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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
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EXAMINATION OF THE CONFORMITY OF THE LAWS
OF THE REPUBLIC OF CROATIA
WITH THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated December 11, 1997, Mr. Slatko Dominikovic, Minister for Agriculture and Forestry of the Republic of Croatia, requested the advice of the Council of UPOV on the conformity with the UPOV Convention of the Plant Variety Protection Law (hereinafter referred to as "the Law") which was adopted by the Parliament of Croatia on November 21, 1997, and published in the Official Gazette No. 131 of December 5, 1997. It was stated in the letter that the Law had been drafted in accordance with the provisions of the 1991 Act; accordingly, the Law is analyzed below for conformity with the said Act. The Annex to this document contains a translation of the Law.

2. Croatia 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 Croatia

3. The protection of new plant varieties will be governed in Croatia by the Law and also by its regulations and other implementing enactments which, in accordance with Article 49 of the Law, will have to be established by the middle of December 1998. An analysis of the Law follows in the order of the substantive law provisions of the 1991 Act.

Article 1 of the 1991 Act: Definitions

4. Article 2.1 of the Law reproduces the essence of the definition of “variety”; Article 2.2 defines the “breeder” in a restricted sense, but the possibility of granting breeders’ rights to the breeder’s successor in title is announced in Article 2.3.

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

5. Article 1 of the Law provides that it regulates “the methods and procedures of plant variety protection, the grant of plant breeders’ rights and the protection of plant breeders’ rights,” thus mirroring Article 2 of the 1991 Act.

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

6. Article 7 of the Law provides that the Minister for Agriculture and Forestry shall draw up a List of Plant Species, thus enabling the Government of Croatia, by appropriate regulations, to conform with the obligations under Article 3 of the 1991 Act.

7. It is assumed, however, that the law is applicable to all plant genera and species, despite the fact that Article 2.1 defines an “agricultural plant variety,” that agriculture is mentioned in other parts of the law (for instance in Article 5, in the title of the supervisory and advisory Commission) and that forest trees are not mentioned in Article 14, in connection with the duration of protection. If such were not the case, the Law would have to be amended within the 10 years following the date on which Croatia becomes bound by the 1991 Act.

Article 4 of the 1991 Act: National Treatment

8. Article 4(2) of the Law provides that foreign natural or legal persons shall have the same rights as a national of the country, if an international treaty to which the Republic of Croatia is a party so provides. With the accession to the 1991 Act, Croatia will comply with Article 4 of that Act.

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

9. The conditions for protection are set out in Article 8 of the Law. Paragraphs (1) and (2) are concerned with novelty; they conform with Article 6 of the 1991 Act provided that “it”

(the variety) is interpreted to mean propagating material or harvested material of the variety and “for economic purposes,” for purposes of exploitation of the variety. Paragraph (3) seems to require distinctness only from *registered* varieties (and varieties that are in the process of registration or protection); this would not be in conformity with Article 7 of the 1991 Act, and it is suggested that the word “registered” should be deleted at the earliest opportunity.

Article 10 of the 1991 Act: Filing of Applications

10. The Law contains no provisions which conflict with those of Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

11. Article 18(2) and (3) of the Law are concerned with the possible acceptance of an application filed in another country and the initiation of a procedure in Croatia by the filing of an application abroad, respectively, if this is in accordance with an international treaty; there thus is a basis for a right of priority under Article 11 of the 1991 Act.

Article 12 of the 1991 Act: Examination of the Application

12. Article 24 of the Law makes provisions for the examination of the variety that is the subject of an application in terms which satisfy Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

13. Article 12(2) of the Law specifies that the protection conferred by breeders’ rights is valid from the date of application. The Law thus conforms to Article 13 of the 1991 Act.

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

14. Article 12(1) of the Law contains provisions which reproduce the substance of Article 14(1) of the 1991 Act. Article 13 provides for the extension of the breeders’ rights granted in respect of a variety, to essentially derived varieties – whose description is very concise, and does not include the restriction “where the protected variety is not itself an essentially derived variety” –, varieties that are not clearly distinguishable from the protected variety and varieties whose commercial production requires the repeated use of the protected variety; this is in conformity with Article 14(5) of the 1991 Act.

