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**EXAMEN DE LA CONFORMITE DE LA LOI SUR LES OBTENTIONS VEGETALES
AGRICOLAS DE L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE
AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

Document établi par le Bureau de l'Union

Introduction

1. Dans une note datée du 18 février 2008, adressée au secrétaire général de l'UPOV, la Mission permanente de l'ex-République yougoslave de Macédoine auprès de l'Office des Nations Unies à Genève et des autres organisations internationales ayant leur siège en Suisse transmet une lettre datée du 30 novembre 2007, adressée au secrétaire général de l'UPOV par Son Excellence Antonio Milošoski, ministre des affaires étrangères de l'ex-République yougoslave de Macédoine, demandant l'examen de la Loi sur les obtentions végétales agricoles de l'ex-République yougoslave de Macédoine (ci-après dénommée "loi"), qui a été adoptée par le Parlement de l'ex-République yougoslave de Macédoine le 4 juillet 2007, du point de vue de sa conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). La note et la lettre sont reproduites dans l'annexe I du présent document.

2. L'annexe II contient une traduction en anglais de la loi, fournie par le Gouvernement de l'ex-République yougoslave de Macédoine. Il sera parfois nécessaire de vérifier l'exactitude de la traduction et de la terminologie employée par rapport au texte original. En attendant que ces vérifications soient effectuées, il n'est pas possible de savoir si les incompatibilités apparentes avec l'Acte de 1991 résultent d'une traduction inexacte ou proviennent du texte original.

3. L'article 34.3) de l'Acte de 1991 dispose que "[t]out État qui n'est pas membre de l'Union ou toute organisation intergouvernementale demande, avant de déposer son instrument d'adhésion, l'avis du Conseil sur la conformité de sa législation avec les dispositions de la présente Convention. Si la décision faisant office d'avis est positive, l'instrument d'adhésion peut être déposé."

4. Le Gouvernement de l'ex-République yougoslave de Macédoine a déjà entamé la procédure pour devenir membre de l'UPOV, par une lettre datée du 4 septembre 2000, dans laquelle Mme Verica Demirovska, directrice au Ministère de l'agriculture, de la sylviculture et de la gestion de l'eau, demandait l'avis du Conseil de l'UPOV sur la conformité de la "Loi relative aux semences et au matériel végétal de reproduction ou de multiplication, et à la reconnaissance, à l'approbation et à la protection des variétés", qui a été adoptée en mai 2000, avec l'Acte de 1991.

5. À sa trente-quatrième session ordinaire, tenue le 26 avril 2000, le Conseil a décidé

a) d'aviser le Gouvernement de l'ex-République yougoslave de Macédoine que la loi relative aux semences et au matériel végétal de reproduction ou de multiplication, et à la reconnaissance, à l'approbation et à la protection des variétés n'intégrait pas certaines dispositions importantes de l'Acte de 1991;

b) de demander au Bureau de l'Union d'offrir son aide au Gouvernement de l'ex-République yougoslave de Macédoine pour la rédaction des modifications qui devaient être apportées à la loi de 2000 et pour la préparation d'une traduction plus satisfaisante dans l'une ou plusieurs des langues officielles de l'UPOV;

c) d'aviser en outre le Gouvernement de l'ex-République yougoslave de Macédoine que lorsque les modifications nécessaires signalées dans le document C/34/13 auraient été adoptées à la satisfaction du Bureau de l'Union et lorsque le règlement d'application aurait été élaboré, il pourrait déposer un instrument d'adhésion à l'Acte de 1991.

6. La décision précitée, rendue par le Conseil le 26 octobre 2000, n'est plus applicable, la loi de 2007 ayant déclaré caduque la loi de 2000 (voir l'article 55 de la loi). C'est pour cette raison que le Gouvernement de l'ex-République yougoslave de Macédoine a présenté une nouvelle demande (voir le premier paragraphe du présent document) aux fins d'obtenir l'avis du Conseil sur la conformité de la loi avec l'Acte de 1991, en vertu de l'article 34.3) de l'Acte de 1991.

Fondement de la protection des obtentions végétales dans l'ex-République yougoslave de Macédoine

7. Dans l'ex-République yougoslave de Macédoine, la protection des obtentions végétales est régie par la loi. On trouvera ci-après une analyse de cette loi dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

8. Certains éléments de la définition du terme “obtenteur”, énoncée au point iv) de l'article premier de l'Acte de 1991, figurent dans les articles 3.1), 12.1) et 12.3) de la loi. L'article 12.3) de la loi contient des dispositions contraires relatives au contenu éventuel d'un contrat d'embauche.

