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UNIÓN INTERNACIONAL PARA LA PROTECCIÓN DE LAS OBTENCIONES VEGETALES
GINEBRA

CONSEJO

Trigésimo cuarto período ordinario de sesiones
Ginebra, 26 de octubre de 2000

**EXAMEN DE LA CONFORMIDAD DE LA LEY DE LA EX REPÚBLICA YUGOSLAVA
DE MACEDONIA CON EL ACTA DE 1991 DEL CONVENIO DE LA UPOV**

Documento preparado por la Oficina de la Unión

Introducción

1. Por carta de fecha 4 de septiembre de 2000, la Sra. Verica Demirovska, Directora, Ministerio de Economía Agraria, Forestal e Hidrológica, solicitó la opinión del Consejo de la UPOV sobre la conformidad con el Acta de 1991 del Convenio de la UPOV de la “Ley de semillas, material de siembra y de reproducción, y de reconocimiento, aprobación y protección de la variedad” (en adelante denominada “la Ley”) que se aprobó en mayo de 2000. En el Anexo I del presente documento se reproduce esa carta. En el Anexo II figura una traducción del macedonio al inglés de la Ley presentada por las autoridades macedonias y que la Oficina de la Unión ha corregido ligeramente. Aún así, la traducción sigue siendo problemática. Es posible que algunos de los aparentes problemas de conformidad con el Convenio se deban a la traducción. A continuación se analiza la Ley desde el punto de vista de su conformidad con el Acta de 1991 del Convenio de la UPOV (en adelante denominado “el Convenio”).

2. Macedonia no ha firmado el Convenio. En virtud del Artículo 34.2) del Convenio, Macedonia debe depositar un instrumento de adhesión para ser Estado miembro de la UPOV sobre la base del Convenio. En virtud del Artículo 34.3), sólo podrá depositar un instrumento de esa índole un Estado que haya solicitado la opinión del Consejo acerca de la conformidad

de su legislación con las disposiciones del Convenio y si la decisión del Consejo haciendo oficio de opinión es positiva.

Fundamentos de la protección de las obtenciones vegetales en Macedonia

3. La protección de las obtenciones vegetales se rige en Macedonia por la Ley y su Reglamento. A continuación se analiza la Ley según el orden de las disposiciones sustantivas del Convenio. Cabe observar que, en los Artículos 4 a 35 de la Ley, se establecen principalmente disposiciones relacionadas con la calidad del material de reproducción y con el rendimiento de las variedades que no son relevantes para la protección de la obtención vegetal. En el presente documento no figura ningún análisis de esas disposiciones de la Ley.

Artículo 1 del Convenio: Definiciones

4. El Artículo 2 de la Ley contiene una definición de variedad diferente de la del Artículo 1.vi) del Convenio. La definición que se da en la Ley contiene algunas proposiciones –por ejemplo, que el grupo de plantas “se caracteriza por algún rasgo económico importante”– que la desvían de la definición del Convenio. Se recomienda que se sustituya esa definición por la del Artículo 1.vi) del Convenio.

Artículo 2 del Convenio: Obligación fundamental de las Partes Contratantes

5. Tal como se establece en el Artículo 1, la Ley regula la protección de la variedad. Se debe señalar que los árboles forestales quedan excluidos de la protección. El Artículo 3 establece que la Dirección de Semillas y Material de Plantación del Ministerio de Economía Agraria, Forestal e Hidrológica de Macedonia es el organismo estatal encargado de la protección de las obtenciones vegetales. Por consiguiente, la Ley satisface los requisitos del Artículo 2 del Convenio.

Artículo 3 del Convenio: Géneros y especies que deben protegerse

6. La Ley no especifica los géneros o especies a los que se aplica. Cuando Macedonia deposite su instrumento de adhesión, deberá notificar un mínimo de 15 géneros o especies vegetales a los que se deba aplicar el Convenio en la fecha en la que quede obligada por el mismo.

Artículo 4 del Convenio: Trato nacional

7. El Artículo 36 menciona que los titulares y los autores de “otros países” tienen derecho a presentar una solicitud ante la Dirección. Por consiguiente, la Ley satisface los requisitos del Convenio relativos al trato nacional.

Artículos 5 a 9 del Convenio: Condiciones de la protección; novedad; distinción; homogeneidad; estabilidad

8. Las condiciones de la protección figuran en el Artículo 67 con referencias a los Artículos 45, 46, 47, 49, 68 y 69 de la Ley en un lenguaje que se asemeja al de los Artículos 5 a 9 del Convenio. Sin embargo, no queda claro el significado de la disposición que dice que la variedad debe “ser aprobada”. Podría también afectar a la duración de la protección que se analiza en el párrafo 22 de este documento. A menos que se deba a errores en la traducción, se recomienda también que el Artículo 45 (distinción) se modifique a fin de que reproduzca con mayor precisión el lenguaje y el contenido esencial del Artículo 7 del Convenio.

9. Los Artículos 44 y 48 de la Ley hacen referencia al “valor del cultivo agrícola”, necesario para que algunos cultivos se puedan examinar a fin de obtener la protección. En el Artículo 58 de la Ley se menciona también que las obtenciones se comparan con variedades estándares que son “distintas de otras variedades por su elevada calidad y cantidad de caracteres”. Esos requisitos, en lo que concierne al Convenio, pueden considerarse como una condición adicional para la protección de la variedad y deben ser suprimidos. El Convenio de la UPV no permite más condiciones que las mencionadas en el Artículo 5 del Acta de 1991.

Artículo 10 del Convenio: Presentación de solicitudes

10. El Artículo 79 menciona que el titular y el autor tienen derecho a presentar una solicitud de registro de una variedad ante los órganos competentes de otro Estado, de manera que se satisfacen los requisitos del párrafo 1 del Artículo 10 del Convenio. La Ley no contiene disposiciones que entren en conflicto con los párrafos 2 y 3 del Artículo 10 del Convenio.

Artículo 11 del Convenio: Derecho de prioridad

11. El Artículo 11.1) del Convenio exige que se garantice el derecho de prioridad del obtentor que haya presentado una solicitud anterior en un Estado miembro de la UPOV durante un plazo de 12 meses a partir de la fecha de presentación de la solicitud anterior. La Ley no contiene disposiciones relativas al derecho de prioridad. Se debe corregir esta omisión. El Artículo 36 de la Ley menciona que el Ministerio de Economía Agraria, Forestal e Hidrológica prescribirá de manera detallada la información que se debe presentar con la solicitud. El Artículo 11.3) del Convenio establece que se conceda al obtentor un plazo de 2 años para presentar los documentos, la información y el material requeridos. Los Artículos 41 y 71 de la Ley exigen que esos materiales y documentos se presenten ante la Dirección en un plazo de un mes antes de la siembra o la plantación, de manera que Macedonia no cumple los requisitos establecidos en el Artículo 11 del Convenio.

Artículo 12 del Convenio: Examen de la solicitud

12. Los Artículos 37, 39 a 43, 58 y 71 a 72 de la Ley contienen disposiciones relativas al examen de las variedades candidatas y guardan conformidad con el Artículo 12 del Convenio.

13. El Artículo 44 contiene disposiciones que no quedan claras y que pueden ser problemáticas para la aplicación de la Ley. El Artículo 44 de la Ley menciona que se puede examinar, reconocer y aprobar una variedad si cumple los criterios de distinción, homogeneidad y estabilidad. Sería más lógico decir que el examen de la variedad candidata debería satisfacer los criterios del examen DHE.

Artículo 13 del Convenio: Protección provisional

14. La Ley no prevé medidas destinadas a salvaguardar los intereses del obtentor entre el momento de la presentación y el momento de la concesión, en términos que guarden conformidad con lo dispuesto en el Artículo 13 del Convenio.

Artículo 14 del Convenio: Alcance del derecho de obtentor

15. El Artículo 73 de la Ley contiene disposiciones que no reflejan el contenido fundamental del Artículo 14 del Convenio. Este Artículo de la Ley se debe modificar básicamente para que cumpla los requisitos del Convenio.

Artículo 15 del Convenio: Excepciones al derecho de obtentor

16. El Artículo 74 contiene disposiciones expresadas de manera que se asemejan al Artículo 15.1) y 2) del Convenio.

Artículo 16 del Convenio: Agotamiento del derecho de obtentor

17. Actualmente la Ley no contiene disposición alguna sobre el agotamiento del derecho de obtentor.

Artículo 17 del Convenio: Limitación del ejercicio del derecho de obtentor

18. El Artículo 77 de la Ley contiene disposiciones relativas a la concesión de licencias obligatorias para variedades que sean importantes para la economía del país, cuyas semillas no se puedan obtener. Se puede considerar que los requisitos de concesión de esa licencia obligatoria responden a la condición de satisfacción del interés público del Artículo 17 del Convenio.

19. El Artículo 78 de la Ley prevé además que cuando se decide conceder una licencia obligatoria, el titular y el autor de la variedad protegida tienen derecho a una compensación. No se especifica que la cantidad tiene que constituir una “remuneración equitativa”, tal como lo exige el Artículo 17.2) del Convenio, pero se hace referencia a un acuerdo entre el autor y el beneficiario de la licencia.

