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CONSEJO

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**EXAMEN DE LA CONFORMIDAD DE LA LEY DE PROTECCIÓN DE LAS
OBTENCIONES VEGETALES DE BOSNIA Y HERZEGOVINA CON EL ACTA DE 1991
DEL CONVENIO DE LA UPOV**

Documento preparado por la Oficina de la Unión

Introducción

1. Mediante nota cursada el 2 de octubre de 2008 al Secretario General de la Unión Internacional para la Protección de las Obtenciones Vegetales (UPOV), el Sr. Milad Zeković, Director de la Oficina de Protección Fitosanitaria de Bosnia y Herzegovina, solicitó el examen de la Ley de Protección de las Obtenciones Vegetales de Bosnia y Herzegovina (“la Ley”), sancionada por el Parlamento el 27 de julio de 2004 (Gaceta Oficial N° 46/04), con la finalidad de determinar su conformidad con el Acta de 1991 del Convenio de la UPOV (“Acta de 1991”). La carta antedicha se reproduce en el Anexo I del presente documento.

2. En el Anexo II figura una traducción de la Ley en inglés proporcionada por el Gobierno de Bosnia y Herzegovina. En diversos puntos, será preciso consultar la versión original de la Ley para comprobar la fidelidad de la traducción, así como la terminología utilizada. Hasta que no haya concluido dicha labor de comprobación, no será posible determinar si las contradicciones que, al parecer, presenta la Ley con respecto al Acta de 1991 son fruto de problemas de traducción o, si por el contrario, están presentes en la versión original de la Ley.

3. El artículo 34.3) del Acta de 1991 dispone que “[a]ntes de depositar su instrumento de adhesión, todo Estado que no sea miembro de la Unión o cualquier organización intergubernamental solicitará la opinión del Consejo acerca de la conformidad de su legislación con las disposiciones del presente Convenio. Si la decisión haciendo oficio de opinión es positiva, podrá depositarse el instrumento de adhesión”.

Fundamento de la protección de las obtenciones vegetales en Bosnia y Herzegovina

4. La protección de las obtenciones vegetales en Bosnia y Herzegovina se rige por la Ley. A continuación se analizan las disposiciones de la Ley en el orden en el que figuran las disposiciones fundamentales del Acta de 1991.

Artículo 1 del Acta de 1991: Definiciones

5. La definición de “obtentor” en el artículo 2 a) y en la primera frase y el párrafo 4 del artículo 12 de la Ley no corresponde a la definición de “obtentor” que figura en el Artículo 1.iv) del Acta de 1991.

6. El artículo 2.a) de la Ley dice así: “El obtentor es la persona física que crea, descubre o pone a punto una variedad de forma independiente o conjuntamente con otras personas físicas”. La palabra “física” después de “persona” parece excluir a las personas jurídicas, lo que no sucede en el artículo 1.iv) del Acta de 1991.

7. El artículo 2.a) de la Ley (véase también los artículos 12.2) y 3) de la Ley) hace referencia a la persona que “descubre o pone a punto”. El artículo 1.iv) del Acta de 1991 hace referencia a la persona que haya “descubierto y puesto a punto”.

8. Debe comprobarse la fidelidad de la traducción de la definición de “variedad” con la versión original de la Ley.

9. En el artículo 2 de la Ley figuran también las siguientes definiciones:

“[...]

b) Titular de derechos es la entidad física o jurídica con potestad para presentar una solicitud de protección de una variedad (la solicitud).

c) Solicitante es la entidad física o jurídica que ha presentado la solicitud.

d) Titular del derecho de obtentor es la entidad física o jurídica que ha adquirido el derecho de obtención vegetal por medio de la protección.

[...]

g) Variedad protegida es la variedad respecto de la cual se ha expedido una decisión de protección. Se define por una descripción oficial de la variedad, por una muestra protegida, y se denomina de la forma prescrita por la presente Ley.

h) Material de la variedad protegida es toda plántula o producto de la variedad protegida, respectivamente, que pueda utilizarse en una posterior multiplicación o reproducción de la variedad.

i) Muestra protegida es la muestra oficial de la plántula de la variedad protegida”.

10. Las definiciones de “titular de derechos” en el artículo 2.b) de la Ley, “solicitante” en el artículo 2.c) de la Ley y “titular del derecho de obtentor” en el artículo 2.d) de la Ley requieren aclaración respecto a la definición de obtentor que figura en el artículo 1.iv) del Acta de 1991. Cabe señalar que la antedicha aclaración obligará a modificar en consecuencia las disposiciones concordantes de la Ley.

11. La definición de “material” establecida en el artículo 2.h) de la Ley no parece abarcar el alcance general del término “producto de la cosecha” que figura en los artículos 6.1), 14.2) y 16 del Acta de 1991 ni, por ende, en las disposiciones concordantes de la Ley (artículos 5, 15 y 17). El Acta de 1991 menciona con precisión el material de la variedad en varias disposiciones pero sólo define “material” a los efectos del párrafo 1 del artículo 16 de dicha Acta. Esa definición no consta en el artículo 17 de la Ley.

Artículo 2 del Acta de 1991: Obligación fundamental de las Partes Contratantes

12. Sin perjuicio de la decisión relativa a la Ley y del análisis expuesto en el presente documento, la primera frase del artículo 1 de la Ley dispone lo siguiente: “La presente Ley establece el procedimiento para proteger las obtenciones vegetales y adquirir y proteger el derecho de obtentor” a tenor de la obligación básica de las Partes Contratantes con arreglo al artículo 2 del Acta de 1991.

Artículo 3 del Acta de 1991: Géneros y especies que deben protegerse

13. La segunda frase del artículo 1 de la Ley dispone que “de conformidad con las disposiciones de la presente Ley, todas las variedades de familias y especies vegetales, incluidos los híbridos de familias y especies, podrán ser protegidos”. Siempre que se compruebe la fidelidad de la traducción de esta disposición con la versión original de la Ley, ésta última parece aplicarse a todos los géneros y especies vegetales como establece el artículo 3.2) del Acta de 1991.

Artículo 4 del Acta de 1991: Trato nacional

14. Los párrafos 2 y 3 del artículo 13 de la Ley disponen lo siguiente:

“Las entidades físicas o jurídicas extranjeras gozarán de los mismos derechos en Bosnia y Herzegovina que las entidades físicas o jurídicas nacionales, siempre que ello se infiera de los tratados o convenios internacionales firmados por Bosnia y Herzegovina o a los que ésta se haya adherido o, respectivamente, con arreglo a las condiciones de reciprocidad real; la carga de la prueba de la reciprocidad recae en la parte que haga referencia a ésta.”

“En los procedimientos ante la Administración, la entidad física o jurídica extranjera ejerce el derecho que le otorga la presente Ley por medio de la persona por ella autorizada que es una persona física residente en Bosnia y Herzegovina o una entidad jurídica con asiento en Bosnia y Herzegovina.”

15. Una vez que Bosnia y Herzegovina pase a ser miembro de la UPOV, las disposiciones establecidas en los párrafos 2 y 3 del artículo 13 de la Ley permitirán a Bosnia y Herzegovina cumplir las disposiciones de trato nacional previstas en el artículo 4 del Acta de 1991.

Artículos 5 a 9 del Acta de 1991: Condiciones de la Protección, Novedad, Distinción, Homogeneidad y Estabilidad

16. Los artículos 4 a 8 de la Ley contienen disposiciones relativas a las condiciones de protección. En varios casos deberá comprobarse con la versión original de la Ley la fidelidad de la traducción de esas disposiciones y la terminología utilizada. Se proporcionan algunos ejemplos en los siguientes párrafos.

Novedad

17. En relación con la condición de novedad prescrita en el artículo 6.1) del Acta de 1991, se requiere comprobar lo siguiente:

i) si las palabras “vendido o explotado económicamente” y “venta o explotación económica de la variedad” que figuran en los párrafos 1 y 2 del artículo 5 de la Ley corresponden a la versión original a “vendido o entregado a terceros de otra manera [...] a los fines de la explotación de la variedad”; y

ii) si las palabras “titular de los derechos” que figuran en los párrafos 1 y 2 del artículo 5 de la Ley corresponden en la versión original a “obtentor”.

18. En relación con la disposición del inciso ii) del artículo 6.1) del Acta de 1991 que se refiere al período de seis años en el caso de “árboles y vides”, el artículo 5.1) de la Ley hace referencia a “plantas perennes y vides”

19. Si los términos *supra* de la versión original que figuran en el artículo 5 de la Ley no reflejan los términos correspondientes del artículo 6.1) del Acta de 1991, deberá modificarse en consecuencia el artículo 5 de la Ley.