9. Dans un souci de précision, il est recommandé d'incorporer dans l'article 3.1) de la loi les éléments de la définition du terme “obtenteur” figurant au point iv) de l'article premier de l'Acte de 1991, ce qui entraînera des modifications en conséquence pour d'autres dispositions de la loi.

10. Pour reproduire la définition du terme “variété” énoncée au point vi) de l'article premier de l'Acte de 1991, il est recommandé d'introduire le membre de phrase “qu'il réponde ou non pleinement aux conditions pour l'octroi d'un droit d'obtenteur” avant “peut-être” dans l'article 3.6) de la loi.

11. Des précisions seraient nécessaires s'agissant des définitions du “titulaire d'un droit d'obtenteur” à l'article 3.3) de la loi et du “détenteur d'un droit d'obtenteur” à l'article 3.5) de la loi, dans la mesure où ces deux expressions semblent viser la même personne et créent une certaine confusion concernant les définitions du “droit d'obtenteur” à l'article 3.2) de la loi et de l'“obtenteur” avec les modifications proposées (voir le paragraphe 9). Ces précisions entraîneront des modifications en conséquence pour d'autres dispositions de la loi (voir notamment les articles 16.3), 23, 28.4), 51 et 56.1)).

12. L'article 3.9) de la loi définit l'“intérêt public” : “L'‘intérêt public’ est l'intérêt de l'État pour la protection et le maintien de nouvelles variétés”.

13. D'autres définitions figurant à l'article 3 de la loi, par exemple “échantillon protégé” et “examen DHS”, peuvent nécessiter des précisions ou une vérification de la traduction par rapport au texte original (voir les paragraphes 35 à 37 ci-dessous).

14. L'article 3.12) de la loi dispose que la “Banque de gènes” est “une institution dans laquelle les semences et le matériel végétal de reproduction ou de multiplication de diverses populations et de divers types autochtones sont conservés et préservés en permanence, afin de protéger la biodiversité et de conserver des échantillons déterminés de semences et de matériel végétal de propagation ou de reproduction figurant sur la liste nationale des variétés”. Les mesures prises pour protéger la biodiversité ne devraient pas concerner le droit d'obtenteur. Il est recommandé d'apporter des précisions en conséquence aux articles 3.12), 43 et 45 (voir les paragraphes 37 et 50 ci-dessous).

Article 2 de l'Acte de 1991 : Obligation fondamentale des Parties contractantes

15. L'article premier de la loi dispose que “[l]a présente loi régit la procédure relative à la protection des obtentions végétales agricoles, à l'exception des plantes forestières, ainsi que le mode d'acquisition et de protection de droits d'obtenteur sur les obtentions végétales agricoles protégées”.

16. L'objet de la loi tel qu'il est défini à l'article premier semble exclure certains groupes de plantes, tels que les "plantes forestières", et ne porter que sur les plantes agricoles. Cette restriction est contraire à l'article 3.2) de l'Acte de 1991.

Article 3 de l'Acte de 1991 : Genres et espèces devant être protégés

17. L'article 2 de la loi dispose que "[l]a présente loi a pour objet la protection des obtentions végétales agricoles de tout type, y compris les hybrides de genres et d'espèces de plantes agricoles". L'article 21.3) de la loi dispose aussi ce qui suit : "Le registre des obtentions végétales enregistrées et protégées conserve les dossiers d'au moins 15 types de plantes agricoles et, après l'adhésion de l'ex-République yougoslave de Macédoine à la Convention UPOV, d'ici à 10 ans, les dossiers seront conservés pour toutes les espèces et variétés de plantes agricoles".

18. L'article 3.2) de l'Acte de 1991 prévoit une période transitoire facultative pour l'application des dispositions de l'Acte de 1991 à "tous les genres et espèces végétaux" (délai maximal de 10 ans), mais n'autorise pas l'exclusion de genres et d'espèces. En vertu de l'article 2 de la loi, il semble que la protection ne soit applicable qu'aux plantes agricoles. Cette restriction figure aussi à l'article 21.3) de la loi. En outre, l'article premier de la loi exclut les "plantes forestières" (voir le paragraphe 16).

19. En conclusion, l'article premier et les articles 2 et 21.3) de la loi contiennent des dispositions contraires à l'article 3.2) de l'Acte de 1991.

Article 4 de l'Acte de 1991 : Traitement national

20. L'article 13 de la loi contient des dispositions relatives aux personnes autorisées à déposer des demandes conformément à l'article 4 de l'Acte de 1991.