Artículo 18 del Convenio: Reglamentación económica

20. La Ley no contiene disposiciones que entren en conflicto con el Artículo 18 del Convenio.

Artículo 19 del Convenio: Duración del derecho de obtentor

21. El Artículo 80 de la Ley estipula que la protección durará 30 años en el caso de la vid, los árboles frutales, las papas/patatas y el lúpulo, y 25 años para los frutos del campo. En ambos casos, estos períodos de protección exceden en 5 años los períodos mínimos de protección exigidos por el Convenio.

22. Existe una contradicción entre el Artículo 80 y el 52 de la Ley. El Artículo 67 de la Ley establece que para conceder la protección la variedad tiene que “ser aprobada” (véase también el párrafo 8). El Artículo 52 de la Ley dice que la aprobación dura solamente 10 años para los frutos del campo y 20 años para la vid y los frutales. No se mencionan las papas/patatas ni el lúpulo. Si la consecuencia es reducir el período de protección por debajo del período mínimo establecido en el Artículo 19.2), el Artículo debe ser modificado, a menos que se trate de problemas de traducción.

Artículo 20 del Convenio: Denominación de la variedad

23. Los Artículos 41 y 49 de la Ley contienen disposiciones relativas a las designaciones de las variedades que satisfacen los requisitos del Artículo 20 del Convenio.

Artículo 21 del Convenio: Nulidad del derecho de obtentor y
Artículo 22 del Convenio: Caducidad del derecho de obtentor

24. Se deben reorganizar los Artículos 50 y 64 de la Ley de manera que uno de ellos se refiera a la nulidad y otro a la caducidad. Las disposiciones actuales no reproducen el contenido fundamental de los Artículos 21 y 22 ni distinguen de manera clara entre anulación y caducidad.

Artículo 30 del Convenio: Aplicación del Convenio

25. El Artículo 30.1)i) del Convenio exige a los Estados adherentes que prevean los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor. Los Artículos 82 a 84, 86, 92 y 94 de la Ley prevén el derecho a presentar reclamaciones relativas a cualquier daño causado por actividades ilegales relativas a las variedades vegetales. Por consiguiente, la Ley satisface los requisitos del Artículo 30.1)i).

26. El Artículo 30.1)ii) del Convenio exige a los Estados adherentes “establecer una autoridad encargada de conceder derechos de obtentor...” Los Artículos 3 y 86-87 de la Ley designan al Ministerio de Economía Agraria, Forestal e Hidrológica y a su Dirección de Semillas y Material de Plantación como la autoridad encargada de aplicar y supervisar la protección de las variedades vegetales en Macedonia, y describe las atribuciones de dicho

Ministerio y de su Dirección. Por consiguiente, la Ley guarda plena conformidad con el Artículo 30.1)ii) del Convenio.

27. El Artículo 30.1)iii) del Convenio exige a los Estados adherentes la publicación de información relativa a las solicitudes de derechos de obtentor y a la concesión de derechos de obtentor, así como las denominaciones propuestas y aprobadas. El Artículo 57 de la Ley dispone que esa información se publique en el Boletín Oficial. Esta disposición satisface totalmente los requisitos del Artículo 30.1)iii) del Convenio.

Conclusión general

28. La Ley, en sus principales disposiciones, incorpora gran parte de lo esencial del Convenio. Sin embargo, necesita una extensa reorganización y que se redacte de nuevo.

29. La Oficina de la Unión sugiere que el Consejo:

a) informe al Gobierno de la ex República Yugoslava de Macedonia de que la Ley no incorpora algunas disposiciones importantes del Convenio;

b) pida a la Oficina de la Unión que ofrezca su asistencia al Gobierno de la ex República Yugoslava de Macedonia para redactar las enmiendas necesarias a la Ley y para preparar una traducción más satisfactoria a uno o más de los idiomas oficiales de la UPOV;

c) informe al Gobierno de la ex República Yugoslava de Macedonia de que, tras la adopción de las enmiendas necesarias según las observaciones propuestas por la Oficina de la Unión y la aplicación de las reglamentaciones, podrá depositar un instrumento de adhesión al Convenio.

30. Se invita al Consejo a tomar nota de la información proporcionada y a tomar las decisiones pertinentes de acuerdo con la propuesta establecida en el párrafo anterior.

[Sigue el Anexo I]

ANEXO I

[Traducción de la Oficina Internacional/Oficina de la Unión de una carta con fecha 4 de septiembre de 2000]

Enviada por: Sra. Verica Demirovska, Directora
Ministerio de Economía Agraria, Forestal e Hidrológica
Ex República Yugoslava de Macedonia

A: Consejo de la UPOV

Me es grato comunicarles que, en mayo de 2000, la República de Macedonia ha aprobado una nueva Ley de:

“material de reproducción, material vegetal de multiplicación, reconocimiento, aprobación y protección de la variedad”.

En ella se incluyen las sugerencias que han efectuado los representantes de organizaciones internacionales como la UPOV y la OCDE durante las consultas que hemos mantenido con ellos.

Mediante esta ley el Gobierno de la República de Macedonia quisiera continuar el proceso de adhesión al Convenio de la UPOV. Les rogamos que nos den su opinión en lo relativo a la armonización de nuestra ley con el Acta de 1991 del Convenio de la UPOV.

Se adjunta el texto oficial de la citada ley.

(Firmado)

[Sigue el Anexo II]

ANNEX II

LAW FOR SEED, PLANTING AND PROPAGATING MATERIAL, AND
RECOGNITION, APPROVAL AND PROTECTION OF THE VARIETY

I. BASIC PROVISION

Article 1

This Law regulates the production, processing, trade and export and import of seed, planting and propagating material of plant origin, as well as recognition, approval and protection of the variety, except seed and planting material of forest plant.

Article 2

The certain terms that are used in this Law mean as follows:

1. Seed material: is a material aimed for plant production, and which is propagated on generative way;
2. Planting material from bulb and potato: is a material aimed for plant production generated from bulbs and clubens;
3. Planting material: is a material aimed for vine and fruit production, that is propagated on vegetative and generative way;
4. Propagating material: are plants and parts of plants of agricultural crops (vegetable, fruits, vine and ornamental plants), aimed for plant production or particularly for growing that is generated by in-vitro system;
5. Pre-basic seed material: is a material from pervious degree of any parent components generation and basic seed, but it is the smallest seed quantity that the grower uses for maintaining the variety and production of basic seed;
6. Basic seed material: is a material produced by the keeper, under the accepted method for maintaining the variety, introduced in the variety list, or by which control and guidelines is obtained and recognized as a basic seed, aimed for production of certified seed material;
7. Certified seed material: is a material, that directly generates from the basic seed material or from seed of previous degree that fulfills the conditions set up for certified seed material;
8. Certified seed material of first generation: is a material that is generated from certified seed material and that fulfils the conditions set up for certified seed material of first generation;

9. Standard seed material: is a material that is only present on agricultural crops, approved or introduced varieties in the variety list, that are in compliance with the conditions set up for the standard seed material;
10. Commercial seed material: is a material of certain plant types, except vegetable crops, that are in compliance with the type and it is approved as a commercial seed material in certain conditions;
11. Pre-basic planting material: is a material from previous degree of any parent components generation and basic planting material, that is the smallest quantity that the grower uses for maintaining the variety and production of basic planting material;
12. Basic planting material: is a material produced by the keeper, under the accepted method for maintaining the variety, introduced in the variety list, or by which control and guidelines is obtained and recognized as basic planting material, aimed for production of certified planting material;
13. Certified planting material: is a material, that directly generates from the basic planting material (source plants) that fulfills the conditions set up for certified planting material;
14. Certified propagating material: is a material generated from the basic propagating material that fulfills the conditions set up for certified propagating material;
15. Standard planting material: is a material from approved varieties of vine, fruits and ornamental plants, that are in compliance with the conditions set up for the standard planting material;
16. Standard propagating material: is a material from approved varieties of vine, fruits and ornamental plants, that are in compliance with the conditions set up for the standard propagating material;
17. Commercial planting material: is a material of certain types that are in compliance with the type and it is approved as a commercial planting material;
18. Commercial propagating material: is a material of certain types that are in compliance with the type and it is approved as a commercial planting material;
19. Mixture of seed material: is a material of certain types, varieties and categories in between mixtures.
20. Types (Species): are the total individual with same origin plant types, sets and divisions of the plant types;
21. Hereditary components: are parents forms, varieties and lines, that are cultivated for creation of other varieties;
22. Variety: is a group of plant-individual that is characterized by some economic important feature;
23. Line-clone: is a descendant of one self-fertilized plant;

24. Genus: is several close plant types, that are grouped under the important mutual features;
25. Author: is a creator and keeper of the variety;
26. Variety owner: is an entity and physical person, who has created the variety;
27. Keeper: is an author-creator, entity and physical person authorized by author and the owner and entity and physical person assigned by license for variety cultivation;
28. Production: is a process for obtaining category of seed, planting and propagating material, under the expert and health control by authorized entities;
29. Processing: is a process of drying, cleaning, sizing, glancing, grinding, disinfected, packing, sealing, certification, placing and keeping of the seed;
30. Placing on market: is an offer, keeping of reserves for issuing and any kind, of giving to other entities of seed, planting and propagating material;
31. Import and export: is placing on market of seed, planting and propagating material in and from the Republic of Macedonia;
32. Variety List: is a list of approved and protected varieties;
33. List of plant types: is a list of approved plant types;
34. Member State: is European Union Member State;
35. Member of the International Association: is a state, that is member of the International Association for protection and growing plant;
36. International Agreements: are bilateral and multilateral agreements, as well as European Union legislation that have been concluded or adopted by the Republic of Macedonia;

Article 3

For performing the activities referring to the control of production, processing, trade, import and export of the seed, planting and propagating material, as well as recognition, approval and protection of the variety within the Ministry of Agriculture, Forestry and Water Economy is established a Directorate for seed and planting material (hereinafter "Directorate").