15. The Law does not contain provisions that implement Article 14(2) of the 1991 Act (protection in respect of harvested material).

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

16. Article 12(3) of the Law provides for the exceptions set out in Article 15(1)(ii) (experimental use) and (iii) ("breeder's exemption"). The Law does not contain provisions on the use for private and non-commercial purposes, and thus offers protection that may be held to go beyond the minimum requirement of the 1991 Act. It makes no exception in the form of a "farmer's privilege."

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

17. The Law does not contain any provision corresponding to Article 16 of the 1991 Act. Exhaustion, however, may be deemed to be implicit (as is the case currently for many intellectual property laws).

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

18. Articles 38 to 40 of the Law contain provisions concerning the grant of compulsory licenses which satisfy the provisions of Article 17 of the 1991 Act, provided that the conditions set out in Article 38(2) of the Law are cumulative.

Article 18 of the 1991 Act: Measures Regulating Commerce

19. The Law contains no provisions which conflict with Article 18 of the 1991 Act.

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

20. Article 14 of the Law provides that protection lasts until the end of the twentieth year following the grant of the rights in the case of vines, fruit trees and ornamental trees – forest trees not being mentioned – and until the end of the fifteenth year in the case of the other genera and species. The durations fall short of the minimums set out in Article 19 of the 1991 Act.

Article 20 of the 1991 Act: Variety Denomination

21. Articles 9 and 10 of the Law contain provisions which satisfy Article 20 of the 1991 Act.

Articles 21 and 22 of the 1991 Act: Nullity and Cancellation of the Breeder's Right

22. Article 16 of the Law provides that breeders rights shall lapse "where the rights have been declared null and void" (paragraph 3) or where the renewal fee due has not been paid (paragraph 4). Rights may be declared null and void under Article 32 "if it is proved that the conditions for the grant of breeders' rights under this Law have not been respected." These

provisions fall short of Articles 21 and 22 of the 1991 Act, but may provide the basis for more detailed rules conforming with the said Articles to be set out in the regulations.

23. Articles 43 to 45 of the Law contain provisions on the judicial assignment of granted rights. However, they are limited to the cases where breeders' rights have been granted twice for the same variety. Their scope is thus narrower than Article 21(1)(iii) of the 1991 Act. Article 46 of the Law deals with actions by the breeder "to be mentioned in all documents relating to the grant of breeders' rights." It is the sole Article of a section entitled "breeder's action to secure the grant of breeders' rights"; that title corresponds to the judicial assignment of the rights granted or applied for. It seems that an assignment can also occur on the basis of Article 31 of the Law, upon an opposition to the grant of the rights filed within six months after the publication of the Official Decision on the said grant.

Article 30 of the 1991 Act: Implementation of the Convention

24. The Law makes adequate provisions for the implementation of the 1991 Act in Croatia. Thus:

(a) Articles 41 and 42 of the Law provide for appropriate (civil law) remedies for the effective enforcement of the rights under a plant variety certificate (Article 30(1)(i) of the 1991 Act);

(b) Article 5 of the Law entrusts the administration of the plant variety protection system to the Institute for Seed and Plant Production and establishes a Commission for Agricultural Plant Variety Protection as a supervisory and advisory authority; a Complaint Board to hear oppositions to decisions taken during the procedure for the grant of breeders' rights is established within the Ministry of Agriculture and Forestry under Article 26(2) of the Law (Article 30(1)(ii) of the 1991 Act);

(c) Article 6(4) provides for the publication of an official journal by the Institute to contain information on granted rights (Articles 6(4) and 25), applications (Articles 20 and 23), withdrawals (Article 20), and rejections (Articles 20 and 25).

General Conclusion

25. The Law, in its main provisions, incorporates the substance of the 1991 Act. However, the Law will not satisfy the 1991 Act unless

(a) it is properly interpreted, supplemented or amended with respect to its scope (see paragraph 7, above), novelty and distinctness (see paragraph 9, above), and compulsory licenses (see paragraph 18, above);

(b) it is supplemented by appropriate regulations with respect to priority (see paragraph 11, above);

(c) it is supplemented by appropriate regulations or amended with respect to nullity and cancellation of the breeder's right (see paragraphs 22 and 23, above);

(d) it is amended with respect to the scope of the breeder's right (see paragraphs 14 and 15, above), the duration of protection (see paragraph 20, above).