Articles 5 à 9 de l'Acte de 1991 : Conditions de la protection, nouveauté, distinction, homogénéité et stabilité

21. L'article 4 de la loi définit les critères à remplir pour obtenir la protection prévus à l'article 5.1) de l'Acte de 1991.

22. L'article 5 de la loi contient des dispositions relatives à la condition de nouveauté, fondées sur l'article 6 de l'Acte de 1991.

23. Il est demandé à l'ex-République yougoslave de Macédoine de vérifier l'exactitude de la traduction de l'article 5.1) de la loi par rapport au texte original et de s'assurer que les mots "vendue ou exploitée à des fins commerciales" correspondent dans l'original au membre de phrase "vendu ou remis à des tiers [...] aux fins de l'exploitation de la variété". Si l'original ne reprend pas les mots de l'article 6.1) de l'Acte de 1991, l'article 5.1) de la loi devra être modifié en conséquence.

24. Par souci de conformité avec l'article 6.1)ii) de l'Acte de 1991, il conviendrait de remplacer les mots "plantes fruitières pluriannuelles" par "arbres".

25. Il est aussi recommandé de remplacer “titulaire du droit d’obtenteur” par “obtenteur” dans l’article 5.2) de la loi.

26. L’article 6.1) de la loi contient la première phrase de l’article 7 de l’Acte de 1991, relative à la condition de distinction.

27. Il est recommandé de remplacer l’article 6.2) de la loi par la deuxième phrase de l’article 7 de l’Acte de 1991. Dans l’article 6.2) de la loi, il manque la phrase “En particulier, le dépôt, dans tout pays, d’une demande d’octroi d’un droit d’obtenteur [...] est réputé rendre cette autre variété notoirement connue à partir de la date de la demande, si celle-ci aboutit à l’octroi du droit d’obtenteur ...”.

28. L’article 7 de la loi contient les éléments de la condition d’homogénéité prévue à l’article 8 de l’Acte de 1991, plus le membre de phrase “qui sont importantes pour la différencier d’autres variétés” à la fin de l’article. Il est recommandé de reprendre le texte de l’article 8 de l’Acte de 1991 dans l’article 7 de la loi.

29. L’article 8 de la loi contient les éléments de la condition de stabilité prévue à l’article 9 de l’Acte de 1991. Il convient de noter que cet article contient les mots “qui sont importants pour la différencier d’autres variétés” au lieu du mot “pertinents” et que les mots “permanents et” précèdent le mot “inchangés”. Il est recommandé que l’article 8 de la loi reprenne le texte de l’article 9 de l’Acte de 1991.

Article 10 de l’Acte de 1991 : Dépôt de demandes

30. Les articles 25 et 26 de la loi contiennent des dispositions relatives au dépôt de demandes.

31. En ce qui concerne les renseignements minimaux devant figurer dans la demande en application de l’article 25.3) de la loi, il faut préciser ce que l’on entend par “données d’information selon lesquelles la variété a été créée grâce au génie génétique”, aux fins de la conformité avec l’Acte de 1991. Cette phrase semble indiquer que la protection n’est applicable qu’aux variétés ayant été créées grâce au génie génétique. L’Acte de 1991 est neutre s’agissant de la technologie employée pour créer des obtentions végétales. À ce sujet, la protection devrait s’appliquer aux nouvelles variétés végétales indépendamment des méthodes de sélection employées pour leur mise au point. En outre, si l’on peut subordonner la production et la commercialisation de variétés génétiquement modifiées à l’application d’autres mesures, ces dernières doivent être indépendantes du droit d’obtenteur (voir l’article 18 de l’Acte de 1991). Il est donc recommandé de modifier l’article 25.3) de la loi en conséquence.

32. L’article 26.3) de la loi appelle des précisions en ce qui concerne la date de dépôt de la demande.

Article 11 de l’Acte de 1991 : Droit de priorité

33. L’article 27 de la loi contient des dispositions relatives au droit de priorité.

34. L'article 27.5) de la loi fixe à deux ans le délai pour revendiquer la priorité de la première demande au lieu des 12 mois prévus à l'article 11.1) de l'Acte de 1991. En outre, les dispositions de l'article 11.3) de l'Acte de 1991 concernant le délai applicable pour fournir tout renseignement, document ou matériel requis en vue de l'examen ne figurent pas dans la loi. En conclusion, l'article 27 de la loi doit être modifié conformément aux dispositions de l'article 11 de l'Acte de 1991.