20. El artículo 5.3) de la Ley dispone lo siguiente:

“Las plántulas de la variedad que sea comúnmente utilizada para la obtención de una nueva variedad, esto es, un híbrido, se considerarán entregadas con fines de lucro, cuando los vegetales o sus partes, pertenecientes a otra variedad, sean entregados”.

21. La fidelidad de la traducción del artículo 5.3) de la Ley debe comprobarse, habida cuenta de que la terminología utilizada no corresponde al artículo 6 del Acta de 1991 de la Convención de la UPOV.

22. En relación con el artículo 6.2) del Acta de 1991, el artículo 53 de la Ley establece un régimen de transición relativo a la novedad para las “variedades de reciente creación”, que dice así:

“1. Los procedimientos para la protección de la variedad que estén en curso en el momento de la entrada en vigor de la presente Ley proseguirán su curso al amparo de ésta.

2. Como excepción de lo dispuesto en el párrafo 1 de la presente Ley, se podrá proteger la variedad que no sea nueva a la fecha de entrada en vigor de la presente Ley, siempre que:
- a) la solicitud de protección de la variedad se haya presentado antes de la entrada en vigor de la presente Ley;
 - b) la variedad reúna los demás requisitos estipulados en el artículo 4 de la presente Ley; y
 - c) esté protegida o en trámite para obtener protección en cualquiera de los Estados signatarios de un tratado también firmado por Bosnia y Herzegovina o al que se haya adherido, y el procedimiento haya finalizado con la protección de la variedad.
3. Cuando se conceda el derecho de obtentor con arreglo al párrafo 2 de la presente Ley, el derecho de obtentor durará otros 20 años, como máximo, o 25 años, respectivamente, en el caso de las plantas leñosas, plazo que correrá a partir de la fecha en que se haya concedido el derecho de obtentor en el Estado signatario en el que la variedad se haya protegido primero”.

Distinción

23. En relación con la condición de distinción que figura en el artículo 7 del Acta de 1991, debe comprobarse con la versión original de la Ley si los términos:
- i) “identificable” e “identificada” que constan en los artículos 4 y 6 de la Ley corresponden a los términos “distinta” y “distinción”;
 - ii) “variedad que es generalmente conocida” corresponde a la expresión “variedad cuya existencia [...] sea notoriamente conocida”.

Homogeneidad

24. En relación con la condición de homogeneidad que figura en el artículo 8 del Acta de 1991, el artículo 7 de la Ley contiene la expresión “características que son de gran importancia para diferenciarla de otras variedades” en lugar de “características pertinentes”.

Estabilidad

25. En relación con la condición de estabilidad que figura en el artículo 9 del Acta de 1991, el artículo 8 de la Ley hace referencia al término “invariable” en lugar de “estabilidad” y a la expresión “características, que son de la mayor importancia para diferenciarla” en lugar de “características pertinentes”.

Artículo 10 del Acta de 1991: Presentación de solicitudes

26. Los artículos 13, 24 a 26 de la Ley contienen disposiciones relativas a la presentación de solicitudes.
27. El apartado g) del artículo 25.1) de la Ley dispone que la solicitud debe contener “la descripción de si la variedad fue obtenida por medio de la ingeniería genética y, de ser así, se adjunte el permiso para someter a prueba dicha variedad conforme a la reglamentación sobre los organismos modificados genéticamente”. Cabe observar que el artículo 18 del Acta de 1991 dispone lo siguiente: “El derecho de obtentor es independiente de las medidas adoptadas por una Parte Contratante para reglamentar en su territorio, la producción, el control y la comercialización del material de las variedades, o la importación y exportación de

ese material. En cualquier caso, esas medidas no deberán obstaculizar la aplicación de las disposiciones del presente Convenio”.

Artículo 11 del Acta de 1991: Derecho de prioridad

28. El artículo 27 de la Ley contiene disposiciones sobre el derecho de prioridad.

29. Las disposiciones de la segunda frase del párrafo 2 y el párrafo 3 del artículo 11 del Acta de 1991 no han sido incorporadas en la Ley.

Artículo 12 del Acta de 1991: Examen de la solicitud

30. Los artículos 29 a 32 de la Ley contienen disposiciones relativas al examen de la solicitud.

31. Los párrafos 1.a), 2, 3.a) y 5 del artículo 31 de la Ley contienen los siguientes elementos que no están especificados en el artículo 12 del Acta de 1991: “verificar si la variedad corresponde a una unidad sistemática, es decir, a una familia o especie de herbáceas especificada en la solicitud”; “La evaluación profesional se realiza sobre la base de los resultados obtenidos en las pruebas de la variedad sobre el terreno o en el laboratorio”; “si las pruebas se realizan en condiciones agroecológicas comparativas siguiendo los procedimientos y métodos prescritos”; “la Administración podrá utilizar los resultados de las pruebas de la variedad obtenidos de otro país que tenga condiciones agroecológicas comparativas”.

Artículo 13 del Acta de 1991: Protección provisional

32. Siempre que se modifique el alcance del derecho de obtentor (véase *infra*), se aclare el término “titular de los derechos” y se compruebe si el término “indemnización adecuada” corresponde en la versión original a “remuneración equitativa”, el artículo 18.2) de la Ley contiene disposiciones relativas a la protección provisional que corresponden al artículo 13 del Acta de 1991.

Artículo 14 del Acta de 1991: Alcance del derecho de obtentor

33. Los artículos 14 y 15 de la Ley contienen disposiciones sobre el alcance del derecho de obtentor.

34. Se debe comprobar la fidelidad de la traducción del artículo 15 de la Ley con la versión original de la Ley; a continuación se presentan a modo ilustrativo ejemplos de utilización de términos distintos a los que figuran en el artículo 14 del Acta de 1991:

- i) “licencia” en lugar de “autorización”;
- ii) “plántulas” en lugar de “material de reproducción o de multiplicación”;
- iii) “productos” en lugar de “producto de la cosecha”;
- iv) “la oportunidad adecuada para adquirir el derecho de obtentor” en lugar de “haya podido ejercer razonablemente su derecho”.

35. Además de la comprobación mencionada *supra* de la traducción en relación con la versión original de la Ley, faltan los siguientes elementos del artículo 14 del Acta de 1991:

- i) el acto de “oferta en venta” del apartado a.iii) del artículo 14.1);
- ii) aunque en la Ley no existe una disposición que corresponda a lo dispuesto en el apartado b) del artículo 14.1) del Acta de 1991, que dice: “[e]l obtentor podrá subordinar su autorización a condiciones y a limitaciones”, el artículo 40 de la Ley titulado “Explotación económica relativa a las licencias” parece tener relación con las licencias comerciales;
- iii) la primera frase del artículo 15.3) de la Ley dispone que “la licencia del titular para las actividades mencionadas en el párrafo 1 también es necesaria si se refiere”, parece excluir la aplicación de las disposiciones del artículo 14.2) del Acta de 1991 sobre los “[a]ctos respecto del producto de la cosecha” al artículo 15.3) de la Ley en lo que respecta a las variedades esencialmente derivadas y otras determinadas variedades. Tal exclusión sería contraria a la correspondiente disposición que figura en el apartado a) del artículo 14.5) del Acta de 1991;
- iv) las disposiciones del apartado c) del artículo 14.5) del Acta de 1991.

Artículo 15 del Acta de 1991: Excepciones al derecho de obtentor

36. Se debe comprobar la fidelidad de la traducción del artículo 16 de la Ley que se refiere a las excepciones al derecho de obtentor con la versión original de la Ley. El artículo 16 de la Ley dispone lo siguiente:

- “1. Se considerará que no se ha infringido el derecho de obtentor si:
 - a) la variedad protegida es utilizada o entregada:
 - 1) para fines privados no lucrativos;
 - 2) para realizar pruebas o con fines científicos;
 - 3) para la obtención de nuevas variedades.
 - b) si la nueva variedad, señalada en el apartado a.3) del presente artículo, se utiliza con fines económicos, salvo si es una variedad derivada;
 - c) el producto de la variedad protegida de determinada especie vegetal, producido por los productores en sus propias explotaciones agrícolas, es utilizado para realizar nuevas siembras en la explotación agrícola, y el productor que recurra a esa posibilidad paga al titular del derecho de obtención una compensación adecuada. La compensación es adecuada si es considerablemente inferior al valor calculado para la producción de plántulas de la variedad en la misma región amparada en la licencia.
2. Los productores que utilicen la posibilidad de realizar nuevas siembras pagarán al titular del derecho de obtentor una compensación adecuada en cumplimiento del apartado 1.c) del presente artículo y facilitarán al titular del derecho de obtentor, siempre que lo solicite, toda la información relativa a las nuevas siembras.
3. Los pequeños propietarios están exentos del pago de la compensación adecuada al titular del derecho de obtentor prevista en el apartado 1.c) del presente artículo.
4. La Administración determinará las especies vegetales por las que se deberá pagar al titular del derecho de obtención la compensación adecuada prevista en el apartado 1.c) del presente artículo, así como los criterios relativos a los propietarios más pequeños”.