II. PRODUCTION, PROCESSING, TRADE, IMPORT AND EXPORT OF SEED, PLANTING AND PROPAGATING MATERIAL

Article 4

For production, processing, trade can be placed the seed, planting and propagating material of plant origin, if there are on the Variety List of following categories:

1. Pre-basic seed material
2. Basic seed material
3. Certified seed material
4. Certified seed material of first generation
5. Standard seed material
6. Commercial seed material
7. Pre-basic planting material
8. Basic planting material
9. Certified planting material
10. Certified propagating material
11. Standard planting material
12. Standard propagating material
13. Commercial planting material
14. Commercial propagating material; and
15. Mixture of seed material.

The categories of basic seed material; certified seed material; certified seed material of first generation; standard seed material; certified propagating material; basic planting material; certified planting material, standard planting material and standard propagating material, are subject of testing and post-control of the variety and material during vegetation and in the laboratories, and the categories of the commercial seed material, commercial planting material, commercial propagating material and mixtures of seed material are subject on control by need.

The post-control during the vegetation is performed by the Commission for post-control, which is established by the Minister of Agriculture, Forestry and Water Economy. The Commission determines the condition by draft approval or reject of the crop that has been submitted to the Directorate. The post-control in the laboratory is performed by entity authorized by the Minister of Agriculture, Forestry and Water Economy.

The way of testing and post-controlling, as well as level and way of cost payment for that purpose is prescribed by the Minister of Agriculture, Forestry and Water Economy.

1. The production of seed, planting and propagating material

Article 5

The production of seed, planting and propagating material can be performed by trade company that fulfills the following conditions:

To have at least one employer an expert, graduated agricultural engineer on certain field, with at least 3 years experience for production of seed, planting and propagating material; and

To have provided lands facilities, equipment and appropriate laboratory and expert control.

Also, the production of seed, planting and propagating material can be performed by physical person, who has finished Agricultural Faculty in certain field, with at least 3 years experience for production of seed, planting and propagating material and to fulfill the conditions of paragraph 1 point 2 of this Article.

The producers from paragraphs 1 and 2 are registered in the Register of producers that is kept by the Directorate.

Article 6

For production can be used seed, planting and propagating material, if fulfills the following conditions:

1. The variety has to be recognized according to the Article 52 of this Law;
2. The variety has to be published according to the Article 57 of this Law;
3. The time limit of the variety has not been expired according to Article 54 of this Law;
4. The variety has to have needed purity, germination and health status;
5. To be determined the combination of graft and bed of grafted vine and fruit;
6. To be determined the types on which the basic seed material should be generated from the recognized pre-basic seed material;
7. To be determined the types on which from the certified seed material of first generation can be obtained certified seed material of second generation;
8. To be determined the methods for approval of production of seed, planting and propagating material and sampling;
9. To be provided planting material from basic or certified planting material for production of planting material of bulbs and clubens;

10. To be determined the types and methods for ennobling of the propagating material and sampling; and
11. To be covered the costs concerning with variety approval and protection.
12. The Minister of Agriculture, Forestry and Water Economy prescribe the conditions from paragraph 1 items 4, 5, 6, 7, 8 and 10 of this Article.

Article 7

The seed and planting material, except the planting material generated from bulbs and clubens, produced abroad, can be approved for production by the Minister of Agriculture, Forestry and Water Economy, without control of the crop in field conditions if it is:

1. the basic seed and planting material, that has been generated from pre-basic seed material and pre-basic planting material and
2. certifies seed material and certified planting material.

Article 8

If the supplying of certified seed and planting material, has not been provided in the Republic of Macedonia or from the country whit which the Republic of Macedonia has concluded International Agreement, the Minister of Agriculture, Forestry and Water Economy can allow production of standard seed material and standard planting material for economic purposes, with certain purity, germination, health status and variety's cleanliness depending of the crop species.

Article 9

The producer of seed, planting and propagating material keeps an evidence for:

1. the mass and number of pieces, as well as origin of the seed, planting and propagating material that has been used for production;
2. the mass and number of pieces for issued seed, planting and propagating material;
3. the mass and number of pieces of seed, planting and propagating material, that has been used for own production; and
4. rest quantity of seed, planting and propagating material that has been rejected or returned back.

The evidence from paragraph 1 of this Article is kept in certain book.

The form and content of the book from paragraph 2 of this Article is prescribed by the Minister of Agriculture, Forestry and Water Economy.

The evidence data are kept within the period of 3 years from the day of its entering in the evidence book.

Article 10

The producer is obliged to denounce the production of seed, planting and propagating material to the Directorate and to the authorized person for expert examination, of:

1. the seed material, within the period of one month after the sowing and
2. planting and propagating material at least to 30 April in current year.

The producer is obliged to submit a report to the Directorate for produced quantities of seed, planting and propagating material per species and varieties.

The denounce of production from paragraph 1 of this Article is performed by certain form, which contains, and as well as the time for submission of the report is prescribed by the Minister of Agriculture, Forestry and Water Economy.

Article 11

For customer protection, during the raising of deviations from prescribed features, the additional quality and identity control of the variety of seed, planting and propagating material is performed, taking into account the biological features, if:

1. there are in compliance with the defined features referred in the decision for approval of the variety and other important marks; and
2. its health status is good.

If, the additional control from paragraph 1 of this Article confirms that the seed, planting and propagating material are not identical with the variety and species, then the Minister of Agriculture, Forestry and Water Economy can forbid production to the producer, till confirmation of the quality and identity.

The quality and identity of the variety has been determined the Commission for additional control, established by the Minister of Agriculture, Forestry and Water Economy.

The Commission from paragraph 3 of this Article performs additional control for the quality of seed, planting and propagating material for determination of variety identity according to the provision of International organization for post-controlling tests for examination of the identity and purity of the variety (OECD) and International quality seed features organization (ISTA).

The Minister of Agriculture, Forestry and Water Economy will prescribed the cost level for determination of the variety quality and identity.

The above finance will be used for the purposes planned under the Program from Article 86 paragraph 3 of this Law. The finance will be paid on certain account-own incomes of the Ministry of Agriculture, Forestry and Water Economy.

Article 12

The Minister of Agriculture, Forestry and Water Economy can, by exception, allow production and processing of seed, planting and propagating material, that has not fulfilled the conditions referred in paragraph 1 items from 1 to 5 of Article 6 in case of elemental catastrophes, lack of seed, planting and propagating material in the market, that fulfils prescribed conditions or in other case determined by International Agreement that the Republic of Macedonia has concluded or access to it.

The Minister of Agriculture, Forestry and Water Economy can, by exception, allow production of commercial seed, planting and propagating material in case of loosing of the type as consequences of elemental catastrophes. The commercial seed, planting and propagating material should be in compliance to the type with the prescribed conditions.

The Minister of Agriculture, Forestry and Water Economy prescribes the quality features concerning the cleanliness, germination, health status and the form of species of commercial seed and planting material that should be placed for production and on market.

2. Processing of Seed, Planting and Propagating Material

Article 13

Processing of seed, planting and propagating material can be performed by the trade company that fulfills the following conditions:

1. To have employed at least one expert for processing of seed, planting and propagating material, who has finished Agricultural Faculty in certain field, and with at least 3 years working experience in the field of seed processing; and
2. To have provided an appropriate facilities, equipment and expert control.

The processors from paragraph 1 of this Article are registered in the Register of processors, which is kept by the Directorate.

Article 14

For processing can be used seed, planting and propagating material if fulfils the conditions from Article 6 paragraph 1 points 1, 2, 3, 4 and 5 of this Law.

Article 15

An expert control of production of seed, planting and propagating material and its processing, can perform the authorized person for approval of seed crops, plantation of bulbs and potatoes, vine and orchard plantation.

The Minister of Agriculture, Forestry and Water Economy brings an act for authorization of paragraph 1 of this Article. The act for authorization is published in the Official Journal of the Republic of Macedonia.

The expert from paragraph 1 of this Article has had finished an Agricultural Faculty in concerned field, with at least 5 years working experience in production and processing of seed, planting and propagating material.

The approval of the crop from paragraph 1 of this Article is made by issuing of an approbation certificate by the expert.

The costs for performing of the expert control from paragraph 1 of this Article are covered the producers and processors

The Minister of Agriculture, Forestry and Water Economy shall prescribe the level and way of payment of the costs for performing of the expert control for production and processing separately per crop species.

Article 16

The testing of the quality features of seed, planting and propagating material and variety identity can perform an entity authorized by the Minister of Agriculture, Forestry and Water Economy, that fulfils the following conditions:

1. To have employed at least one an expert for laboratory analyses, graduated agricultural engineer with at least 3 years working experience in the concerned field; and
2. To have provided appropriate laboratory with needed equipment for quality analyses.

The performed tests for variety identity can be confirmed by the authorized office from other country, with which the Republic of Macedonia has concluded the International Agreement or from the country, with which has not been signed an International Agreement, according to the International Agreements that obliged the Republic of Macedonia.