Article 12 de l'Acte de 1991 : Examen de la demande

35. Les articles 30 à 32 de la loi contiennent des dispositions relatives à l'examen de la demande. La traduction pose quelques problèmes au regard de la conformité avec l'Acte de 1991 et de la cohérence interne. Par exemple, l'article 30.1) de la loi contient le mot "permanentes" tandis que l'article 31.1) emploie l'adjectif "homogènes". Seul le terme "homogènes" est correct. Le terme "conditions" qui figure dans l'article 31.1) et dans le titre de l'article 32 de la loi n'est pas approprié. À l'article 31.1), ce terme semble désigner les modalités de forme et, à l'article 32, il vise tout renseignement, document ou matériel requis en vue de l'examen. Il est recommandé de vérifier la traduction par rapport à l'original.

36. Les alinéas 1) à 4) de l'article 31 de la loi concernent l'examen de la demande et prévoient d'autres conditions que celles énoncées à l'article 12 de l'Acte de 1991. Par exemple, "[l]'évaluation spécialisée de la nouvelle variété est effectuée sur la base des résultats obtenus dans le cadre de l'examen de la variété réalisé sur le terrain et en laboratoire (examen DHS) dans l'ex-République yougoslave de Macédoine ou un autre État par un service habilité". C'est aussi le cas de la disposition suivante : "la direction peut utiliser les résultats de l'examen de la variété obtenue dans un autre pays présentant les mêmes conditions agroécologiques adéquates que l'ex-République yougoslave de Macédoine".

37. Il est recommandé de préciser la teneur des alinéas 1) à 4) de l'article 31 de la loi conformément à l'article 12 de l'Acte de 1991. Ces précisions peuvent entraîner des modifications importantes pour d'autres dispositions de la loi (articles 3.7), 3.8), 3.11), 3.12), 22, 30, 32.1), 33.1), 43 et 45 de la loi).

Article 13 de l'Acte de 1991 : Protection provisoire

38. Sous réserve des modifications recommandées concernant la portée du droit d'obtenteur prévue à l'article 15 de la loi (voir le paragraphe 43), l'article 18.2) de la loi concernant une protection provisoire est conforme à l'article 13 de l'Acte de 1991. L'expression "dommages-intérêts adaptés", qui figure à l'article 18.2) de la loi, devrait être entendue comme visant au moins une "rémunération équitable", condition minimale au sens de l'article 13 de l'Acte de 1991.

Article 14 de l'Acte de 1991 : Étendue du droit d'obtenteur

39. Les articles 14.2) et 15 de la loi contiennent des dispositions relatives à l'étendue du droit d'obtenteur.

40. L'article 14.2) de la loi dispose que "[l]e droit d'obtenteur est le droit de l'utilisation commerciale de la obtention végétale protégée". Comme le droit de commercialiser la variété (produire, mettre sur le marché, importer, exporter, etc.) peut dépendre d'autres mesures et que ces dernières doivent être indépendantes du droit d'obtenteur (voir l'article 18 de l'Acte de 1991), il est recommandé de supprimer l'article 14.2) de la loi.

41. Concernant l'article 15 de la loi, il faudrait vérifier l'exactitude de la traduction par rapport à l'original.

42. Outre la vérification nécessaire de la traduction, les éléments ci-après de l'article 14 de l'Acte de 1991 devraient être incorporés dans l'article 15 de la loi :

- à l'alinéa 1) : référence au "matériel de reproduction ou de multiplication"; introduction des actes "le conditionnement aux fins de la reproduction ou de la multiplication", "l'offre à la vente", "ou toute autre forme de commercialisation" (après "la vente") et "la détention à l'une des fins mentionnées ci-dessus"; et introduction de la disposition suivante : "[l]'obtenteur peut subordonner son autorisation à des conditions et à des limitations";
- à l'alinéa 2) : référence au "produit de la récolte";
- à l'alinéa 3) : "dans les cas visés à l'alinéa 1) du présent article aucune autorisation n'est nécessaire" devrait être remplacé par "[l]es dispositions des alinéas 1) et 2) s'appliquent également";
- à l'alinéa 4) : la définition de la "variété essentiellement dérivée" devrait être remplacée par la définition figurant à l'article 14.5)b) de l'Acte de 1991. Les dispositions de l'article 14.5)c) de l'Acte de 1991 manquent aussi.

43. En conclusion, l'article 14.2) de la loi devrait être supprimé et l'article 15 devrait être remplacé par les dispositions correspondantes des articles 14.1), 14.2) et 14.5) de l'Acte de 1991.