37. Las disposiciones del párrafo 1.a.3) y 1.b) del artículo 16 de la Ley parece tener relación con la excepción al derecho de obtentor pero no corresponden a la excepción al derecho de obtentor del inciso iii) del artículo 15.1) del Acta de 1991.

38. La Ley contiene disposiciones sobre la excepción facultativa prevista en el artículo 15.2) del Acta de 1991 en los párrafos 1.c), 2) 3) y 4) de su artículo 16.

Artículo 16 del Acta de 1991: Agotamiento del derecho de obtentor

39. El artículo 17 de la Ley titulado “Excepciones” parece incorporar determinadas disposiciones del artículo 16 del Acta de 1991 titulado “Agotamiento del derecho de obtentor”. Se debe comprobar la fidelidad de la traducción del artículo 17 de la Ley con la versión original de la Ley.

40. Las siguientes disposiciones del artículo 17 de la Ley no corresponden a las disposiciones que figuran en la primera frase del artículo 16 del Acta de 1991:

“El titular del derecho de obtentor no necesita una licencia para las actividades previstas en el párrafo 1 del artículo 15 de la presente Ley o para la producción de una variedad protegida que se derive de una variedad protegida, siempre que el propio titular haya proporcionado las plántulas de la variedad o lo haya hecho por conducto de un tercero por él autorizado, salvo que esas actividades incluyan: [...]”.

41. El Acta de 1991 menciona con precisión el material de la variedad en varias disposiciones pero sólo define “material” a los efectos del párrafo 1 del artículo 16 de dicha Acta. Esa definición no consta en el artículo 17 de la Ley (véase el párrafo 11 *supra*).

Artículo 17 del Acta de 1991: Limitación del ejercicio del derecho de obtentor

42. El artículo 41 de la Ley contiene disposiciones acerca de una “licencia obligatoria”. En el artículo 41.1) de la Ley se hace referencia a los motivos de interés público que corresponden a la prescripción establecida en el artículo 17.1) del Acta de 1991.

43. El artículo 41.8) de la Ley establece que “el titular del derecho de obtención vegetal tiene derecho a recibir compensación”. El artículo 17.2) del Acta de 1991 dispone que el obtentor “reciba una remuneración equitativa”.

Artículo 18 del Acta de 1991: Reglamentación económica

44. Siempre que se aclare lo relativo al apartado g) del artículo 25.1) de la Ley (véase el párrafo 27 *supra*), la Ley no parece contener disposiciones que entren en conflicto con el artículo 18 del Acta de 1991.

Artículo 19 del Acta de 1991: Duración del derecho de obtentor

45. El artículo 18.1) de la Ley contiene disposiciones sobre la duración del derecho de obtentor que corresponden al artículo 19 del Acta de 1991.

Artículo 20 del Acta de 1991: Denominación de la variedad

46. Los artículos 10, 11 y 37 de la Ley contienen disposiciones relativas a las denominaciones de variedades. Debe comprobarse la fidelidad de la traducción con la versión original de la Ley.

47. Las disposiciones establecidas en los artículos 10.4) y 11.3) de la Ley no corresponden a las disposiciones del artículo 20.3) del Acta de 1991 en relación con el registro de la denominación o la denegación de ésta.

48. La disposición establecida en el apartado j) del artículo 10.2) de la Ley que dice: “es contrario al reglamento de propiedad industrial;” no corresponde a la disposición del artículo 20.4) del Acta de 1991 que se refiere a los “[d]erechos anteriores de terceros”.

49. En el Acta de 1991 no hay disposiciones que corresponden al artículo 11.2) de la Ley. El artículo 11.2) de la Ley dispone lo siguiente:

“La disposición del párrafo 2 no será válida si una plántula de la variedad protegida es utilizada con fines no comerciales en el sector privado”.

Artículo 21 del Acta de 1991: Nulidad del derecho de obtentor

50. El artículo 35 de la Ley titulado “Declaración de nulidad” contiene causas para anular el derecho de obtentor. Elementos de las causas de nulidad establecidos en el artículo 21.1) del Acta de 1991 parecen estar contenidos en los apartados a), b) y c) del artículo 35.1) de la Ley. Sin embargo, debe comprobarse la fidelidad de la traducción con la versión original de la Ley.

51. A efectos de que correspondan a las disposiciones establecidas en el artículo 21.2) “Exclusión de cualquier otra causa” del Acta de 1991, las causas de nulidad que figuran en los apartados d), e), f) y g) del artículo 35.1) de la Ley, que parecen estar en relación con las causas de caducidad, deben pasar a un artículo separado que se refiera a la caducidad del derecho de obtentor.

Artículo 22 del Acta de 1991: Caducidad del derecho de obtentor

52. El artículo 35 de la Ley titulado “Declaración de nulidad”, en sus apartados d), e) f) y g) del párrafo 1, parece contener causas de caducidad del derecho de obtentor.

53. A efectos de que correspondan a las disposiciones establecidas en el artículo 22.2) “Exclusión de cualquier otra causa” del Acta de 1991, las causas de caducidad deben pasar del artículo 35 de la Ley a un artículo separado que se refiera a la caducidad del derecho de obtentor.

54. Debe comprobarse la fidelidad de la traducción con la versión original de la Ley, en particular la referencia en el apartado g) del artículo 35.1) al “artículo 43” de la Ley parece tener relación con el artículo 42 de ésta. Asimismo, parece haber una repetición en los apartados d) y e) del artículo 35.1) de la Ley, que no figuran en las disposiciones correspondientes de los apartados a) y b.i) del artículo 22.1) del Acta de 1991.

Artículo 30 del Acta de 1991: Aplicación del Convenio

55. En relación con la obligación de “prever[...] los recursos legales apropiados que permitan defender eficazmente los derechos de obtentor” (inciso i) del artículo 30.1) del Acta de 1991), los artículos 45 a 51 de la Ley hacen referencia a los recursos, sanciones y multas civiles y administrativos disponibles. Como se explicó en los párrafos 34, 35, 36 y 37 del presente documento, las disposiciones de la Ley relativas al alcance del derecho de obtentor y a las excepciones a ese derecho requieren algunas aclaraciones y modificaciones con el fin de que correspondan a las disposiciones del Acta de 1991 del Convenio de la UPOV. Las modificaciones antedichas obligarán a reformar en consecuencia los artículos 46.3) y 50.1) de la Ley que se refieren a la infracción del derecho de obtentor. Asimismo, será necesario efectuar los cambios respectivos en el artículo 51 de la Ley que se refiere a las sanciones o multas administrativas para los casos de incumplimiento o utilización indebida de las denominaciones de variedades (véase los párrafos 47, 48 y 49 *supra*).

56. En relación con la obligación prescrita en el inciso ii) del artículo 30.1) del Acta de 1991, el artículo 33.1) de la Ley dispone que:

“Si, sobre la base de la evaluación profesional prevista en el artículo 31 de la presente Ley, se establece que el solicitante ha cumplido todos los requisitos prescritos, la Administración expedirá la decisión relativa a la protección de la variedad y publicará ésta en la Gaceta Oficial de la Administración”.

57. En relación con la obligación prevista en el inciso iii) del artículo 30.1) del Acta de 1991, el artículo 19 de la Ley dispone que:

“1. La Administración tendrá competencia para lo siguiente:

[...]

c) publicar en la Gaceta Oficial la información relativa a las solicitudes, incluida la propuesta de denominación de la variedad,

d) mantener las decisiones negativas respecto de las solicitudes, el registro y posibles modificaciones en el registro de una solicitud, el retiro de solicitudes, las determinaciones sobre la protección de la variedad y sus posibles cambios, y demás información oficial,

[...]