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

(a) to advise the Government of Croatia that the Law, when supplemented by Regulations and with the incorporation of suitable amendments, provides the basis for a law conforming with the 1991 Act;

(b) to request the Office of the Union to offer its assistance to the Government of Croatia in respect of the amendments and the Regulations that are necessary to achieve conformity;

(c) to further advise the Government of Croatia that

(i) after the enactment of a law on the revision of the Law in accordance with the suggestions of the Office of the Union, but without other substantial changes, and the making of necessary Regulations, and

(ii) after consultation of the Office of the Union as to whether the amendments to the Law and the Regulations are adequate,

it may deposit an instrument of accession to the 1991 Act.

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

[Annex follows]

ANNEX

PLANT VARIETY PROTECTION LAW*

CHAPTER I

BASIC PROVISIONS

Article 1

This Law regulates the methods and procedures of plant variety protection, the grant of plant breeders' rights and the protection of plant breeders' rights.

Article 2

For the purpose of this Law:

1. Agricultural plant variety (hereinafter *the variety*) means a plant grouping within a single botanical taxon of the lowest known rank, 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 a unit with regard to its suitability for being propagated unchanged.
2. The breeder of the variety (hereinafter *the breeder*) is the natural or legal person who has been engaged in the process of breeding a new variety or who has created or discovered the new variety.
3. Breeders' rights are the rights of the breeder or the rights of the breeder's legal successor as provided for in this Law.

Article 3

- (1) Breeders' rights are granted to the breeder.
- (2) Joint breeders' rights may be granted to two or more breeders if they have been working together on the process of breeding the new variety.
- (3) If two or more breeders have been engaged in the process of breeding the new variety independently of each other, breeders' rights shall be granted to the breeder who submits the first application for the grant of breeders' rights.

* Approved by the Parliament of the Republic of Croatia on November 21, 1997 (No. 081-97-1973/1); published in Official gazette No. 131/97 of December 5, 1997.

Article 4

- (1) Breeders' rights shall be granted to natural persons who are nationals and residents of the Republic of Croatia and to legal persons with headquarters in the Republic of Croatia.
- (2) With respect to the protection of breeders' rights, a foreign natural or legal person shall have the same rights as a national of the country, if an international treaty to which the Republic of Croatia is party so provides.
- (3) In all proceedings conducted before the variety protection body and State administration bodies and in court proceedings, foreign legal and natural persons shall exercise their rights under this Law through their designated representatives, who shall represent them in variety protection proceedings. The representative shall be a domestic natural or legal person.

Article 5

- (1) Activities relating to plant variety protection under this Law shall be undertaken by the Institute for Seed and Plant Material Production (hereinafter *the Institute*).
- (2) The Commission for Agricultural Plant Variety Protection will be established within the Ministry of Agriculture and Forestry (hereinafter *the Ministry*) in order to monitor the status of variety protection and issue professional opinions and proposals.
- (3) The Commission shall be established and the Chairman, Secretary and members of the Commission shall be appointed by the Minister for Agriculture and Forestry (hereinafter *the Minister*) in an official decision published in the Official Gazette.
- (4) The Chairman, Secretary and members of the Commission shall be entitled to payment regulated by the Minister.
- (5) The Minister may establish other working bodies for the implementation of specific activities under paragraph (2) of this Article.

Article 6

- (1) The Institute shall manage the following Registers:
 1. Register of Applications for Breeders' Rights;
 2. Register of Breeders' Rights;
 3. Register of Transferred Breeders' Rights;
 4. Register of Assigned Breeders' Rights;
 5. Register of Designated Representatives.
- (2) The Registers provided for in paragraph (1) above shall be public.

(3) The content, form and procedures of the Registers provided for in paragraph (1) above shall be regulated by the Minister.

(4) The official journal published by the Institute shall publicize the rights granted to breeders and entered in the Registers provided for in paragraph (1) above.

CHAPTER II PLANT VARIETY PROTECTION

Article 7

(1) The variety shall be protected by the grant of breeders' rights.

