limits for the payment thereof.

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