2) La Administración publica la información prevista en el párrafo 1 del presente artículo en la Gaceta Oficial de la Administración”.

58. El artículo 19 de la Ley cumple la obligación de publicar información relativa a las solicitudes de derechos de obtentor y los derechos de obtentor concedidos y las denominaciones propuestas, como exige el inciso iii) del artículo 30.1) del Acta de 1991.

59. De conformidad con lo dispuesto en el artículo 20.3) y el inciso iii) del artículo 30.1) del Acta de 1991, la publicación de las decisiones relativas a los derechos de obtentor debe también contener la información sobre las denominaciones aprobadas.

Conclusión general

60. En opinión de la Oficina de la Unión, el análisis expuesto en el presente documento sugiere que la Ley incorpora algunas disposiciones del Acta de 1991. Sin embargo, en ese análisis se han identificado varias disposiciones del Acta de 1991 que no figuran en la Ley u otras que no corresponden al Acta de 1991. Además, ciertas disposiciones de la Ley parecen no guardar coherencia con otras o es preciso aclararlas. Por otra parte, este análisis proporciona algunos ejemplos que ilustran la necesidad de comprobar con la versión original de la Ley la fidelidad de la traducción y la terminología utilizadas.

61. En conclusión, para que el Gobierno de Bosnia y Herzegovina esté en condiciones de dar cumplimiento a las disposiciones del Acta de 1991 según exige el artículo 30.2) de esta última, se recomienda incorporar en la Ley las disposiciones y modificaciones adicionales según se indica en el presente documento.

62. *Se invita al Consejo a:*

a) tomar nota del análisis expuesto en el presente documento;

b) recomendar que Bosnia y Herzegovina incorpore en su Ley las disposiciones y modificaciones adicionales pertinentes, según se indica en el presente documento, y recomendar que una vez incorporadas en la Ley las disposiciones y modificaciones adicionales, la Ley modificada sea sometida al Consejo a los fines de examinar su conformidad en virtud del artículo 34.3) del Acta de 1991;

c) pedir a la Oficina de la Unión que ofrezca asistencia, lo antes posible, al Gobierno de Bosnia y Herzegovina en la redacción de las disposiciones y modificaciones adicionales que es necesario incorporar en la Ley; y

d) autorizar al Secretario General a informar al Gobierno de Bosnia y Herzegovina sobre esta decisión.

[Siguen los Anexos]

ANEXO I

[Traducción por la Oficina de la Unión de una carta con fecha 2 de octubre de 2008]

Enviada por: Sr. Milad Zeković
Director
Oficina de Protección Fitosanitaria de Bosnia y Herzegovina

A: Dr. Kamil Idris
Secretario General
Unión Internacional para la Protección de las
Obtenciones Vegetales (UPOV)
34, chemin des Colombettes
CH – 1211 Ginebra 20

Me complace informarle que el 27 de julio de 2004 el Parlamento de Bosnia y Herzegovina adoptó la Ley de protección de las obtenciones vegetales de Bosnia y Herzegovina (Gaceta Oficial N° 46/04).

Bosnia y Herzegovina tiene la intención de adherirse al Convenio Internacional para la Protección de las Obtenciones Vegetales de 2 de diciembre de 1961, revisado en Ginebra el 10 de noviembre de 1972, el 23 de octubre de 1978 y el 19 de marzo de 1991 (Convenio de la UPOV).

De conformidad con las disposiciones del Artículo 34.3) del Convenio de la UPOV, le agradecería que el Consejo de la UPOV examine la conformidad de la Ley de Bosnia y Herzegovina con las disposiciones del Convenio de la UPOV.

Aprovecho la oportunidad para saludarle atentamente,

(Firmada)

[Sigue el Anexo II]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

[In English only / En anglais seulement /
Nur auf Englisch / En Inglés solamente]

LAW
ON PROTECTION OF NEW VARIETIES OF PLANTS
OF BOSNIA AND HERZEGOVINA

Pursuant to Article IV 4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at its 42nd session of the House of Representatives, held on 27 July 2004, and at the session of the House of Peoples, held on 9 July 2004, passed.

I - General Provisions

Article 1
Content of the Law

1. This Law establishes the procedure for protection of new varieties of plants and acquisition and protection of breeding rights. In accordance with the provisions of this Law, all the varieties of families and species of plants, including hybrids of families and species, may be protected.

Article 2
Terms meaning

1. The terms used in this Law shall have the following meanings:
- a) Breeder of variety is a physical person who breeds, discovers or develops a variety independently or jointly with other physical persons.
 - b) Right holder is a physical or legal entity who is entitled to file an application for a variety protection (hereinafter referred to as: the Application)
 - c) Applicant is a physical or legal entity who has filed the application.
 - d) Breeding right holder is a physical or legal entity who has acquired the plant breeding right through protection.
 - e) Breeding right is a common expression provided for by Article 15 of this Law.
 - f) A variety is a group of plants or parts thereof, provided that complete plants can be again produced from them within the lowest botanic classification which can, regardless of whether it meets other requirements for protection, be:
 - 1) defined by its characters originating from a certain genotype or a combination of genotypes,
 - 2) distinguished among any other groups of plants at least by one of these characters, and
 - 3) considered as a systematic unit if these characters are not changed in the course of plant propagation.
 - g) Protected variety is a variety for which a decision on protection has been issued. It is defined by an official description of the variety, by a protected sample, and is denominated in the manner as prescribed by this Law.

- h) Material of the protected variety is any seedling or the product of the protected variety, respectively, which could be used for further propagation of the variety.
- i) Protected sample is an official sample of a seedling of the protected variety.
- j) The relevant bodies, in the light of the provisions of this Law, are: the Management of Bosnia and Herzegovina for protection of plants health (hereinafter referred to as: the Management) and relevant bodies of the Entities and Brčko District of Bosnia and Herzegovina (hereinafter referred to as: the relevant bodies of Entities and Brčko District).

Article 3
Commission for addition to the National variety list

The procedure for protection of a new variety, applications register for protection of a new variety (hereinafter referred to as: Applications Register) and the Protected Varieties Register are maintained by the Commission for addition to the National variety list (hereinafter referred to as: the Commission) as a body within the Management.

II – REQUIREMENTS FOR VARIETY PROTECTION

Article 4
Protection of varieties

- 1. A variety is protected by acquisition of the breeding right.
- 2. Any variety may be protected, provided it is:
 - a) new
 - b) identifiable
 - c) uniformed
 - d) invariable and
 - e) denominated in compliance with the provisions of this Law.

Article 5
A new variety

- 1. It shall be considered that a variety is new on the date of application if it has been sold or economically exploited with the permission of the right holder in Bosnia and Herzegovina at the most for one year prior to the date of filing the application, and for four years out of Bosnia and Herzegovina, prior to the date of filing the application; in the event of many year leaf plants and grape vine not more than six years prior to the date of filing the application.
- 2. Sale or economic exploitation of variety, in the light of the preceding paragraph, shall not be considered to be the:
 - a) use or delivery of the variety for profitable aims without permit or knowledge of the right holder;
 - b) contracted right assignment of the variety;
 - c) contracted economy, propagation, seed processing or warehousing of the seedlings or products of the variety for the right holder, provided the right holder has kept the sole right of ownership of the propagated seedlings, products of the variety or the products from the same;

- d) testing of the variety in the field or laboratory and, respectively, experimental production for the purpose of determination of the use value if so done by the right holder or his/her authorized person;
 - e) official testing of the variety for registration in the Register of Varieties or the risk assessment of the genetically changed varieties;
 - f) sale of products originating as by-products or, respectively, surpluses in development of a new variety, provided that these products are intended for final use and that on this occasion the variety is not specified.
3. Seedlings of the variety which is constantly used for breeding of other new variety, that is, hybrid, shall be considered to be delivered for profitable purposes, when the plants or their parts, belonging to other variety, are delivered.

Article 6 **Identified variety**

1. A variety is identifiable if it is possible to distinguish it clearly from any other variety which is generally known to the date of filing the application.
2. A variety shall be generally known, in particular if:
 - a) it was to that date protected in any country or registered in the List of Varieties;
 - b) an application to protect it or register it in the List of Varieties has been filed in any country to that date and the procedure is finished by the variety protection or its registration in the List of Varieties;
 - c) the seedlings of the variety or its product has already been on the sale or used for profitable purposes.