(2) Breeders' rights shall be granted if the variety is new, distinct, uniform, stable and named.

(3) The Minister shall draw up a List of Plant Species that may be protected by the grant of breeders' rights.

Article 8

(1) The variety shall be deemed new if, on the filing date of the application for plant breeders' rights, it has not been sold or assigned for economic purposes by the breeder for longer than one year before that date in the Republic of Croatia, or outside the Republic of Croatia for longer than four years before that date.

(2) In the case of trees and vines, the period under paragraph (1) above shall be six years.

(3) The variety shall be deemed distinct if it is clearly distinguishable from any other registered variety whose existence is a matter of common knowledge at the time of the filing of the application. This provision is likewise applicable to varieties that are undergoing the process of registration or protection in the Republic of Croatia or in foreign countries.

(4) The variety shall be deemed uniform if it is uniform in its relevant characteristics.

(5) The variety shall be deemed stable if its relevant characteristics remain unchanged after repeated propagation or at the end of each particular cycle of propagation.

Article 9

(1) The variety denomination provided for in Article 7(2) may consist of one or several words up to a maximum of three, a combination of figures and letter, a combination of words and letters or a combination of words and figures.

- (2) Grounds for exclusion shall exist where the variety denomination:
1. renders identification of the variety impossible;
 2. causes confusion or misleads as to the origin, creation, characteristics, value or identity of the variety, or the identity of the breeder;
 3. is identical or confusingly similar to a variety denomination under which a variety of the same or a related species has been entered in an official list of varieties in the Republic of Croatia or in another member State of the International Union for the Protection of New Varieties of Plants (hereinafter *UPOV*);
 4. is the same as or confusingly similar to a designation in which a third party has prior rights;
 5. refers solely to attributes that are common to other varieties of the species concerned;
 6. consists of the botanical or common name of a genus or species, or includes such a name in a manner liable to cause confusion;
 7. suggests that the variety is derived from another known or related variety;
 8. includes words such as “variety,” “cultivar,” “form,” “hybrid” or “cross” or translations thereof.
- (3) If the variety is already registered in another member State of UPOV, or if an application for the protection of the same variety has already been filed in such State, only the variety denomination that has been proposed or already registered in that other State may be proposed and registered as a denomination for the variety.
- (4) If the variety denomination used in the other State is inappropriate for linguistic reasons, the applicant shall propose another variety denomination within three months.

Article 10

Any person who offers for sale or markets propagating material of a protected variety shall, even after the protection has expired, use the same registered variety denomination.

CHAPTER III
SCOPE AND DURATION OF BREEDERS' RIGHTS

1. Establishment of Breeders' Rights

Article 11

The breeder of the variety shall be granted breeders' rights as of the date of the entry in the Register of Breeders' Rights.

2. Scope of Breeders' Rights

Article 12

(1) The following acts in relation to the propagating material of the protected variety shall require authorization by the breeder:

1. production or reproduction (multiplication)
2. conditioning of propagating material for the purposes of sowing or planting
3. offering for sale
4. selling or other marketing
5. importing, exporting
6. stocking and processing.

(2) Protection under paragraph (1) of this Article shall be valid from the filing date of the application for the grant of breeders' rights.

(3) Authorization by the breeder is not needed for the breeding of new varieties and for their use for experimental purposes.

Article 13

The provisions of paragraph (1) of Article 12 of this Law shall also apply to:

1. varieties that are essentially derived from and genetically close to the protected variety;
2. varieties that are not clearly distinguishable from the protected variety;
3. varieties whose production requires repeated use of protected varieties.

3. Term of Breeders' Rights Protection

Article 14

The protection of breeders' rights shall last:

1. for vines, fruit trees and ornamental trees, including their rootstocks, until the end of the twentieth year following the grant of the rights;
2. for all other genera or species, until the end of the fifteenth year following the grant of the rights.

Article 15

- (1) Fees shall be paid in accordance with this Law and regulations under it for the grant and maintenance of breeders' rights.
- (2) The fees under paragraph (1) shall be established by the Minister.
- (3) Where the fees for the grant of breeders' rights are not paid, the application for breeders' rights shall be rejected.