Article 15 de l'Acte de 1991 : Exceptions au droit d'obtenteur

44. Les premier et deuxième points de l'article 16.1) et l'article 16.3) de la loi contiennent des dispositions relatives à deux exceptions obligatoires au droit d'obtenteur, conformément aux points i) et ii) de l'article 15.1) de l'Acte de 1991. Il est demandé de vérifier si, dans la version originale de la loi, la traduction du membre de phrase "[l]e droit d'obtenteur peut être utilisé sans l'autorisation de l'obtenteur", à l'article 16.1) de la loi, correspond au membre de phrase "[l]e droit d'obtenteur ne s'étend pas".

45. En ce qui concerne le troisième point de l'article 16.1) de la loi, "pour les actes accomplis aux fins de la création de nouvelles variétés", il conviendrait d'ajouter ce qui suit, par souci de conformité avec l'article 15.1)iii) de l'Acte de 1991 : "ainsi que, à moins que les dispositions de l'article 15.3) ne soient applicables, aux actes mentionnés à l'article 15.1) et 15.2) accomplis avec de telles variétés". Voir aussi les modifications proposées concernant l'article 15 de la loi (paragraphe 42 et 43).

46. Le quatrième point de l'article 16.1) et les alinéas 2) et 4) de l'article 16 de la loi semblent contenir l'exception facultative au droit d'obtenteur prévue à l'article 15.2) de l'Acte de 1991. La traduction de ces dispositions pose quelques problèmes. Par exemple, des précisions sont nécessaires concernant les mots "espèces distinctes", la question étant de savoir s'il s'agit d'espèces sélectionnées ou d'une liste d'espèces. D'autres précisions sur ce que l'on entend par "usage personnel" sont demandées s'agissant de la condition d'utilisation du produit de la récolte "par la mise en culture, sur leur propre exploitation". Ces précisions relatives à la version originale de la loi sont nécessaires pour vérifier sa conformité avec l'article 15.2) de l'Acte de 1991.

Article 16 de l'Acte de 1991 : Épuisement du droit d'obtenteur

47. Certaines dispositions des paragraphes 1) et 2) de l'article 16 de l'Acte de 1991 ne figurent pas dans l'article 17 de la loi. Il est recommandé de modifier ce dernier conformément aux paragraphes 1) et 2) de l'article 16 de l'Acte de 1991.

Article 17 de l'Acte de 1991 : Limitation de l'exercice du droit d'obtenteur

48. L'article 42 de la loi contient des dispositions relatives à une "licence obligatoire". À l'alinéa 3), il est fait référence à l'intérêt public et à d'autres raisons de concéder une licence obligatoire. Il est recommandé de supprimer les raisons supplémentaires aux fins de la conformité avec l'article 17.1) de l'Acte de 1991.

49. La référence à une "rémunération appropriée" à l'article 42.11) de la loi satisfait à l'exigence prévue à l'article 17.2) de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

50. Sous réserve des recommandations concernant les articles 3.12), 14.2), 25.3), 43 et 45 de la loi (voir les paragraphes 14, 31 et 40), la loi ne semble pas contenir de dispositions contraires à l'article 18 de l'Acte de 1991.

Article 19 de l'Acte de 1991 : Durée du droit d'obtenteur

51. L'article 18.1) de la loi contient des dispositions relatives à la durée du droit d'obtenteur. Pour être conforme à l'article 19 de l'Acte de 1991, l'article 18.1) de la loi devrait contenir le mot "arbres" afin d'établir la durée du droit d'obtenteur pour les arbres à 25 ans à compter de la date d'octroi.

Article 20 de l'Acte de 1991 : Dénomination de la variété

52. Les articles 9 à 11 et 38 de la loi contiennent des dispositions relatives à la dénomination de la variété.

53. Il est recommandé de préciser ou de modifier les articles 9, 10, 11, 21.5), 25.3) et 38 de la loi conformément aux dispositions de l'article 20 de l'Acte de 1991, notamment :