Article 7 **Uniformed variety**

The variety is uniformed if it has sufficiently and specifically expressed those characteristics which are of great importance for making it different from other varieties, despite the aberrations which may be expected for the specificity of its propagation.

Article 8 **Invariable variety**

A variety is invariable if its characteristics, being of utmost importance to distinguish it, after more successive propagations and, respectively, in case of particular cycle of propagation, are not changed.

Article 9 **Protected variety**

The protected variety shall be denominated which is a sign of its difference.

Article 10

Name registration

1. Any designation which makes it possible to distinguish it, may be registered as the name of the protected variety and it may be a word, a combination of words, a combination of words and numbers or combination of letters and numbers, unless it was otherwise prescribed by this Law.
2. As the name of a protected variety, there shall not be a designation which:
 - a) is not appropriate for the language reasons;
 - b) makes it impossible to identify the variety;
 - c) consists only of numbers, except where it is already a routine practice;
 - d) is the same or similar to the name of any generally known variety of the same species or related species of plants while in use; this provision is also exceptionally valid after termination of use of this variety, if this variety was specifically denominated;
 - e) makes confusion in regard to the sources, characters, value, use, identity or geographical origin, respectively.
 - f) consists of botanic or general name, family or species, or includes such a name which could bring in a confusion;
 - g) includes the words such as “variety, cultivated species, form, hybrid, cross-species” or translation of these words;
 - h) makes confusion in regard to the plant variety breeder or the right holder;
 - i) is contrary to public order or morale;
 - j) is contrary to the regulations on industrial ownership;
3. If a certain variety is already protected or registered in the Variety List, or if the application was filed to be protected or registered in any signatory state of the international treaties or conventions of which Bosnia and Herzegovina is also a signatory or accessed it. Only the name of the variety which was registered, entered on the Variety List or stated in the application in other country, may be registered in Bosnia and Herzegovina.
4. Exceptionally, a certain variety may be registered in Bosnia and Herzegovina under some other name only if the use of the original name is inappropriate for the language reasons or because it was contrary to the public order and morale.
5. At the proposal of the Commission, the Management shall define the related variety under paragraph 2.d) of this Article and a more detailed requirements for registration of the variety.

Article 11

Name of protected variety

1. The use of the name of a protected variety is binding. The seedlings of the protected variety may be on sale only if the name of the protected variety is stated.
2. The provision of paragraph 2 shall not be valid if a seedling of the protected variety is used for non-commercial purposes in private sector.

3. The protected variety shall be designated with the same registered name in all countries, except in case of aberration under Article 10 paragraph 4 of this Law.
4. In addition to registered name, the trademark or, respectively, other designation can also be used in sale of seedlings of the protected variety, provided that the registered name is quite visible and identifiable.
5. The name of the protected variety or the name which can be replaced with this name shall not be used for some other variety of the same or related plant.

III –HOLDERS OF RIGHT TO PROTECT VARIETY AND ACQUISITION OF BREEDER’S RIGHT

Article 12

Holders of the right to protect variety

Holder of the right to protect variety and acquisition of breeder’s right is the variety breeder or his/her legal heir.

2. If more persons have jointly created, bred, discovered or developed a variety, the joint right to protect the variety and acquire the right belong to them and, respectively, their heirs.
3. If more persons individually created, bred, discovered or developed a variety, the breeder’s right belongs to the one who filed the application first.
4. If the breeder is employed by a legal entity, and their mutual rights and duties are governed by the employment contract, the right to acquisition is determined in accordance with this contract. On the contrary, it is implied that the provisions from the regulations on the rights of industrial ownership from work relationship referring to the patents shall be applied.

Article 13

Requirements to acquire breeder’s rights

1. The breeder’s right referred to by the preceding Article can be acquired by the right holder who is a citizen of Bosnia and Herzegovina, other physical person residing permanently in Bosnia and Herzegovina and a legal entity seated in Bosnia and Herzegovina.
2. Foreign legal or physical entity shall enjoy the same rights in Bosnia and Herzegovina as a national legal or physical entity does, provided it arises from the international treaties and conventions signed or accessed by Bosnia and Herzegovina or, respectively, under the conditions of real reciprocity; the burden of proving the reciprocity is on the one who refers to it.
3. In the procedure before the Management, the foreign legal or physical entity exercises his or her right from this Law through his or her authorized person who is a physical person residing in Bosnia and Herzegovina or a legal entity seated in Bosnia and Herzegovina.

IV – BREEDER’S RIGHT

Article 14 Breeder’s right

A breeder acquires the breeder’s right when a variety is protected.

Article 15 License

1. The license of the breeder’s right is necessary for carrying out the following actions in regard to seedlings of a protected variety

- a) production or propagation,
- b) preparation of protected variety material for propagation
- c) selling or other forms of sale,
- d) export or import, and
- e) keeping the material of protected variety for the purposes mentioned in the preceding paragraphs.

2. In addition to the actions referred to in paragraph 1, the license of the right holder is also necessary in case of the products of protected variety only if:

- a) the product is the result of unauthorized use of seedlings of the protected variety, and
- b) the holder did not have appropriate opportunity to acquire the breeder’s right in seedlings of this variety.

3. The license of the holder for the undertakings mentioned in paragraph 1 is also necessary if it concerns:

- a) the varieties derived from the protected variety, except if the protected variety is derived in itself;
- b) the varieties which he or she could not distinguish from the protected variety;
- c) the varieties or, respectively, hybrids of which the breeding requires a permanent use of the protected variety.

4. A certain variety is considered to be a derived variety, if:

- a) its origin is a prevailing original variety or the variety which is mainly derived from the original variety,
- b) it can be distinguished from the original variety, and
- c) it is, by its expressed essential characteristics, which define the genotype or a combination of genotypes of the original variety, similar to the original variety, except in differences which are the result of derivation.

Article 16

1. It shall be considered that the breeder's right is not breached if:
 - a) the protected variety is used or disposed with:
 - 1) in private non-profitable purposes;
 - 2) for testing or scientific purposes;
 - 3) for breeding new varieties.
 - b) if the new variety is used for economic reasons from the third paragraph, item a) of this Article, except that this variety is a derived variety;
 - c) the product of protected variety of certain species of plants, produced by the producers on own agricultural estate, is used for further seeding on the agricultural estate, and the producer exploiting this possibility shall pay the breeding right holder an appropriate compensation. The compensation is appropriate if it is significantly lower than the amount calculated for production of seedlings of the variety in the same region under the license.
2. The producers using a possibility of further seeding shall pay the breeding right holder appropriate compensation in compliance with item c) paragraph 1 of this Article and shall give the breeding right holder, at his or her request, all the information concerning further seeding.
3. Small land owners are exempted from payment of appropriate compensation to the breeding right holder under item c) paragraph 1 of this Article.
4. The Management shall determine the plant species for which an appropriate compensation is paid to the breeding right holder under item c) paragraph 1 of this Article, as well as the criteria for smaller land owners.

Article 17 Exceptions

The breeding right holder does not need a license for the undertakings provided for by Article 15 paragraph 1 of this Law or for production of protected variety derived from a protected variety, provided that he or she has given the seedlings of the variety by himself or herself or by some other person authorized to do so, except that these undertakings comprise:

- a) further propagation of the protected or derived variety, or
- b) export of material of the protected or derived variety, which can be used for further propagation, to the country in which the plant families or species, to which this plant species belongs, is not possible to protect. This provision is not valid if the exported material is intended for final use.

Article 18 Period of breeder's right

1. Unless this Law prescribes otherwise, the period of breeder's right lasts from the date of its acquisition to the end of twentieth calendar year, and when hop, grape vine and species of trees are concerned it last to the end of twenty-fifth calendar year which follows the year of the right acquisition.

2. Regardless to the provisions of paragraph 1, the right holder from Article 12 of this Law, who has already filed a complete application, is entitled to the adequate indemnity, if anybody, during the procedure to protect the variety, contrary to Article 15 of this Law, economically exploited or disposed of the variety applied for protection. The right holder may claim the indemnity only for the period from the date of publication of the application in the “Official Gazette of the Management of Bosnia and Herzegovina for protection of herbal health” to the date of acquisition of the breeder’s right.
3. The breeder’s right ceases to exist:
- a) by termination note of the holder of breeder’s right;
 - b) by expiration period, as determined in paragraph 1 of this Article;
 - c) by ceasing or, respectively, cancellation of the decision by which it was acquired.