3. The trade of seed, planting and propagating material

Article 17

The trade of seed, planting and propagating material can perform by the trade company that fulfils the following conditions:

1. To have employed at least one expert for trade activities, who has finished Agricultural Faculty in certain field, and with at least 3 years working experience; and
2. To have provided an appropriate storehouse for storing the seed, planting and propagating material.

The trade company from paragraph 1 of this Article has to be registered in the Register of trader that is kept by the Directorate.

Article 18

The seed and planting material can be placed on market if fulfils the following conditions:

1. To be approved as a basic seed material, basic planting material, certified seed material, certified planting material and standard planting material;
2. To be approved according to the Article 8 of this Law, as standard seed material, and to be in compliance with the prescribed conditions for standard seed material;
3. To be approved according to Article 12 paragraph 1 and Article 21 paragraph 4 of this Law as a trade seed material and trade planting material for economic purposes, to be identical on the form, to be performed analyses for germination ability of the seed, as well as health seed by the authorized physical person;
4. To be allowed export according to the Article 23 and Article 28 of this Law;
5. To have a contract and agreement by the author for propagation, as a pre-basic seed material of certain allowed variety, and to be given to the country with which the Republic of Macedonia has concluded International Agreement;
6. If it has not been protected and belongs to a certain variety or plant group marked and described, and if there is no any reason for canceling the mark according to Article 51 paragraph 1 of this Law and fulfils the conditions determined in Article 6 of this Law;
7. To be processed and appropriately packed according to Article 29 of this Law; and
8. To be originally packed by the producer or processor.

Article 19

The trade company that seed and planting material, first places on market, or re-packs and places on market, needs to be evidenced by the weight and number of pieces and the origin.

The evidence from paragraph 1 of this Article is kept in certain book.

The form and contents of the book from paragraph 2 of this Article and the way of keeping evidence are prescribed by the Minister of Agriculture, Forestry and Water Economy.

The evidence data is kept 3 years from the day of its entering in the evidence book.

Article 20

The propagating material can be placed on market if fulfils the following conditions:

1. To be approved as a propagating material;
2. If it has not been protected as propagating material of fruits, vine and ornamental plants, and belongs to certain variety or plant group, marked and sufficiently well described and there are no any reason for cancellation the mark according to the Article 49 paragraph 1 of this Law, and that are in compliance with the conditions defined according to the Article 6 paragraph 1 of this Law;
3. To belong to certain variety as propagating material for vegetables, as has been recognized according to the Article 52 of this Law or has been introduced in the variety list of certain country whit which the Republic of Macedonia has concluded an International Agreement; and
4. If it has been appropriately packed according to the Articles 30 and 31.

The propagating material can be placed on market in till the propagating material is in compliance with the condition as standard material or if it is not in compliance with these conditions, it will be used for scientific and exhibition purposes.

Article 21

The Minister of Agriculture, Forestry and Water Economy can allow import and place on market of interface mixture of seed material of various species, varieties or categories, as well as mixture of varieties and species that are not subjected to the conditions of seed material, or if there is a need in the country, but only for economic purposes.

The Minister of Agriculture, Forestry and Water Economy in order to protect the consumer can allow placing on market certain propagating material, if it will be submitted the mark and description according to the conditions defined in Article 20 paragraph 1 item 2 of this Law.

The Minister of Agriculture, Forestry and Water Economy in order to protect the consumer, can, by exception, allow placing on market certain propagating material, that has not fulfilled the conditions from paragraph 2 of this Article in case of elemental catastrophes and lack of propagating material on the market that has fulfilled the prescribed conditions, or in other cases determined by International Agreement.

If the supplying of certified seed material has not been provided, the Minister of Agriculture, Forestry and Water Economy can allow commercial seed material of certain species and quantities for economic purposes to be placed on market.

The commercial, seed and planting material has to be identical to the form on species, for which the placing on market of seed and planting material has been conditioned by certain forms.

For providing of seed material of certain crops for a certain period of time, but the most for one year, the Minister of Agriculture, Forestry and Water Economy can allow import of certified seed material of certain species, if its is within the period according the Article 52 and if it has been issued the decision according to the Article 56 of this Law, and which is the same with the approval in the export country.

4. Import and export of seed, planting and propagating material

Article 22

The import and export of seed and planting material can be done by the trade company, which fulfils the following conditions:

1. To have employed at least one expert, who has finished Agricultural Faculty in certain field, with at least 3 years working experience, and
2. To have provided an appropriate storehouse for storing the seed and planting material.

The trade company from paragraph 1 of this Article is registered in the Register form importers and exporters which is kept by the Directorate.

Article 23

The import and export of seed, planting and propagating material can be done from the categories of basic seed material, certified seed material, standard seed material and standard planting material if:

1. The variety has been approved and its approval has not been disputed;
2. It has the time limit defined with Article 52 of this Law;
3. It has not been subject of limitations for placing on market, except if the Republic of Macedonia is authorized to forbid placing on market the seed, planting and propagating material of that variety according to the International Agreement;
4. The variety is intended for cultivation, searching, exhibition, recognition and approval for introduction of new variety.

The import of standard seed, planting and propagating material, as well as its placing on market can be allowed according to the Article 8 of this Law.

The import is approved, if the seed, planting and propagating material is in compliance to the conditions determined in Article 6 paragraph 1 item 4 of this Law. If the seed, planting and propagating material is approved in the country with which the Republic of Macedonia has concluded the International Agreement, then the seed, planting and propagating material should be in compliance to the minimum defined conditions prescribed in concerned country and European standards.

Article 24

For consumer protection, during the trade, import and export of seed, planting and propagating material, will be necessary to be provided a certificate for:

- quality, according to the conditions prescribed by International quality seed organization (ISTA)
- identity, according to the conditions prescribed by International post-control tests for identifying the identity and purity of the variety organization (OECD)
- health accurate, according to the conditions prescribed by International plant protection convention (IPPC).

Article 25

For protection and maintaining the quality of domestic production of seed, planting and propagating material, the Minister of Agriculture, Forestry and Water Economy can forbid or limit the import of seed, planting and propagating material of certain varieties, which has been recognized in the Republic of Macedonia.

Article 26

The conditions prescribed in article 23 paragraph 1 and Article 25 of this Law have not been applied on seed, planting and propagating material which:

1. is under custom supervision,
2. is intended for sowing, planting or re-planting in the fields on the border regions of the Republic of Macedonia by this side of the border, but which is managed on the other side of the border of the Republic of Macedonia, and
3. is on official testing process for variety recognition in the Republic of Macedonia.

The Minister of Agriculture, Forestry and Water Economy can allow import of seed, planting and propagating material which is not in compliance of the prescribed condition of Article 23 of this Law, if it is:

1. intended for propagation on contract base for propagation, and the produced seed material should be exported;
2. on contract base for propagation with country with which the Republic of Macedonia has concluded the International Agreement according to the Article 18 paragraph 1 item 5 of this Law;
3. approved according to the Article 7 of this Law;
4. intended for processing and packing for repeated export, or placed on market as standard seed material, commercial seed material, commercial planting material and commercial propagating material if their placing on market is approved according to the Article 8, Article 12 paragraph 1 and Article 22 paragraph 5 of this Law;
5. as seed, planting and propagating material is intended for re-export and which
6. is intended for cultivation, researching, exhibition and testing for official purposes.

Article 27

The Minister of Agriculture, Forestry and Water Economy can, if it is necessary for implementation of the International Agreements, prescribed, that the seed, planting and propagating material intended for export out of the Member States, to be maintained separately from other seed, planting and propagating material and to be appropriately marked, as well as to be defined the needed data and type of marking.

5. Marking and packaging of seed, planting and propagating material

Article 28

The seed, planting and propagating material, except the commercial seed material and commercial planting material, can be placed on market, only if it has a variety mark that has been easily recognized and clearly legible.

The marking and packaging of seed, planting and propagating material is done by the producer or processor of the seed, planting and propagating material.

Article 29

The seed, planting and propagating material can be imported or placed on market only in the package or in the dishes if they fulfil the conditions defined in Article 18 paragraph 1 of this Law.

On the seed and propagating material sheaf and dishes are identical with the package.

On the package or dishes should be referred:

1. the type of seed, planting and propagating material,
2. the variety mark,
3. the category of seed, planting and propagating material, and
4. on the basic seed material, certified seed material, certified seed material of first generation, standard seed material and standard planting material, the number of decision for approval, and on commercial seed material and commercial planting material, the number of the import permission.

Article 30

The Minister of Agriculture, Forestry and Water Economy, for consumer protection and for regulation the trade of seed and planting material, will prescribe:

1. the type of marking, package or dishes type, their closing and insuring of the closing;
2. needed data of certain seed and planting material on or in the packages, or dishes to be referred additional data especially for the producer or the entity that performs the trade, origin, time and type of production, propagation and treatment, time of sampling and closing, features, sizing, composition, using purposes, weight and number of pieces,
3. the way of packing of seed and planting material of certain varieties or categories, which should be used only unused packing material or specially treated dishes.

For facilitate the trade of seed and planting material and for consumer protection, the Minister of Agriculture, Forestry and Water Economy can allow exceptions concerning the packaging and marking foreseen in Article 29 of this Law if there is lack on market of certain species of seed and planting material.

Article 31

The planting and propagating material can be imported or placed on market only if it is sheafed, packed on certain packing material or dishes and to be marked.