- a) l'adjectif "protégée" devrait être supprimé dans l'article 9 de la loi;
- b) l'article 10.2) de la loi devrait être remplacé par le texte des paragraphes 2) et 4) de l'article 20 de l'Acte de 1991;
- c) les articles 10.3) et 4) et 11.3) de la loi devraient être modifiés conformément aux paragraphes 2), 4) et 5) de l'article 20 de l'Acte de 1991;
- d) à l'article 10.5) de la loi, des précisions sont nécessaires sur ce que l'on entend par "types distincts de plantes agricoles";
- e) afin d'éviter toute confusion avec les dispositions relatives aux exceptions au droit d'obtenteur, il est recommandé de supprimer l'article 11.2) de la loi;
- f) à l'article 21.5) de la loi, la référence à des "synonymes" devrait être précisée compte tenu de l'article 20.5) de l'Acte de 1991;
- g) au cinquième point de l'article 25.3) de la loi, il faudrait remplacer le mot "dénomination" dans le membre de phrase "la dénomination latine et macédonienne des espèces auxquelles la nouvelle variété appartient" par le terme "nom" et accorder les adjectifs en conséquence; et
- h) l'article 38.1) de la loi autorise le changement de dénomination à la demande du titulaire du droit d'obtenteur. Il est recommandé de préciser cette disposition compte tenu de l'article 20.7) de l'Acte de 1991.

54. En conclusion, alors que certaines dispositions de l'article 20 de l'Acte de 1991 ont été incorporées dans les articles 9 à 11 et 38 de la loi, ces derniers nécessitent des modifications par souci de cohérence interne et de conformité avec l'Acte de 1991.

Article 21 de l'Acte de 1991 : Nullité du droit d'obtenteur

55. L'article 35 de la loi, intitulé "Procédure d'annulation de la décision de protéger une obtention végétale", semble porter sur les motifs de nullité prévus à l'article 21 de l'Acte de 1991. Il est recommandé de vérifier la traduction par rapport à l'original et de suivre la terminologie employée à l'article 21 de l'Acte de 1991. En outre, il convient aussi de vérifier certains points de cohérence interne par rapport à l'article 18.3) de la loi.

Article 22 de l'Acte de 1991 : Déchéance de l'obtenteur

56. L'article 36 de la loi, intitulé "Annulation de la décision", semble énoncer les motifs de déchéance du droit d'obtenteur prévus à l'article 22 de l'Acte de 1991. Il est recommandé de vérifier la traduction par rapport à l'original et d'employer la terminologie de l'article 22 de l'Acte de 1991. En outre, il convient aussi de vérifier certains points de cohérence interne par rapport à l'article 18.3) de la loi.

57. Les articles 43 à 45 de la loi devraient être précisés pour éviter les répétitions et la création d'obligations supplémentaires à la charge du titulaire du droit d'obtenteur par rapport aux obligations prévues à l'article 22 de l'Acte de 1991.

Article 30 de l'Acte de 1991 : Application de la Convention

58. En ce qui concerne l'obligation de prévoir "les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), les articles 46 à 53 de la loi traitent des recours civils, des sanctions et des amendes disponibles. Ainsi qu'il ressort des paragraphes ci-après, certaines modifications sont recommandées par souci de conformité avec les recommandations concernant d'autres dispositions de la loi.

59. Les articles 46.1), 47.3) et 52.1) de la loi devraient être modifiés pour mentionner les actes non autorisés prévus à l'article 15 de la loi après la modification de celui-ci conformément aux recommandations énoncées dans les paragraphes 42 et 43 du présent document.

60. Il est recommandé de faire référence dans la loi à toute législation de l'ex-République yougoslave de Macédoine prévoyant des mesures provisoires.

61. Les articles 50 et 51 de la loi prévoient des mesures à la frontière en cas de violation du droit d'obtenteur.

62. L'article 53 de la loi devrait être modifié conformément aux modifications recommandées pour les articles 11 et 16 de la loi, concernant respectivement la dénomination de la variété et les exceptions au droit d'obtenteur.

63. L'article 3 de la loi dispose ce qui suit : on entend par "service chargé de la protection des obtentions végétales agricoles" la Direction des semences et du matériel de reproduction ou de multiplication au sein du Ministère de l'agriculture, de la sylviculture et de la gestion de l'eau". L'article 20.1) de la loi dispose que : "[l]a procédure relative à la protection de l'obtention végétale sur la base de la demande et des documents fournis est menée par la Commission d'experts pour la protection des obtentions végétales agricoles". En outre, l'article 33.1) de la loi dispose que si "la variété remplit les conditions [...], le ministre décidera d'accorder la protection pour l'obtention végétale". Il est recommandé de préciser le rôle de la Direction et de la Commission en ce qui concerne l'obligation prévue à l'article 30.1)ii) de l'Acte de 1991. Il est recommandé de prévoir à l'article 20.2) de la loi que des renseignements détaillés concernant la Commission figureront dans le règlement d'application de la loi.