Article 16

Breeders' rights shall lapse:

1. where the owner of the rights waives them;
2. after the term of protection of the rights has expired;
3. where the rights have been declared null and void;
4. where the owner of the rights does not pay the renewal fee due, even after a six-month period of grace for payment.

CHAPTER IV

PROCEDURE FOR THE GRANT OF BREEDERS' RIGHTS

1. Starting the Procedure

Article 17

- (1) Breeders' rights are acquired in an administrative procedure conducted by the Institute.

(2) The Law on General Administrative Procedure is applicable to all matters not governed by this Law.

Article 18

(1) The procedure for the grant of breeders' rights is initiated by the filing of the application with the Institute.

(2) The Institute may accept an application for the grant of breeders' rights filed in a foreign country if it is done in accordance with international treaties signed by the Republic of Croatia.

(3) The procedure for the grant of breeders' rights may be initiated by the filing of an application in a foreign country if this is governed by an international treaty signed by the Republic of Croatia. The legal effect of rights granted on such applications shall be the same as that of rights granted on domestic applications, except where the international treaty provides otherwise.

(4) The application filed under paragraph (1) of this Article shall be accompanied by a certain quantity of propagating material of the variety for which the grant of breeders' rights has been requested.

(5) The language of the application shall be Croatian.

(6) The method and procedure for the grant of breeders' rights shall be laid down by the Minister.

Article 19

(1) The application under Article 18 shall be marked with the date and hour of its filing; the applicant shall be sent a record of receipt with the date and hour of filing.

(2) The filing date is the date of receipt of an application that complies with the conditions for entry in the Register of Applications for the Grant of Breeders' Rights (hereinafter *Register of Applications*).

(3) Propagating material of the variety for which the grant of breeders' rights has been requested, and also the attached documents, shall be kept in confidence.

Article 20

The application, and also any withdrawal or rejection thereof, shall be published by the Institute in its journal.

2. Examination as to Form of the Application for the Grant of Breeders' Rights

Article 21

- (1) On receipt of the application for breeders' rights, the Institute shall examine it to determine whether it complies with the conditions of entry in the Register of Applications.
- (2) The Minister is authorized to lay down conditions for the entry of the application in the Register of Applications.

Article 22

- (1) If the application complies with the conditions laid down, it shall be entered in the Register of Applications with the date of its filing. The applicant shall receive written confirmation of receipt.
- (2) If the application does not comply with the conditions set forth in this Law, the Institute shall request the applicant, in writing, to complete his application. The deadline for completing the application shall be three months after the date on which the said request was sent.
- (3) If the applicant completes the application within the time limit set under paragraph (2) of this Article, the application shall be entered in the Register of Applications with the date of receipt of the completed application.
- (4) If the applicant does not complete the application within the time allowed, his application shall be rejected.

Article 23

- (1) The duly filed application for the grant of breeders' rights for which the relevant fee has been paid shall be published in the journal within three months after the application date.
- (2) The notice published under paragraph (1) of this Article shall contain: filing date; name and address of applicant; variety denomination; main characteristics of the variety.
- (3) The notice published under paragraph (2) of this Article shall be made available to any interested party.

Article 24

- (1) After the entry in the Register of Applications, the Institute shall examine the application for compliance with the conditions for the grant of breeders' rights.

- (2) In the examination of the grant conditions under paragraph (1) of this Article, the Institute shall examine the variety if it does not already have proof in its possession that the variety complies with the conditions set forth in Article 7(2) of this Law.
- (3) The Institute may request the applicant to submit the requisite amount of propagating material in due time.
- (4) The Institute may entrust examination of the variety under paragraph (2) of this Article to specialized institutions in foreign countries, and may accept the results of such examinations.
- (5) The Institute shall accept the examination results of variety registration procedures (both for newly created domestic varieties and for foreign varieties) if the conditions set forth in Article 7(2) are fulfilled.

3. Grant of Breeders' Rights

Article 25

- (1) If the examination shows that the application satisfies the conditions set forth in Article 24 of this Law, the Institute shall issue an Official Decision on the grant of breeders' rights. The breeders' rights shall be entered in the Register of Breeders' Rights.
- (2) The date of registration in the Register under paragraph (1) of this Article is the date of the Official Decision on the grant of breeders' rights.
- (3) If the examination shows that the variety does not comply with the prescribed conditions, the Institute shall reject the application for the grant of breeders' rights.
- (4) The Official Decision on the grant of breeders' rights, or the rejection of the application, shall be published in the official journal of the Institute.