Article 32

The seed, planting and propagating material has not be placed on market with mark, data or package that could confused, especially for the features, origin, quality and testing.

The material for yield, has not be allowed for trade as seed, planting or propagating material with mark, data or form that could be used as seed, planting and propagating material.

Article 33

From the day of buying of seed, planting and propagating material, the guarantee for authentic of type of certain variety for a period of one year for seed and planting material of annual crops, and for a period of three years for planting and propagating material of multi-annual crops, has to be in effect.

Article 34

The entity that places on market, process and packs of seed, planting and propagating material, has, within one month before placing on market, to announce to the Directorate:

1. Own production of basic seed material, certified seed material and certified seed material of first generation and standard seed material, standard planting material and standard propagating material.
2. Seed and planting material that issues the final consumer,

The entity from paragraph 1 of this Article keeps an evidence for input and output of seed, planting and propagating material per weight and number of pieces and with accompanying documentation should be kept for six years, and for propagating material, should be evidenced the origin, production, keeping of the rest of propagating material and for executed testing.

The evidence of paragraph 2 of this Law is kept in the evidence book, which contents and form is prescribed by the Minister of Agriculture, Forestry and Water Economy.

Article 35

For providing security in production of seed material and maintaining of plant species, which grains can be used only for seed and other purposes the Minister of Agriculture, Forestry and Water Economy issues an agreement.

The plant species from paragraph 1 of this Article are:

1. solid wheat - *Triticum durum*,
2. sunflower - *Helianthus Annus*,
3. peanuts - *Arachis hypoge*,
4. sesame - *Sesamum indicum*,
5. poppy - *Papavaer Somniferum*, and
6. pumpkin - *Cucurbita pepo*.

III. RECOGNITION, APPROVAL AND PROTECTION OF THE VARIETY

1. The way of recognition and approval of the variety

Article 36

A request for variety recognition and approval submits the owner and the author.

When the variety has been created by several authors, the right for submission for variety recognition and approval has all creators. In the case when one or several variety creators cancels form the way of variety recognition and approval, the other creators can realize that right.

The right for submission of request for variety recognition and approval, created in the state, scientific and other institutions, has the institution with the author, within the three mounts after the completion of testing on request of the author. In the other case the right for variety recognition and approval transfers to the author.

When the variety is created on contract base, between the entity and the author, the right for submission of request for variety recognition and approval belongs to the person dedicated by the contract.

The requests for variety recognition and approval from paragraphs 1, 2, 3 and 4 of this Article are submitted to the Directorate.

The right for submission for variety recognition and approval has both the variety owners and the authors from other countries via authorized representatives in the Republic of Macedonia.

The Minister of Agriculture, Forestry and Water Economy prescribes, in detail, the elements that should be contained in the request.

Article 37

The request is thrown away if the requester has not:

1. submitted needed quantity of seed or propagating material, and prescribed documents with all necessary data;
2. given the variety denomination, and
3. not pay the prescribed costs for variety testing, and
4. announced already registered, i.e. recognized or approved variety.

Article 38

The Directorate puts on the bulletin board the request for variety recognition and approval with mentioning the type, denomination or temporary denomination, as well as the name and address of applicant, cultivator and representative of the action.

Article 39

For defining the features of the variety referred in the Article 44 of this Law, the variety has to be tested within the period of 1-5 years depending of the crop species.

The list of plant species with certain testing time is prescribed by the Minister of Agriculture, Forestry and Water Economy.

Article 40

For variety recognition and approval, the Minister of Agriculture, Forestry and Water Economy establishes Commissions from experts of plant genetic and breeding field per group of categories, as:

1. The Commission for crop and vegetable crops;
2. The Commission for fruit and vine plants, and
3. The Commission for ornamental plants.

The Commissions from paragraph 1 items 1, 2 and 3 of this Article are responsible for reviewing and proposing of:

1. the requests for variety recognition and approval;
2. requests for continuation of variety recognition and approval;
3. returning back and cancellation of variety recognition and approval or of variety registered in the list of varieties concerning the denomination and duration;
4. request for change of the denomination and giving a new denomination;
5. controlling of the field trials during the vegetation,
6. reports of the executed tests with proposal for recognition and approval or refusing of variety.

The Directorate submits, to the Commissions from paragraph 1 of this Article, for recognition and approval, the features of each species that seems to be important for differentiation of the varieties. The features should be remarkable and well described.

Article 41

If the variety fulfils the conditions for approval the request for variety recognition and approval, the Directorate performs field, laboratory and other tests.

The requestor is obliged to submit the seed, planting and propagating material, as well as the other prescribed documents and reports, to the Directorate within the period of 1 month, before the sowing and planting.

The Directorate can give an information for the results of variety recognition to the responsible bodies in the country and abroad if it is necessary for mutual information.

For variety recognition and approval, the requestor, within the period 15 days from the day of submission of the request, the Directorate submits:

1. variety denomination if he has mentioned the temporary denomination, and
2. new variety denomination, if the mentioned denomination can not be accepted.

If the requestor for variety recognition and approval has not fulfilled the conditions of this Article, the request has to be refused by decision.

Against the decision from paragraph 5 of this Article, can be submitted a complain to the Minister of Agriculture, Forestry and Water Economy.

Article 42

The Minister of Agriculture, Forestry and Water Economy will closely regulate the procedure for recognition and approval of the variety, including the selection for recognition of major attributes, determination of the examination, and testing, checking, and monitoring of the varieties during the vegetation.

Article 43

The Minister of Agriculture, Forestry and Water Economy will closely regulate the amount, method and periods of payment for the expenditures related to the procedure of recognition and approval of the variety, as well as the expenditures for variety control, taking into consideration the importance of the variety and its economic value.

Article 44

The variety can be permitted for examination, recognition and approval, if it meets the following criteria:

1. to be distinct
2. to be uniform
3. to be stable

4. to have the value of agricultural crop, and
5. to be named with variety denomination that can be used for its registration

Varieties of fruit and ornamental plants can be permitted for examination only if they have supplementary qualities determined additionally during their growing and utilization, in accordance with paragraph 1, points 1, 2, 3 and 5 of this Article.

The criteria from paragraph 1 point 4 of this Article, the variety to have value of agricultural crop, is defined under the International plant protection convention (IPPC).

With reference to the planting and propagation material, instead of the criteria “value of agricultural crop”, physiological characteristics are taken into consideration, as well as the characteristics that have to be examined related to the growing conditions and the purpose of the crop, which are requirement for marketing of planting and propagation material in accordance with international agreements.

Article 45

The variety is considered to be distinct if its plants differ, at least in one major characteristic, from the plants of any other variety, which is:

1. already recognized, approved, or its approval has been requested, and
2. registered in the variety list in the country that has International agreement with Republic of Macedonia.

Article 46

The variety is considered uniform when its plants, notwithstanding small exclusions, are identical in their basic attributes, taking into consideration the characteristics of generative and vegetative reproduction in the determination of major recognition attributes.

Article 47

The variety is considered uniform when it remains unchanged, in its basic recognizable attributes, after each reproduction, or if the author has determined special reproduction cycle for the created variety within which there are no changes in the determined attributes of the variety.

Article 48

The variety is considered to have the value of agricultural crop when in the assessment of all its determined attributes, according to the approved varieties for comparison, it gave possibilities to expect clear improvement in the crops growing and in the valuation of the results gained from the yield.

The condition of 'value of agricultural crop' is not valid for:

1. certain types of vegetable crops, fruits and ornamental crops;
2. grass varieties that are not intended to be used as forage crop;
3. varieties that are exclusively intended for the utilization as inheritance components and in scientific-research work;
4. other varieties, referred to in points 1, 2 and 3 of this paragraph of this Article if they have fulfilled the requirement of value as agricultural crop in any country that has International agreement with Republic of Macedonia and are added into variety list, and the request submitter asks the variety to be approved without examination of its value as agricultural crop, and
5. varieties whose seeds are not intended for planting in any country that Republic of Macedonia has International agreement with. The approval for such variety can be repealed, if its growing jeopardize the health of people, animals and plants.

Article 49

The variety has to have variety denomination for its determination related to its genus or class. The denomination may be of one or two words or combination of words, letters and numbers, but not more than four words, letters or numbers.

The denomination of the variety will be accepted if:

1. it differs from any other variety marking used in Republic of Macedonia for that or any other closer species, as well as from the denomination of similar variety in the countries that have International agreement with Republic of Macedonia, especially after the finishing of the period of validity of the variety;
2. it does not provoke confusion, there are no doubts with regards to the origin, attributes, value of the variety or with regards to the author of the variety;
3. there are no signs of difference;
4. the name is suitable for denomination and there are no language disputes;
5. it is not comprised of numbers only;
6. the name of a person is not taken without its knowledge, as well as the name or abbreviation of foreign country taken without authorization from the responsible authority of that country, and
7. the variety is not recognized, approved or registered in any list of varieties in the countries that have or have not concluded International agreement with Republic of Macedonia. In this case, only the mark that is applied or registered can be used.

The Directorate may ask from the grower to give new denomination to the variety within the period of 1 month, otherwise the denomination will be determined authoritatively. Upon the request from the holder or any third person, the Directorate can determine denomination for any variety when the submitter of the request will verify the rationale of its request.