64. Les articles 19, 26.2) et 33.3) de la loi satisfont à l'obligation de publier des renseignements sur les demandes et l'octroi de droits d'obtenteur et sur les dénominations proposées, conformément à l'article 30.1)iii) de l'Acte de 1991. Il est recommandé de préciser dans la loi que la publication de la décision relative à l'octroi du droit d'obtenteur indiquera aussi la dénomination approuvée, comme l'exigent les articles 20.3) et 30.1)iii) de l'Acte de 1991.

65. Il serait utile d'apporter des précisions sur les personnes autorisées à émettre des objections dans l'article 28 de la loi, qui porte sur la publication de la demande.

66. Il est recommandé, pour des raisons de cohérence interne, de préciser les articles 21 et 22 de la loi s'agissant des renseignements à publier au bulletin officiel, des renseignements figurant sur le registre accessible aux personnes intéressées et des mesures appropriées pour préserver l'intérêt légitime de l'obtenteur.

Conclusion générale

67. L'analyse faite dans le présent document montre que la loi contient certaines dispositions de l'Acte de 1991. Cette analyse a cependant permis de repérer un nombre important de dispositions de la loi qui ne sont pas conformes à l'Acte de 1991 (voir les paragraphes 16, 19, 24, 25, 27, 31, 34, 40, 42, 43, 45, 47, 48, 51, 53, 54, 59 et 62 du présent document). En outre, certaines dispositions de la loi font apparaître une incohérence interne tandis que d'autres nécessitent des précisions (voir les paragraphes 8, 9, 10, 11, 13, 14, 28, 29, 32, 37, 53, 54, 55, 56, 57, 60, 63, 64, 65 et 66 du présent document). De plus, l'exactitude de la traduction et la terminologie employée devront être vérifiées par rapport à la version originale de la loi à plusieurs endroits (voir les paragraphes 13, 23, 35, 41, 44, 46, 55 et 56 du présent document). En conclusion, pour que l'ex-République yougoslave de Macédoine soit en mesure de donner effet aux dispositions de l'Acte de 1991, comme le prévoit l'article 30.2), la loi devra être modifiée conformément aux recommandations formulées dans le présent document.

68. *Le Conseil est invité à :*

a) prendre note de l'analyse faite dans le présent document;

b) recommander à l'ex-République yougoslave de Macédoine d'incorporer dans la loi les dispositions supplémentaires et les modifications signalées dans le document C(Extr.)/25/4, et recommander que, dès que ces dispositions supplémentaires et ces modifications auront été incorporées dans la loi, la loi ainsi modifiée soit soumise au Conseil pour examen, conformément à l'article 34.3) de l'Acte de 1991;

c) demander au Bureau de l'Union d'offrir son concours au Gouvernement de l'ex-République yougoslave de Macédoine, à la première occasion, pour la rédaction des dispositions supplémentaires et des modifications nécessaires; et

d) autoriser le secrétaire général à informer le Gouvernement de l'ex-République yougoslave de Macédoine de cette décision.

[Les annexes suivent]

ANNEXE I

Traduction d'une lettre datée du 18 février 2008 (n° 16-01-89)

adressée par : la Mission permanente de l'ex-République yougoslave de Macédoine auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège à Genève
143, rue de Lausanne
CH-1202 Genève

à : M. Kamil Idris
Secrétaire général de
l'Union internationale pour la protection des obtentions végétales (UPOV)

Objet : Note accompagnant une lettre adressée par le ministre des affaires étrangères au secrétaire général de l'UPOV

Monsieur le Secrétaire général,

La Mission permanente de l'ex-République yougoslave de Macédoine auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège à Genève présente ses compliments au secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV) et a l'honneur de lui transmettre la lettre originale datée du 30 novembre 2007, adressée par Son Excellence Antonio Milošoski, ministre des affaires étrangères de l'ex-République yougoslave de Macédoine, à M. Kamil Idris, secrétaire général de l'Union internationale pour la protection des obtentions végétales.

La traduction officielle en anglais de la loi sur la protection des nouvelles variétés de plantes agricoles de l'ex-République yougoslave de Macédoine est jointe à la présente.

La Mission permanente de l'ex-République yougoslave de Macédoine auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège à Genève saisit cette opportunité pour renouveler au secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV) les assurances de sa plus haute considération.

Veillez agréer, ...

(Signé :)

Traduction d'une lettre datée du 30 novembre 2007

adressée par : M. Antionio Milošoski
Ministre des affaires étrangères de
l'ex-République yougoslave de Macédoine

à : M. Kamil Idris
Secrétaire général de l'Union internationale
pour la protection des obtentions végétales (UPOV)
Genève

Monsieur le Secrétaire général,

J'ai le plaisir de vous informer que le Parlement de la République de Macédoine a adopté la loi sur la protection des nouvelles variétés de plantes agricoles le 4 juillet 2007.