Article 26

- (1) Opposition to Official Decisions and other measures taken during the procedure for the grant of breeders' rights may be filed within three months after the date on which the Decision or other measure was taken.
- (2) A complaint shall be submitted to the Complaint Board established within the Ministry. The Board shall have three members.
- (3) The Minister is authorized to establish the Board and to appoint its members.
- (4) Members of the Board are entitled to receive the payment specified by the Minister.

Article 27

- (1) Every holder of breeders' rights shall ensure that, throughout the period during which the rights are exercisable, he is in a position to provide the Institute with propagating material of the protected variety.
- (2) The holder of the breeders' rights shall pay a renewal fee for the maintenance of his rights. The fee shall be set by the Minister.

Article 28

- (1) When the decision on the grant of breeders' rights has been published, a Certificate of Breeders' Rights shall be issued.
- (2) At the breeder's request, the Certificate of Breeders' Rights may be accompanied by a list of the breeders' rights granted.
- (3) The Minister is authorized to determine the form and content of the Certificate provided for in paragraph (1) of this Article.

Article 29

- (1) The Official Decision on the grant of breeders' rights shall be issued to the first breeder to file an application for the grant of breeders' rights.
- (2) If the application for the grant of breeders' rights has been filed by two or more breeders jointly, the breeders' rights shall be granted to all of them.
- (3) The Official Decision on the grant of breeders' rights under paragraph (2) of this Article does not regulate the respective rights of the said breeders.

4. Special Provisions on the Procedure for the Grant of Breeders' Rights

Article 30

Within six months after the publication of the Official Decision on the grant of breeders' rights, any person having a legal interest may file opposition to the grant. Opposition may be based on the allegation that the applicant is not the breeder of the variety or that the variety does not comply with the conditions of Articles 7 to 9 and 25 of this Law.

Article 31

- (1) After opposition proceedings have taken place, an Official Decision upholding or rejecting the opposition shall be issued by the Institute.

- (2) If the opposition is upheld, an Official Decision shall be taken to amend or cancel the Official Decision on the grant of breeders' rights.

Article 32

The Official Decision on the grant of breeders' rights shall be declared null and void if it is proved that the conditions for the grant of breeders' rights under this Law have not been respected.

Article 33

If the party requesting annulment of the Official Decision on the grant of breeders' rights abandons his claim, the Institute may continue the proceedings in accordance with its official duties.

CHAPTER V

TRANSFER OF BREEDERS' RIGHTS AND LICENSING OF THEIR USE

1. Transfer of Breeders' Rights

Article 34

- (1) The holder of breeders' rights may transfer those rights to another person by contract, either completely or partly.
- (2) Paragraph (1) of this Article shall also apply to the applicant for the grant of breeders' rights.

Article 35

- (1) A contract under Article 34 of this Law shall be in written form.
- (2) A contract under paragraph (1) of this Article shall be entered in the Register of Transferred Breeders' Rights.
- (3) A contract that is not in written form shall not be legally binding on third parties.

2. Licensing of the Right to Exploit the Variety

Article 36

- (1) For the contractual grant of breeders' rights, a license contract shall be concluded under this Law and other regulations.
- (2) The license contract shall be in written form.
- (3) Paragraph (1) of this Article shall also apply to the applicant for the grant of breeders' rights.
- (4) If the application has been filed by two or more persons or if breeders' rights have been granted to two or more persons, the consent of all those persons shall be required for the license contract.

Article 37

- (1) The license contract shall contain the following data: term of the license, scope of the license, royalty.
- (2) The contract under paragraph (1) of this Article shall be entered in the Register of Assigned Breeders' Rights.
- (3) A license contract not entered in the Register under paragraph (2) of this Article shall not be legally binding on third parties.