2. End of Validation and Cancellation of the Variety Authorization

Article 50

The approval of the variety stops with:

1. cancellation by the registered grower;
2. cancellation of the denomination;
3. if the variety is not distinct, is not uniform, is not stable, does not have the value of agricultural crop;
4. if impose threat to the health of people, animals and plants;
5. if after the varieties approval or extending its approval, the grower has not paid the expenditures related to the extension or approval;
6. if the grower did not fulfilled the obligation of maintaining the variety in accordance with Article 48, paragraph 1 of this Law; and
7. if the grower does not give new variety denomination.

Article 51

The approval of some unprotected variety with regards to its denomination, can be cancelled if:

1. the denomination leads to confusion, there are uncertainties with regards to the origin, attributes, and value of the variety or its author;
2. the usage of the variety denomination has been forbidden for the grower through court decision;
3. the usage of the variety denomination has been forbidden through court decision for the person authorized for the denomination usage, in accordance with Article 28, paragraph 1 of this Law.

For unprotected variety the Directorate can issue temporary denomination until the finalization of the procedure for variety protection. On contrary, the temporary denomination will be cancelled.

Article 52

On the base of the executed examination of the variety and confirmation of the results, upon proposal from the Commission for recognition and approval of the new variety, the Minister of Agriculture, Forestry and Water Economy brings decision.

Objections against the decision from paragraph 1 of this Article can be announced a complain to the Government of Republic of Macedonia for salvation of governing matters of second degree in the area of agriculture, forestry, water economy and veterinary.

The effect of the decision for recognition and approval of the new variety of field crops lasts ten years and of vine and fruit 20 years.

After the non-effect of the decision for recognition and approval of the new variety the author, holder or representative of the variety is obliged to submit samples of seed, planting and propagating material for keeping in the National gene bank, that will be provided permanent keeping and complete protection of the plant species.

Article 53

Each registered maintainer can maintain the variety in accordance with prescribed terms and conditions for systematic growing for the purposes of maintenance in countries that have International agreement with Republic of Macedonia, and in countries that do not have International agreement with Republic of Macedonia, if the conditions for maintenance are provided in accordance with this Law.

It is necessary, during the growing of the variety for its maintenance, the maintainer to keep evidence for the material used for the creation of the variety and for the methods implemented.

The evidence from paragraph 2 of this Article is kept for six years.

If other registered maintainer has apprehended the growing for maintenance of certain variety, the latter will be registered as maintainer without previous examination of the variety.

Article 54

The approval of the variety can be extended upon the request from the maintainer, or in case if there are several maintainers, upon the request of one of them, but at the most to ten years, or twenty years for the vine and fruit varieties, If the variety is still distinct, uniform and stable and if the economics value of the variety justifies the extension, the extension of the variety is justified.

The request for extension of the approval validity period should be submitted to the Directorate at latest two years before the expiration of the validity period for the approved variety.

If the request for the extension of the period is rejected, the Minister of Agriculture, Forestry and Water Economy can approve marketing of seed material, planting and propagation material for the variety, to set up the final dates, at the most until June 30 of the third year after the expiration of the validity period.

As an exemption of paragraph 1 of this Article, the Minister of Agriculture, Forestry and Water Economy can, in accordance with the International agreement, set up the variety validity period in a different manner with regards to the vine and fruit.

Article 55

After the expiration of the validity period of the variety approval determined in Article 52 of this Law, the variety is a subject of scrutiny by an official legal person mentioned in Article 15 of this Law.

After the execution of the variety examination and confirmation of the variety identity, upon proposal by the Commission for recognition and approval of varieties, the Minister of Agriculture, Forestry and Water Economy prescribes a decision for the extension of the validity period of the variety.

Article 56

The decisions for recognition and approval of varieties from seed material, planting and propagation material, issued in Republic of Macedonia, are equal to the decisions for recognition and approval of varieties issued by:

1. country that have International agreement with Republic of Macedonia, and
2. country that does not have International agreement with Republic of Macedonia, reciprocal base, if the standards that are obligatory for Republic of Macedonia have been accomplished.
3. Varieties List

Article 57

Whenever a variety is been recognized or approved it is placed in the Varieties Register maintained by the Directorate. According to this Register a Varieties List is being prepared for new recognized or approved varieties, which is published in the Official Journal of Republic of Macedonia.

In the list of recognized and approved varieties from paragraph 1 of this Article the following things are being referred:

1. variety species and denomination,

2. name and address of the maintainer or maintainers and of the representative in the procedure, and
3. time of recognition and approval of the new variety.

If the registered variety denomination with the role of variety protection is replaced with other one, or protection is being given to some approved variety under other denomination in accordance with Article 49, paragraph 3 of this Law, that variety denomination should be registered in the Variety List.

Determined characteristics for recognition of the major attributes may be replaced for the needs of the country, if it is necessary the description of the variety to be compared with other variety.

The changes of persons as maintainers or representatives in the procedure will be registered whenever they will be proved. The registered maintainer in the procedure retains his duties and obligations until the changes are registered.

Article 58

Field trials for new variety envisaged in Article 41, paragraph 1 of this Law, necessary for recognition or approval of new variety, are compared with standard variety approved by the Commission for recognition and approval of new varieties.

Standard varieties from paragraph 1 of this Article are recognized and approved varieties that distinct from other varieties with their high quality and quantity characteristics. For this purpose a list of standard varieties is being prepared and is published in the Official Journal of Republic of Macedonia.

In the list of standard varieties from paragraph 2 of this Article, variety type and denomination are being referred as well as the typical characteristics that distinguish the standard variety from other recognized and approved varieties.

Article 59

Public inquiry is allowed in:

1. list of varieties: request for approval of varieties or for registering as continuing maintainer of the variety;
2. the approval for examination of a variety and for review of the extension of the variety approval.

For the varieties created with crossing of certain components, the data for parent components may not be available to the public, upon the author request, until the variety approval.

Article 60

The types of plants registered in the list of plants will be placed in production, marketing, processing and import and export.

Plants needed for realization of the production, processing, marketing, export, import and protection of consumer can be introduced into the list of plants. Some specie can be excluded from the list of plants if it is no longer necessary for the protection of the consumer.

4. Procedure for Variety Protection

Article 61

For the protection of recognized and approved variety, the Minister of Agriculture, Forestry and Water Economy constitutes Commission for protection of the recognized and approved variety comprised of experts in the area of plant genetics and breeding and lawyer.

Commission from paragraph 1 of this Article for variety protection is authorized for review and issuing proposal with regards to:

1. requests for variety protection;
2. cancellation of the variety protection with regards to the variety denomination;
3. deprive and repeal of the protection given to the variety;
4. executing control of the trials during and after the vegetation;
5. reports from realized examinations with proposal for protection or rejection of variety.

Article 62

The variety protection is being realized on proposal by the Minister of Agriculture, Forestry and Water Economy through issuing a decision (certificate).

The certificate confirms the protection of the variety and the rights of the author.

The form, contents and method of issuing of the certificates are being regulated by the Minister of Agriculture, Forestry and Water Economy.

Article 63

The protection right of the variety can be repealed, if:

1. the denomination is registered;

2. the denomination produces confusion;
3. the other right proves to be correct and the owner of the variety protection is in compliance to give other denomination for the variety;
4. the right for usage of variety denomination has been revoked from the owner through court decision.

The owner who request variety protection is obliged, within a period of 15 days from the submission of the request, to give denomination to the variety. After the expiry of the period the Directorate can issue temporary denomination until the finalization of the procedure for variety protection. After the end of the procedure the denomination will be annulled.

Protected variety can be registered only if it has denomination.

Article 64

The right of variety protection stops in the following cases:

1. when the period determined in accordance with Article 80 of this Law expires;
2. when the owner of the protected variety will cancel the protection in writing;
3. when the variety is not distinct, new, uniform and is not stable;
4. when the submitter has not fulfill the obligations regarding the additional control for future maintenance of the variety;
5. when the author is not in a position to submit to the Directorate identical seed material, planting and propagation material and appropriate documentation for the procedure of variety protection, within a period of three months, in order to extend the variety protection;
6. when the author is not going to allow the institution for variety maintenance to take sample for variety maintenance;
7. when the regular annual expenditures from Article 66 are not going to be paid.

The certificate which validity has stopped because of unpaid annual expenditures may continue to be valid within the period of six months, but not longer after the finish of the production. In that case, the expenditures will be increased 100% for the period of the extension of the certificate.

Article 65

The Minister of Agriculture, Forestry and Water Economy will closely regulate the procedure for variety protection, including the selection for recognition of major attributes,

determination of examination, survey, monitoring of the varieties and additional control for the extension of the period of the protected variety.

Article 66

The expenditures for recognition of protected variety are covered by the submitter of the request.

The Minister of Agriculture, Forestry and Water Economy will closely regulate the amounts, methods and periods for the payments of the expenditures for variety protection, as well as the expenditures for variety control with regard to the importance of the variety and its economic value.

Article 67

The protection of variety is implemented if the variety:

1. fulfills the conditions in accordance with Articles 45, 46, 47, 49 and 69 of this Law;
2. is approved, and
3. is new.

Article 68

The variety is considered as new, if until the day of submission of the request for variety protection it has not been marketed by the maintainer or by other persons with permission from the maintainer, in order to utilize the variety in the following time periods:

1. one year in the country;
2. four years abroad for each plant crop and six years for vine (*Vitis*) and all types of fruits.

The request from paragraph 1 of this Article is submitted to the Directorate.