V – PROCEDURE OF VARIETY PROTECTION

1. Bodies

Article 19

Competences and tasks of the Management

1. The Management shall have the following competences:
 - a) conduct an administrative procedure for a new variety protection and the variety denomination registration in compliance with this Law and the Law on General Administrative Procedure,
 - b) maintain the Application Register and Protected Varieties Register,
 - c) publish in the Official Gazette the information on applications including the proposal for a variety denomination,
 - d) maintain negative decisions to the applications, registration and eventual changes in the registration of application, withdrawal of applications, decisions on variety protection and its eventual changes, and other official information,
 - e) cooperate with the international organizations and associations, the state bodies and, respectively, non-governmental organization from the region of the protected new varieties,
 - f) participate technically and professionally with authorized agencies of foreign countries in the area of testing varieties and checking the maintenance of varieties,
 - g) exchange the results of testing of varieties and other information from its competence with the relevant bodies in other countries,
 - h) checking the fulfillment of obligations of the protection holder, and
 - i) perform other duties in the area of varieties protection.
- 2) The Management publishes the information provided for by paragraph 1 of this Article in the Official Gazette of Management.

Article 20

Commission

1. Council of Ministers of Bosnia and Herzegovina (hereinafter referred to as: the Council of Ministers) appoints the Commission consisting of nine members, out of which three members of the Commission are proposed by relevant bodies of Entities each, two by the Management and one by Brčko District.

2) The position of the Commission is to be an expert in the procedure for variety protection, and based on the examination of application and enclosed documents it proposes a decision to the Management concerning the variety protection.

2. Registers
Article 21
Content of Register

1. The Management maintains the Applications Register and the Protected Varieties Register in compliance with the regulations.

2. The Register contains the information from the documents which serves as a basis for registration in both registers. The documents are collected in a collection of documents which is an attachment to both registers.

3. The Application of Register shall in particular contain:

- a) data on the applicant, breeder and eventual authorized representative,
- b) date of complete application,
- c) specification of plant species,
- d) proposal of temporary designation of the variety or, respectively, proposal of denomination of variety,
- e) in case of claiming priority right, specifies the country in which the application has already been filed and the date of receiving the complete application in that country,
- f) proposal for suspension or termination of the procedure, respectively,
- g) notes of courts' decisions in regard to the rights to file application.

4. The Register of insured varieties contains, in particular:

- a) plant variety and registered name of the variety, all synonyms are also entered with the name,
- b) official description of the variety or reference to the documents which contains official description of the variety and they are an integral part of the Register,
- c) in case of the variety of which breeding requires a constant use of certain additions for production of seedlings of the protected variety, the addition should specify,
- d) name and surname of breeding right holder, the breeder and any representative in the procedure,
- e) date of acquisition and termination of the variety protection and the reasons thereof,
- f) name and address of the person to whom the right to economically exploitation was transferred by the license contract,
- g) name and address of the person who was awarded a forced license, specifying the requirements for awarding and the date of termination of the right,
- h) notes on courts' decisions regarding the breeding right.

5. The Management shall keep the collection of documents concerning individual cases in original or copies for at least five years following the withdrawal or negative decision to the application or, respectively, for five years following termination of breeder's right.

6. The Management shall determine in more details the content and method of maintenance of the Register.

Article 22
Data Publicity

1. Applications Register and Varieties Protection Register are public.
2. The Management shall enable any person who has proved the legal interests to have insight into the following documents and collection of documents:
 - a) the documents relating to the applications,
 - b) the documents relating to acquired breeding rights,
 - c) the documentation relating to the official testing of variety.
3. Exceptionally from the provisions under paragraph 2 of this Article, the applicant, in case of hybrids, may require that the documentation, concerning component parts of variety, being in the procedure of protection, is not accessible for public.

3. Costs of procedure
Article 23
Costs

1. In the procedure for protection of a new variety and for the maintenance of the breeding right, the applicants or, respectively, the breeding right holders shall pay the prescribed fees, the costs of technical and professional checking of justification of the application, the costs of testing the variety and the costs relating to publication and other actions.
2. The Council of Ministers of Bosnia and Herzegovina shall prescribe the amount of fees and costs under paragraph 1 of this Article and the amount of fees provided for by Article 39.

4. Course of procedure for variety protection

Article 24
Application

1. The procedure for variety protection begins with the application filed by the applicant to the Management.
2. The Management makes decision in the administrative procedure.
3. An appeal may be filed against the administrative acts of the Management. The appeal shall be filed, within 30 days from the date of receiving the decision, to the Ministry of foreign trade and economic relations of Bosnia and Herzegovina.

Article 25
Content of application

1. The application shall be lodged on the prescribed form and shall contain the following:
 - a) information concerning the applicant or his representative or agent;
 - b) data relating to the breeder, if he or she is not the applicant by himself or herself;
 - c) Latin and national name of species to which the variety belongs;

- d) proposed name of the variety or, respectively, a temporary designation of the variety;
 - e) the country in which the application has already been filed and the date of receipt of application in that country, if the application claims priority right;
 - f) technical description of the variety which can be an attachment to the application; and
 - g) description whether the variety was obtained by means of gene technology and, if so, attach the permit for testing this variety in accordance with the regulations of genetically changed organisms;
2. a more detailed form and content of the application, and the documents which shall be attached to the application are prescribed by the Management.

Article 26 **Correction of application**

1. The Management examines whether the application is complete and properly filled in and whether the evidence of paid fee is attached.
2. If the application is incomplete or improperly filled in or if the prescribed fee has not been paid in, the Management shall call the applicant to supplement it within 30 days from the date of its receipt. If the applicant does not meet the requirements stipulated by the Management within the given period, such an application shall be deemed not to be filed.
3. The applicant is given a receipt. The complete application is registered in the Application Register and published in the Official Gazette of the Management. The date of receipt of the application or the date of receipt of the supplement which makes the application complete, is entered as the date of receipt of the complete application.
4. The extract from the complete application is published in the Official Gazette following the expiry of three months from the date of its filing.

Article 27 **Priority rights**

1. The applicant who filed the application for protection of a new variety in any signatory state of the international treaties or conventions signed or accessed by Bosnia and Herzegovina, can, following the provision of evidence of a complete application filed for the same variety in other country, achieve priority right. In this case, the application filed in Bosnia and Herzegovina shall be deemed to be filed on the date when the complete application was filed in foreign country.
2. The priority right under the preceding paragraph shall be expressly requested by the applicant in the application.
3. The applicant can accomplish the priority right in Bosnia and Herzegovina within 12 months, at latest, from the date of filing the first complete application abroad.

Article 28 **Appeal**

1. Anyone who has a legal interest may appeal the application, published in the Official Gazette on the basis of Article 26 paragraph 4 of this Law, to the Management while the procedure for protection of the variety is in the course.
2. The appeal may relate only to meeting the requirements under Articles 5, 6, 7, 8 and 10 of this Law.
3. The appeal shall be in writing and explained. Relevant evidence shall be attached to the appeal and prescribed court fee shall be paid.
4. The management shall immediately submit the received appeal to the applicant and called upon him or her to reply to the appeal not later than 30 days from the receipt of the appeal.
5. The Management shall inform the appellant on its opinion in regard to the appeal not later than three months following their filing.

Article 29 **Review of the application**

The Management shall review whether the content of the application is appropriate, and shall check, on the basis of the data stated in the application, whether the variety is new and whether the applicant is entitled to acquisition of the breeding right. If it is determined in the course of reviewing the content that the requirements under Article 5 and 12 of this Law are not met, such an application is rejected.

Article 30 **Name of variety**

1. The Management also evaluates the appropriateness of the proposed name of the variety. In case that the proposed name of the variety is contrary to the provisions of Article 10 of this Law, the Management shall call the applicant to propose new name for the variety. The proposal shall be given not later than three months from the date of receipt of the call.
2. In the course of protection of a variety, the Management shall exclusively use the name of the variety which was registered in the Application Register for protection of a new variety.