3. Compulsory Licenses

Article 38

- (1) Where the holder of the breeders' rights exercises his rights insufficiently, either himself or through others, or not at all, another person may acquire those rights against payment of a royalty to the holder thereof.
- (2) The Institute shall grant a compulsory license on request if:
 1. the holder of the breeders' rights does not produce or sell a sufficient amount of the propagating material or product, either himself or through a licensed user;
 2. the exercise of the breeders' rights is in the public interest.
- (3) A compulsory license may be granted to the person who proves that he has propagating material at his disposal and also the production, technical and financial facilities for the exercise of the breeders' rights.

- (4) A compulsory license shall not be granted for a term of more than three years; that term may be extended if the conditions determining the grant of the license persist.

Article 39

The holder of the compulsory license shall pay a jointly agreed royalty amount to the holder of the plant breeders' rights. If the parties fail to agree on the royalty amount, it and the manner of its payment shall be determined by the Institute.

Article 40

- (1) The Institute shall rule on the application for the grant of a compulsory license.
- (2) An application for the grant of a compulsory license may be filed after a period of five years following the grant of breeders' rights.

CHAPTER VI
JUDICIAL PROTECTION

1. Action for Infringement of Breeders' Rights

Article 41

- (1) Any person infringing breeders' rights deriving either from an application or from rights already granted, shall be liable for damages under the general provisions on indemnification.
- (2) The person whose rights have been infringed shall be entitled, apart from indemnification, to request the prohibition of any further activities on the part of the person who has infringed his rights, and to have the sentence declaring the infringement published at the offender's expense.
- (3) Any unauthorized economical exploitation of breeders' rights constitutes infringement thereof.

Article 42

- (1) An action for infringement of breeders' rights may be brought within three years of the date on which the party bringing the action became aware of the infringement.
- (2) No action may be brought after five years have elapsed following the infringement.
- (3) Actions for infringement of breeders' rights shall be heard in an emergency procedure before the competent court.

2. Challenge to Granted Breeders' Rights

Article 43

During the term of granted breeders' rights, the holder of the said rights may apply to the competent court in order to be declared such where the same rights have been granted to another person and registered.

Article 44

- (1) Within three months of the handing down of a legally binding court decision approving the aforesaid application, the person concerned shall have the right to demand of the Institute that it enter his rights in the Register of Breeders' Rights and issue the appropriate document.
- (2) If the person referred to in paragraph (1) of this Article does not file such an application, the breeders' rights shall be deleted from the Register of Breeders' Rights.

Article 45

Rights obtained by a third party from the previous holder of rights shall be binding on the new holder of breeders' rights if they have been entered in the appropriate Register, or if the application for registration was filed before notice of the court proceedings was given.

3. Breeder's Action to Secure the Grant of Breeders' Rights

Article 46

- (1) The breeder may bring an action before the competent court in order to be mentioned in all documents relating to the grant of breeders' rights.
- (2) In the event of the breeder's death, his successors will have the right to bring the above action.
- (3) An action under paragraph (1) of this Article may be filed in the course of the procedure for the grant of breeders' rights and during the validity of such rights.

CHAPTER VII REPRESENTATION

Article 47

- (1) Natural persons and legal entities representing the applicant in proceedings for the grant of breeders' rights have to be entered in the Register of Representatives kept by the Institute.

(2) The Minister is authorized to establish the method and procedure for registration, and the conditions to which the natural persons and legal entities acting as representatives are subject.

CHAPTER VIII
MONITORING OF THE IMPLEMENTATION OF THIS LAW

Article 48

The Ministry is authorized to engage in administrative monitoring of the implementation of this Law. The Ministry may supervise administrative proceedings conducted by the Institute.

CHAPTER IX
TRANSITIONAL AND FINAL PROVISIONS

Article 49

Regulations and other enactments for the implementation of this Law shall be established by the Minister within one year after its entry into force.

Article 50

Notwithstanding Article 8(1) of this Law, the breeders of plant varieties that were protected under the previous legislation and their legal successors, may file applications for the grant of breeders' rights within one year after the entry into force of this Law.

Article 51

Pending the establishment of the Institute provided for in Article 5 of this Law, but not longer than one year after its entry into force, the activities of the Institute shall be conducted according to former legal enactments applicable prior to the said entry into force.

Article 52

This Law shall enter into force on the eighth day after its publication in the Official Gazette of the Republic of Croatia.