Article 69

The request for variety protection is submitted by the owner, author, person authorized by the author or his legal inheritor. If the variety is produced of several authors, than their right is collective. In case one or several of the variety authors to cancel the variety protection, the rest of the authors may utilize the right of protection.

For approval of the variety is taking for complete, submitted request for protection, except if it is known that the submitter has not right for protection of the variety.

If someone without right has submitted the request for variety protection, the authors can ask to be transferred the right for obtaining the variety protection.

Article 70

The submitter of the request for variety protection is necessary to emphasize that the variety is new and has not been maintained by other persons. If these types of data are not available, the submitter should emphasize the way of getting the variety.

The submitter of the request should point out the variety denomination or its temporary denomination.

Article 71

If the variety, according to its denomination, fulfills the conditions for receipt of variety protection, the Directorate executes field and other examinations. Field examinations are in a period of one year.

The Directorate will not execute the examinations, foreseen with paragraph 1 of this Article, if the Directorate has the results from the country for recognition and approval of the variety.

The Directorate will not execute the examinations, foreseen with paragraph 1 of this Article, if official results from the authorized institutions from member states of the International Plant Protection Organization are being enclosed.

The Directorate can allow field or other examinations to be executed by other expert institutions in the country or from abroad, and will consider as valid the information and examination results received in this manner.

The submitter of the request is obliged to submit to the Directorate the samples of seed, planting and propagation material and all other relevant documents and reports within a period of one month before the seeding or planting.

For the variety protection, the submitter of the request encloses to the Directorate within a period of 15 days:

1. decision for recognized or approved variety;
2. variety denomination if he had imposed temporary denomination, and
3. new variety denomination, if the imposed denomination can not be accepted.

Article 72

If the submitter of the request for variety protection fails to fulfill the conditions set in Article 71 of this Law, the request will be rejected with a decision issued by the Minister of Agriculture, Forestry and Water Economy.

Against the decision of paragraph 1 of this Article complain can be issued to the Government of Republic of Macedonia - Commission for resolving governing matters of second degree in the area of agriculture, forestry, water economy and veterinary.

If the variety protection is without grounds, the variety author can request from the maintainer of the variety protection to transfer the variety protection.

Article 73

The owner and the author have exclusive right to:

1. produce the protected variety;
2. reproduce the protected variety;
3. do the marketing of the protected variety; and
4. export the protected variety.

The right from paragraph 1 of this Article concerns the seed, planting and reproducing material.

Article 74

Without agreement from the owner and author the protected variety can be used for:

1. matters without trade motive;
2. experimental trials; and
3. inherited component for the creation of new variety.

The issues for paragraph 1, point 1 of this Article are concerned for own production, with the utilization of seed material from previous yield (second generation) for certain number of crops and varieties.

The types of varieties and crops that do not have trading purpose are being determined by the Minister of Agriculture, Forestry and Water Economy.

Article 75

The right of variety protection, the right of issuing of variety protection and the protection of the variety can be transferred in their entirety or partially through licensing agreement or compelled license.

Article 76

In accordance with the owner and the author of the protected variety, the right of protection can be transferred to other person with license agreement.

If the variety is new and produced by several authors the protection right can be transferred to other person with license agreement approved by all authors.

Exclusive, non-exclusive, full or partial variety protection right can be determined with the license agreement.

The license agreement should be in writing and inscribed in appropriate license register within the Directorate. The agreement that is not inscribed in the license register does not have legal validity.

The Minister of Agriculture, Forestry and Water Economy is determining the content of the register from paragraph 4 of this Article.

Article 77

If the owner or the author of the protected variety is not utilizing the variety enough or at all, on his own or through license agreement, the Minister of Agriculture, Forestry and Water Economy can give the right of utilization of variety protection to other person through forced license if:

1. the variety has not been used in a period of five years since the submission of the request for certificate, or within three years since the issue of the certificate, and the variety is of special economic value; and
2. the variety was not used in accordance with the needs of the economy of Republic of Macedonia within the periods emphasized in point 1 of this Article. If the variety maintainer shows that he was not in position to realize this from justified causes, the right will not be taken.

The maintainer of the forced license should prove that he is in a position to use the variety within the conditions set in the decision for forced license.

The forced license is single-purposed and the right can not be transferred to third person.

The forced license may be annulled if the maintainer of that right can not provide the conditions for variety utilization within a period of one year after the license issue.

The forced license will be annulled if, within a period of two years of its issuance, the maintainer of the right from the license has not started with the variety utilization.

The maintainer of the variety protection right may ask for the extension or modification of the conditions for issuing forced license from paragraph 2 of this Article after one year, if the conditions for issuing of the decision for forced license have changed meanwhile.

If forced license for production and marketing of certain variety have been given, the maintainer of the variety protection, in order to realize the authors right, can ask from the Directorate the following data:

1. who is the producer of the seed, planting and propagation material of the protected variety;
2. the size of the area for its reproduction, and
3. which quantity or numbers that will be allowed for marketing.

Article 78

The owner and the author of the protected variety have the right of allowance for given license in accordance with Article 75 of this Law.

The amount of the allowance from paragraph 1 of this Article will be determined in agreement between the author of the variety and the beneficiary of the license.

Article 79

The owner and the author have the right to select a country that has International agreement with Republic of Macedonia, in which the request for applying of protection for their variety will be submitted.

The persons that fulfills the conditions for submitting request for variety protection may be:

1. citizens of Republic of Macedonia and entities with residence in Republic of Macedonia.
2. entities from country that have International agreement with Republic of Macedonia, with residence in the country or out of it through legal representatives from Republic of Macedonia.
3. entities and physical persons, from the country to which they belong or have residence in, if they have obtained reciprocity with Republic of Macedonia.

Article 80

The authorization for the variety protection with field plants lasts 25 years, and for the vine, hops, potato and fruits 30 years.

Article 81

Seed, planting and propagation material of the protected variety, except for private purposes, can be marketed only if the variety mark has been given and is clearly imprinted on the package and other written documents, not withstanding that the period of variety protection has passed.

The marking of the protected variety or other variety for which the right for growing has been given in other country member of the International association, or variety marked with temporary mark, has not be used for other variety.

Article 82

Production, marketing and maintenance of the variety protected with certificate, without the consent from the maintainer of the protection right is forbidden.

Person that markets or maintains variety protected with certificate in order to utilize the variety, produced by other persons that have harm the certificate, is forbidden.

The maintainer of the variety certificate and the maintainer of the license with exclusive protection right, can realize its right through the responsible court.

The maintainer of the forced license from Article 77 of this Law, can express, in the country where the variety is protected, injury of the right from the certificate, if the maintainer of the right did not transferred the right within the period of six months after the receipt of the invitation from the maintainer of the license.

Each maintainer of license can participate in the process of injury of the right from the certificate, when the complain is issued by the maintainer of the certificate. The same stands for the maintainer of the certificate, when the complain is issued by the maintainer of the license, in accordance with paragraph 3 and 4 of this Article.

Complain for injury of the right of variety protection can be submitted by the author before the certificate issue, after the previous registering of the request.

Article 83

If the seed, planting and propagation material have been marketed without any legal grounds, the author has the right to request from the Ministry of the Agriculture, Forestry and Water Economy the material to be destroyed, or to be appropriately reimbursed and informed for the origin of the material.

The author from paragraph 1 of this Article in accordance with the registered producer can make a contract for illegally produced and marketing of seed, planting and propagation material.

If there are no contract from paragraph 2 of this Article, the author has right to take procedure in the responsible court.

The person is, who has made the injury, obliged to provide data to the author concerning the name and address of the producers and other former owner's of the material, buyers, and as well as quantity of produced and delivered material.

Article 84

The rights in the case of injury of the right for variety protection determined by this Law is considered deteriorated after the period of three years from the moment when the maintainer of the right has found that there has been an injury.

Article 85

The protected variety by certificate is registered in the Register for protected variety which is maintained in the Directorate, and on its base the List of the protected varieties has been prepared, and which is published in the Official Journal of the Republic of Macedonia.

List from paragraph 1 of this Article contents:

1. variety type and denomination,
2. name and address of the maintainer or maintainers and of the representative in the procedure, and
3. time of recognition and approval of the new variety.

If the registered variety denomination with the role of variety protection is replaced with other one, or protection is being given to some approved variety under other denomination in accordance with Article 49, paragraph 3 of this Law, that variety denomination should be registered in the Variety List.

Determined characteristics for recognition of the major attributes may be replaced for the needs of the country, if the description of the submitted variety is compliance with the description with other variety.

The changes of persons as maintainers or representatives in the procedure will be registered whenever they will be proved. The registered maintainer in the procedure retains his duties and obligations until the changes are registered.