Article 31 **Professional evaluation**

1. Any variety which meets the requirement of Articles 26 and 29 of this Law shall be subject to a professional evaluation for the purpose of:
 - a) checking whether the variety falls under a systematic unit, i.e. a herb family or species specified in the application,
 - b) ascertaining whether the variety is different, unified and invariable (Articles 6, 7 and 8 of this Law) and

- c) preparation of an official description of the variety if it meets the requirements under items a) and b) of this paragraph.
2. The professional evaluation is carried out on the basis of the results obtained from testing the variety in the field or in a laboratory.
3. The testing of variety may be carried out by:
- a) The Management or, respectively, the Management recognized professional institution in Bosnia and Herzegovina or abroad, if the testing is carried out in comparative agroecological conditions by means of prescribed procedures and methods;
- b) the applicant, at the request of the Management.
4. In the event that the Management does not carry out testing alone, it shall ensure a professional supervision over testing the variety.
5. In professional evaluation of a variety, the Management may use the results of testing of the variety obtained from other country which has comparative agroecological conditions, provided that the testing was carried out within the international systems of testing, and whether the evidence of results were issued according to the international treaties made or entered into by Bosnia and Herzegovina.
6. Council of Ministers, at the request of the Management and in cooperation with relevant bodies of the Entities and Brčko District, prescribes a more detailed requirements, procedures and methods for testing the variety.

Article 32
Professional evaluation of variety

1. The applicant shall submit to the Management, within a prescribed period, necessary information, documents and, respectively, seedlings for making a professional evaluation of the variety for the purpose referred to by Article 31 paragraph 1 of this Law.
2. If the applicant fails to meet the requirements under paragraph 1 of this Article without a justified reason, the application shall be refused.

Article 33
Decision

1. If, on the basis of professional evaluation provided for by Article 31 of this Law, it is established that the applicant has met all the prescribed requirements, the Management shall issue the decision on protection of the variety and publish it in the Official Gazette of the Management.
2. The data from the effective decision on protection of the variety or, respectively, on refusing the application, are entered in the Application Register.
3. Together with the effective decision on insurance of the variety, the holder is issued a certificate on acquisition of breeding right, which is valid from the date of effectiveness of the decision.

4. On the basis of the effectiveness of the decision on protection of a variety, the relevant data are entered in the Protected Variety Register.
5. Council of Ministers, at the proposal of the Management, prescribes the form and content of the certificate on acquisition of the breeding right.

5. Termination of the plant breeding right

Article 34

Decision on termination of the plant breeding right

1. At the request of the breeding right holder under Article 18 paragraph 3 a) of this Law, the Management shall issue a decision in the administrative procedure confirming that the plant breeding right has been terminated at the request of the holder. The plant breeding right shall terminate on the following day from the date of receipt of the written statement by the holder.
2. Based on the effective decision under the preceding paragraph, the termination of the plant breeding right shall be published in the Official Gazette of the Management.

Article 35

Declaration of the decision null and void

1. The Management, in the administrative procedure, shall declare the decision on protection of a variety null and void only in the cases if it is subsequently ascertained that:
 - a) the variety was not new on the date of receiving a complete application (Article 5 of this Law) or it could not be distinguished (Article 6);
 - b) the variety was not uniformed on the date of receipt the complete application (Article 7) and invariable (Article 8 of this Law), and the variety was protected primarily on the basis of the information and documents submitted by the applicant;
 - c) the plant breeding right was awarded to the person who was not entitled to it, and the right holder did not request a forced transfer in accordance with Article 37 of this Law;
 - d) the holder does not meet the requirements stipulated by Article 44 of this Law or, respectively if ascertained that the variety is no more uniformed (Article 7 of this Law) or invariable (Article 8 of this Law)
 - e) the holder does not submit, at the written request of the Management and within the prescribed period of time, the seedlings for checking or the documentation on selection for maintenance of the variety in accordance with Article 44 of this Law;
 - f) the holder does not submit, at the written request of the Management and within the prescribed period of time, the proposal of a new name in accordance with Article 38 paragraph 1 of this Law;
 - g) the holder does not duly pay the prescribed annual fee for maintenance of validity of the plant breeding right under Article 43 of this Law.

Article 36

Forced transfer of the right

1. If the application for protection of a new variety is submitted by a person who is not entitled to it, and the plant breeding right has been awarded, the right holder may initiate a procedure before the Management for a forced transfer of the right.

2. The request for a forced transfer provided for by the paragraph 1 can be filed from the date of publication of the application for protection of a new variety in the Official Gazette of the Management, not later than five years from the date of publication of the application.
3. If the unduly acquired right was transferred to the third party, in case of paragraph 1 of this Article, the transfer of these rights shall be cancelled.
4. Exceptionally from the provisions of paragraph 3 of this Article, the holder of any right to use the variety may continue to use the variety, if he obtained this right in good faith prior to the beginning of the procedure under paragraph 1 of this Article, provided he pays to the right holder adequate compensation.

Article 37 Erasure from the Register

1. The registered name of the variety is erased from the Application Register and the Protected Variety Registration under the following conditions:
 - a) if so required by the applicant or, respectively, the plant breeding right holder proves to have legal right to this action; the application shall specify the reasons for erasure and a proposed new name;
 - b) if it is subsequently established that the name of the variety was registered despite the reasons for its refusal under Article 10 of this Law;
 - c) if the holder or any other person is banned to use this name.
2. The Management forthwith informs the applicant or, respectively, the breeding right holder about the proposal or the request for erasure of the name and the application, and call him or her to propose a new name of the variety, not later than three months. After the procedure under Article 30 of this Law is carried out and the prescribed requirements are met, the proposed name is registered in the relevant register and published in the Official Gazette of the Management. At the same time, the former name is erased from the register.

7. Reinstating Article 38 Reinstating

1. In case that the plant breeding right holder or any other party to the procedure could not, for justified reasons, pay the fee or meet the other obligations towards the Management within the prescribed time which is a reason for loss of the right to protect variety under Article 36 of this Law, he or she can request a reinstating in the course of the procedure of a variety protection.
2. The reinstatement application shall be filed within eight days from the date when the reason causing the failure ceases, and in case that the party learns subsequently for the failure, then the application is filed from the date when the party learns and within the period of three months, following the cease of the reason for failure to meet the obligations, but not later than one year from the date of expiry, a period to which the obligation should be met. The request shall be attached with an explanation and the evidence of the prescribed fee payment.

3. If the reinstatement application is met, the Management determines a new time period for the applicant to fulfill the obligation. The time period to fulfill the obligation shall not be longer than the period of the delay to fulfill the obligation, and shall be from the date of receiving the notice of meeting the application.

4. The reinstatement applicant is not entitled to request any injury, if from the date of loss of the right to the date of reinstatement, anybody, in good faith, exploited or entered a contract for exploitation of the protected variety.

IV – TRANSFER OF PLANT BREEDING RIGHT AND ASSIGNMENT OF PLANT BREEDING RIGHT EXPLOITATION

Article 39 Transfer of plant breeding right

1. A plant breeding right holder may transfer through an agreement the whole or a part of the plant breeding right to another person.

2. The right holder or the applicant may transfer the right to application for a new variety protection or, respectively, the rights arising from the application.

3. Transfer contract of the rights referred to in paragraphs 1 and 2 of this Article shall be in writing or otherwise it shall be void.

4. Rights transfer under paragraphs 1 and 2 shall not affect the previous rights of any third persons.

5. Transfer of plant breeding rights has no legal effect on third persons until the agreement is registered in the register.

6. A proposal for registration the transfer contract can be given by any party to the agreement.

Article 40 Economic exploitation of land

1. Plant breeding right holder may transfer to a third person, through a license contract, partly or wholly the right of economic exploitation of the protected variety.

2. The license contract is registered in the relevant register at the request of one of the parties to the contract.

3. The license contract which is not registered in the relevant register under paragraph 2 of this Article has no legal effect towards third persons.

4. The form, the method of making and the content of the license contract and the legal protection are governed by the regulations of the law of obligations.