Article 86

The Directorate from paragraph 3 of this Law, organizes the matters concerning the control of production, processing, trade, import and export, examination of the new varieties for recognition, approval and protection of the variety, as follows:

1. keeps certain registers of entities for production, processing, trade, import and export of seed, planting and propagating material;
2. controls the production of seed, planting and propagating material during the vegetation by authorization of experts, according to the provisions of ISTA (International seed quality organization) in Zurich, Switzerland;
3. controls the executed expert control of production by the expert from Article 15 of this Law;
4. stimulates the production of seed, planting and propagating material
5. controls the processing, trade, import and export of seed, planting and propagating material;
6. keeps registers for the recognized, approved and protected varieties;
7. organizes and controls the work of the entities at which will be performed field examination for recognition, approval and protection of new varieties and laboratory analyses;
8. controls the way of testing methods for confirmation of the variety distinctness in accordance to the provision from UPOV (International Union for the Protection of New Varieties of Plants), Geneva, Switzerland;
9. controls the procedure for examination for confirmation of the variety identity according to the provision from OECD (International, post-control examination of the identity and purity of the variety organization) in Paris, France;
10. the way of keeping, maintaining, evidence and permanent conservation of seed, planting and propagating material in the National gene bank, Directorate will work according to the FAO provisions (Food and agricultural organization) in Rome, Italy;
11. controls the marketing, export and import of the seed, planting and propagating material
12. performs other activities concerning the production, processing, trade, import and export, recognition, approval and protection of the variety.

For the matters referred to in paragraph 1 item 7 of this Article, the Directorate determines entities that will perform the field and laboratory tests.

The conditions from paragraph 1 items, 2, 3, 4, 9 and 10, the Government of the Republic of Macedonia adopts the Program for seed and planting material.

IV. MONITORING

Article 87

The Ministry of Agriculture, Forestry and Water Economy does the monitoring of the implementation of the provision of this Law and the regulations produced on its basis. Inspection is done by the Republic Inspectorate through the agricultural inspectors.

The inspectors from paragraph 1 of this Article for performing the inspection control can enter and monitor the area, offices, storage, transport means for the seed, planting and propagation material, yields, certificates and other business documentation.

The entity i.e. physical persons are obliged to allow unrestricted implementation of the monitoring to the authorized inspector.

Article 88

If during the execution of the monitoring the authorized inspector finds that the production, processing and marketing are not in accordance with the provisions of this Law, and the regulations enacted on its basis, he will order by decision in certain period of time the activities to be corrected in accordance with the provisions of this Law.

If the production, processing and marketing are not corrected within the set period, the inspector will forbid realization of these activities in accordance with Article 93 paragraph 3 and Article 94, paragraph 3 until court makes legal decision.

If during the realization of inspection survey, the authorized inspector finds that the seed, planting and propagation material, which have been marketed, is not in the list of varieties, is not with the prescribed quality, is not in appropriate health condition and is not suitably packed and marked, he will forbid the marketing with a decision and will oblige the entity to correct the faults in a certain period of time.

If within the period of time from paragraph 3 of this Article the faults are not corrected, or if there is danger from substantial material damage, by decision the authorized inspector will assemble and destroy, in presence of a commission, the seed, planting and propagation material.

If during the realization of the inspection of the imported seed, planting and propagation material, the cross-border inspector determines that the shipment is not accompanied with appropriate certificates, is not in the list of varieties or there is not an authorization to import, is not appropriately packed and marked, or estimates that the shipment does not comply with prescribed quality conditions and health standards, he will oblige the owner with a decision in certain period of time to correct the fault or to return back the shipment.

If within the specified period from paragraph 5 of this Article the faults have not been corrected or shipment has not been returned, the cross-border inspector in presence of a customs officer will overtake or destroy the shipment.

Against the decisions from paragraphs 1 to 6 of this Article a complain can be issued within a period of 8 days from the day of receiving the decision to the Minister of Agriculture, Forestry and Water Economy.

The complain against the decision from paragraphs 1 to 6 of this Article will not postpone its execution, in cases where material damage, which can not be repaired, occurs.

Article 89

The authorized inspectors can take samples for analyses in order to confirm the quality, health condition and the rights.

The expenditures for the taking and examination of samples will be born by the legal person that produces, processes or is marketing seed, planting and propagation material, if after the examination a fault has been found on behalf of that legal person.

Article 90

The authorities of the customs service are obliged to report all shipments of seed, planting and propagation material, in order to be inspected by the cross-border inspector.

The authorities of the customs service can not start the customs procedures, or to transfer to other customs office, of the shipments from paragraph 1 of this Article without consent from the cross-border inspector.

Article 91

Responsible authorities for internal matters and the customs service authorities, in accordance with their responsibilities, prevent illegal entries and transport of seed, planting and propagation material outside of the specialized border crossings determined by the Government of Republic of Macedonia.

The shipments from Article 23 of this Law, which came into the territory of Republic of Macedonia outside of the determined border crossing, are being stopped by the authorities from paragraph 1 of this Article, and informs the authorized inspection from the border crossing, or send the shipments to certain border crossing.

V. PENALTIES

Article 92

Entity will be punished with payment fine of 100.000 to 300.000 denars for the obstruction if:

1. produces or process seed, planting or propagation material and does not fulfills the conditions determined in Article 5, paragraph 1, points 1 and 2 and Article 13 of this Law;

2. produces, markets or maintains protected variety with certificate without the consent of the maintainer of the rights for variety protection (Article 82);

The responsible person of the entity will be punished with payment fine of 30.000 to 50.000 denars for the obstruction from paragraph 1 of this Article.

Beside the payment fine from paragraph 1 point 1 of this Article, entity may be punished with preventive measure of forbiddance of its activities within a period of 6 months to 5 years.

The responsible person of the entity will be punished with the preventive measure of forbiddance for execution of duties within a period of 3 months to 1 year for the activities from paragraph 1 of this Article.

The physical person will be punished with payment fine of 20.000 to 30.000 denars for the obstruction from paragraph 1 point 1 of this Article.

Article 93

The entity will be fined with payment fine of 80.000 to 250.000 denars if:

1. produces seed, planting or reproducing material and does not satisfy the necessary conditions (Articles 6);
2. approves and examines the quality of the seed, planting or propagation material, without formal approval and executing the examination not in accordance with the prescribed method (Articles 15 and 16);
3. produces standard seed material and standard planting material without permit and not fulfilling the conditions from Article 8 of this Law;
4. markets seed and planting material for economic purposes that do not satisfy certain conditions from Article 18 of this Law;
5. markets propagation material, which does not satisfy certain conditions from Article 20 of this Law;
6. markets commercial seed material, without permit and not satisfying the conditions from Article 21 of this Law;
7. imports seed, planting and propagation material that does not satisfies the conditions from Article 23 of this Law;

The responsible person of the entity will be punished with payment fine of 20.000 to 40.000 denars for the obstruction from paragraph 1 of this Article.

Beside the payment fine from paragraph 1 of this Article, entity may be punished with preventive measure of forbiddance of its activities within a period of 3 months to 5 years.

The responsible person of the entity will be punished with the preventive measure of forbiddance for execution of its duties within a period of 3 months to 1 year.

The physical person will be punished with payment fine of 10.000 to 30.000 denars for the obstruction from paragraph 1 points 1, 2 and 3 of this Article.

Article 94

The entity will be fined with payment fine of 50.000 to 200.000 denars if:

1. does not report the production, processing and marketing within the period of one month and does not keep evidence (Articles 9, 10 and 34);
2. does not fulfil the conditions for marketing of seed, planting and propagation material (Article 20);
3. imports or markets seed, planting and propagating material which is not marked or packed (Articles 28, 31 and 32);
4. does not maintain the accompanying documentation (Article 9 and 34);
5. does not allow monitoring and inspection to the authorized inspector (Article 87).

The responsible person of the entity will be punished with payment fine of 10.000 to 30.000 denars for the obstruction from paragraph 1 of this Article.

The physical person will be punished with payment fine of 10.000 to 20.000 denars for the obstruction from paragraph 1 points 1, 5 and 6 of this Article.

Article 95

Beside the payment penalty for the obstructions from Articles 92, 93 and 94 of this Law, a preventive measure of dispossessing of belongings used for realization of the obstruction or obtained i.e. made with the realization of the obstruction, and of material wealth created with the realization of the obstruction.

Article 96

With payment fine of 10.000 denars the physical person will be punished on the spot if markets seed, planting and propagation material.

VI. TRANSITIONAL AND FINAL PROVISIONS

Article 97

Current enterprises and entities, registered or authorized for production, processing, realization of experts surveys during the vegetation and realization of examinations to review the quality characteristics of the seed and planting material, are obliged, within a period of one year from the day of enacting of this Law, to comply their activities with the conditions set in this Law.

If subjects from paragraph 1 of this Article fail to comply with the conditions, they will be excluded from the appropriate register maintained by the Ministry of Agriculture, Forestry and Water Economy.

Article 98

Closer regulations of this Law will be enact, in the period of 12 months from the day of the enforcement of the Law, by the Minister of Agriculture, Forestry and Water Economy.

Until the day of enforcing the closer regulations from paragraph 1 of this Article, the regulations prevailing at the day of entering into force of this Law will be applied.

At the day of entering into force of this Law, the published list for recognized domestic, approved foreign and hosted varieties will be applied.

Article 99

With the date of entering into force of this Law, the following Laws are revoked:

1. Law for seed (Official Journal of Socialistic Republic of Macedonia no. 18/73, 51/88, 20/90 and Official Journal of Republic of Macedonia no. 32/91 and 83/92);
2. Law for planting material (Official Journal of SRM no. 10/73, 51/88, 20/90, 32/91 and Official Journal of Republic of Macedonia no. 32/91 and 83/93);
3. Law for recognition of newly created varieties, approval for utilization of foreign varieties in the production and protection of the agriculture and forestry varieties (Official Journal of SFRJ no. 38/80 and 82/90);

Article 100

This Law enters into force the eighth day from its publishing in the Official Journal of Republic of Macedonia.

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