Article 41
Forced license

1. If there is a public interest and if the plant breeding right holder alone or somebody else authorized by him or her does not carry out economic exploitation of the protected variety to a sufficient extent and does not assign to anybody the exploitation right or, respectively, some unjustified requirements are set for the assignment, the forced license may be assigned to somebody else.
2. The forced license can be awarded only to a person who proves to dispose technological and production abilities necessary for efficient exploitation of the protected variety and needed resources.
3. The forced license cannot be possibly awarded if the plant breeding right holder has evidenced that there are justified reasons for non-exploitation or not sufficient exploitation of the protected variety.
4. The forced license cannot be possibly awarded if, from the date of awarding of the plant breeding right to the date of filing the application for awarding a binding license, less than three years passed.
5. The forced license gives the license holder the right to perform undertakings stipulated by Article 15 of this Law partly or wholly for the purpose of supply the national market.
6. The forced license can be awarded for the period of at least two years and four years, the most. The forced license is possible to renew if, after studying again the requirements of paragraph 1, it is ascertained that there are still reasons for awarding the forced license.
7. The Management, at administrative procedure, makes decision on the application for awarding or extension of the forced license. Prior to making decision in regard of awarding or extension of the forced license, the Management shall have the opinion of interested parties.
8. In case of awarding the forced license, the plant breeding right holder is entitled to compensation.
9. The compensation amount under paragraph 8 shall be agreed between the plant breeding right holder and the person who was awarded the forced license. If the agreement has not been reached, the compensation amount shall be determined by the Management.
10. The Management may request the plant breeding right holder to provide the forced license holder with initial quantity of seedlings for use of the variety based on the forced license. The plant breeding right holder is entitled to adequate compensation for the seedlings.
11. In case of awarding the forced license, the plant breeding right holder may request from the professional institution, authorized to perform professional control of seedlings production, data of production of seedlings of the protected variety,

VII – OBLIGATIONS OF PLANT BREEDING RIGHT HOLDER AND THIRD PERSONS

Article 42 Fee

1. For maintenance of the plant breeding right, the plant breeding right holder is obliged to pay the Management annual fee for maintaining valid the plant breeding right.
2. The fee shall be paid at the beginning of every calendar year for the current year of protection but not later than 31 January.
3. If the fee for maintenance of the plant breeding right is not paid even in the subsequent period of time, as determined by the Management and it shall not be longer than 6 months after receiving notice, the right shall cede to be valid.

Article 43 Maintenance of protected variety

1. Over the period of protection, the holder shall maintain the protected variety or, respectively, its hereditary components unchanged.
2. At the request of the Management, the holder shall, within a determined time, submit to the Management or an authorized institution the data, documentation or seedlings needed for checking the maintenance of the variety.
3. If the examination finds that the holder does not maintain the variety, the Management shall initiate procedure to cancel the plant breeding right.

Article 44 Sample of seedlings

1. At the request of the Management or an authorized institution, respectively, the holder shall, within a specified time, provide an appropriate sample of seedlings of the requested variety or, respectively, its hereditary components for:
 - a) variety protection or renewal of the variety sample,
 - b) making comparative examination of other varieties which are in the procedure of protection.
2. The Management may authorize the plant breeding right holder to keep and renew by him/herself the protected sample of seedlings.

Article 45 Data

1. Whoever without agreement or contrary to the agreement with the plant breeding right holder carries out economic exploitation or, respectively, disposes the seedlings of the protected variety shall give all the data to the holder in regard to it.

2. If the data are not given voluntarily, the plant breeding right holder can request the Management to issue a decision which orders the infringer to submit the data.

VIII – COURT PROTECTION

Article 46

Breaching the rights

1. Whoever breaches the right of the applied for or, respectively, protected new variety shall be responsible for damage under general regulations concerning the damage compensation.

2. The person whose right has been breached may request, in addition to the injury, that the person who breaches the right be banned any further breaches.

3. Breaching the plant breeding right is any unauthorized economic exploitation of the protected variety.

Article 47

Sue

1. A sue against breaching the plant breeding right can be filed within three years when the plaintiff learned for infringer or, respectively, for breaching. Following the expiry of the period of five years, a sue cannot be filed any more.

2. The sue is filed with a regular court.

IX – SUPERVISION

Article 48

Supervision

1. The supervision of adherence to the provisions of Articles 11, 15, 16 and 46 of this Law shall be done by agricultural and forestry inspectors.

2. When the agricultural and forestry inspectors, in carrying out the supervision, reasonably suspect that the violation has been done, they shall temporarily confiscate the objects used or intended for violation or they originate from the violation.

3. The agricultural and forestry inspectors shall surrender the temporarily confiscated objects to the relevant body for conducting the violation proceedings with a proposal to start proceedings.

Article 49

Violation of plant breeding right

1. If the plant breeding right holder evidence probable that the export of a certain seedlings of the protected variety from Bosnia and Herzegovina or import into Bosnia and Herzegovina is a violation of his or her plant breeding right, the phytosanitary inspectors may, at his request, determine at the border:

- a) that the holder or his or her authorized person may review the material;
- b) that the material be confiscated, exclude from the sale and keep at a safe place.

2. In the proposal referred to paragraph 2, the right holder shall give to the phytosanitary inspectors a detailed description of the material of the protected variety, satisfactory evidence concerning the plant breeding right and its probable violation. At the request of phytosanitary inspection, the holder shall deposit a bail for eventual damage which could arise from these measures.

3. A phytosanitary inspector shall forthwith inform the exporter on the measures made or, respectively, the importer and the receiver of the material of the protected variety, if the import of material of the protected variety in Bosnia and Herzegovina is concerned. The phytosanitary inspector shall revoke the measure made if the right holder does not file a sue within seven days or does not initiate some other procedure for justification of the measures undertaken.

X – PENAL PROVISIONS

Article 50

1. The legal entity shall be fined KM 5,000 for the violation if, without permission of the plant breeding right holder, produces or propagate the seedlings of the protected variety by this Law, if prepares the seedling of the protected variety for propagation, if put on sale, import or export the seedlings of the protected variety or if keeps the material of the protected variety for the above purposes (Article 15 of this Law).

2. The responsible person of the legal entity shall be fined KM 1,000 for the violation under paragraph 1.

3. An individual who makes such a violation in connection with independent performance of the business activity shall be fined KM 5,000 for the violation under paragraph 1 of this Article.

4. The physical entity shall be fined KM 1,000 for the violation under paragraph 1 of this Article.

Article 51

1. The legal entity shall be fined KM 3,500 for the violation:

- a) if, contrary to the paragraph 1 of Article 11 of this Law, the material of protected variety is circulated, without specifying the registered name of the protected variety or if the name is not correctly stated;
- b) if, contrary to the paragraph 5 Article 11 of this Law, uses the name of the protected variety by this Law, or the name which can be easily mistaken for this name, for some other variety of the same or relative variety.
- c) if, contrary to the paragraph 2 Article 16 or 46, respectively, of this Law, does not give the requested data to the holder.

2. The responsible person of the legal entity shall be fined KM 700 for the violation of the preceding paragraph.
3. The individual shall be fined KM 500 for the violation of the first paragraph of this Article whose violation is in connection with independent performance of business activity.
4. The physical entity shall be fined at least KM 500 for the violation under paragraph 1 of this Article.

XI – TRANSITIONAL AND FINAL PROVISIONS

Article 52 Pre-protected varieties

1. The variety which has been, until this Law comes in force, protected under the former valid regulations, enjoy the protection under this Law until the expiry of the acquired plant breeding right.
2. The plant breeding right for the variety under paragraph 1 can be declared void and shall be cancelled only if it is ascertained that when awarding this right, the requirements in regard to identity, uniformity or invariability of the variety, respectively.

Article 53 Procedures in the course

1. The procedures for insurance of the variety which are in the course at the time of coming into force of this Law, shall be continued under this Law.
2. Exceptionally from the provision of paragraph 1 of this Law, the variety, which is not new to the date of coming into force of this Law, can be protected, if:
 - a) the application for protection of the variety was filed prior to coming this Law into force,
 - b) the variety meets other requirements stipulated by Article 4 of this Law and
 - c) is protected or in the procedure for protection in one of the signatory states, also signed or accessed by Bosnia and Herzegovina, and the procedure is completed with protection of the variety.
3. In case of awarding the plant breeding right under paragraph 2 of this Law, the plant breeding right shall last another 20 years, at most, or 25 years, respectively, for wooden plants from the date of awarding the plant breeding right in the signatory state in which the variety was first protected.

Article 54 Regulations passed pursuant to this Law and deadline for their passing

The regulations pursuant to this Law shall be passed within 12 months from the date of coming this Law into force. The Council of Ministers can, at a proposal of the Management, and in addition to the regulations provided for by individual articles of this Law, also pass other regulations necessary for implementation of this Law.

Article 55
Regulations implemented until new ones are passed

Until new regulations are passed pursuant to this Law, the existing regulations in this area shall be implemented, if not contrary to this Law.

Article 56
Coming into force of this Law

This Law comes into force on the eighth day from the day of its publishing in the “Official Gazette of BiH” and shall be published in the Official Gazettes of the Entities and Brčko District of Bosnia and Herzegovina.

PA BiH No. 99/04
9 September 2004
Sarajevo
Chairman of the House of Representatives
Parliamentary Assembly BiH
Martin Raguž
Chairman of House of Peoples
Parliamentary Assembly BiH
Goran Milojević

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Fin de l'annexe II et du document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]