J'ai aussi le plaisir de vous informer que la République de Macédoine envisage d'adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Convention UPOV).

Conformément aux dispositions de l'article 34.3) de la Convention UPOV, je saurais gré au Conseil de l'UPOV d'examiner la conformité de la loi sur la protection des nouvelles variétés de plantes agricoles de la République de Macédoine avec les dispositions de la Convention UPOV.

Veillez agréer, ...

(Signé : Antionio Milošoski)

Pièce jointe : traduction officielle en anglais de la loi sur la protection des nouvelles variétés de plantes agricoles

[L'annexe II suit]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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

LAW ON NEW VARIETIES OF AGRICULTURAL PLANTS
OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Translation in English provided by the Government
of The former Yugoslav Republic of Macedonia)

Pursuant to Article 75 paragraphs 1 and 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue this

**DECREE
FOR PROMULGATION OF
THE LAW ON NEW VARIETIES OF AGRICULTURAL PLANTS**

The Law on New Varieties of Agricultural Plants, adopted by the Assembly of the Republic of Macedonia on its session held on 20 June 2007, is hereby promulgated.

No. 07-2892/1
20 June 2007
Skopje

President of the
Republic of Macedonia,
Branko Crvenkovski

President of the
Assembly of the Republic of
Macedonia,
Ljubisha Georgievski

**1. Law on Protection of New Varieties
of Agricultural Plants**

I. GENERAL PROVISIONS

**Article 1
Subject**

This Law shall regulate the procedure for protection of new varieties of agricultural plants, except forest plants, as well as the manner of the procedure for acquisition and protection of the breeder's right to the protected new variety of agricultural plants.

**Article 2
Purpose of the Law**

The purpose of this Law shall be the protection of new variety of all types of agricultural plants, including hybrids among genera and species of agricultural plants.

**Article 3
Meaning of Terms**

The terms used in this Law shall have the following meaning:

1. "Breeder" means one or more national or foreign legal entities or natural persons who have bred, or discovered and developed, a variety;
2. "Breeder's right" means the rights of the breeder arising from this Law;
3. "Holder of a breeder's right" means a legal entity or natural person who has the right to submit an application for the protection of a new variety and has received a decision and a certificate for the protection of a new variety;
4. "Applicant" means a legal entity or natural person who has submitted an application;
5. "Owner of a breeder's right" means a legal entity or physical person who, by protecting the variety, acquires the breeder's right;
6. "Variety" means a plant grouping within the frames of the meaning of the botanical taxon of the lowest known rank, if it can be:
 - defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
 - distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
 - considered as a unit, if those characteristics remain unchanged in the reproduction;
7. "Protected variety" means a variety for which a decision has been issued for the protection of new variety, which contains a description of the variety;
8. "Protected sample" means a definite sample of seed material from the protected new variety;
9. "Public interest" is the state interest for protection and maintenance of new varieties;
10. "Authority" for the protection of new varieties of agricultural plants means the Seed and Propagating Material Directorate within the Ministry of Agriculture, Forestry and Water Economy;

11. DUS test means a procedure for recognition of the variety based on certification of distinctness, uniformity and stability of the variety according to the UPOV Convention;
12. Gen Bank means an institution in which the seed and propagating material of divergent populations and autochthonous types is permanently kept and maintained, in order to protect the biodiversity and keep definite samples of seed and propagating material of varieties registered in the National Variety List; and
13. UPOV means International Union for the Protection of New Varieties of Plants with headquarters in Geneva, Switzerland.

II. CONDITIONS FOR VARIETY PROTECTION

Article 4

Protection Criteria

- (1) The variety shall be protected by gaining the breeder's right.
- (2) Every variety can be protected if it is:
 - new,
 - distinct,
 - uniform,
 - stable and
 - designated by a denomination in accordance with the provisions of Article 10 of this Law.

Article 5

New Variety

- (1) The variety shall be deemed to be new if, at the date of submitting of the application for variety protection, it has not been sold or commercially exploited by or without the consent of the breeder of the variety in the Republic of Macedonia earlier than one year before the date of submitting the application for protection of the new variety at most, and in another country earlier than four years before the date of submitting the application for protection of new variety, while for multi-annual fruit plants and grapevine earlier than six years before the date of submitting the application for protection of new variety.
- (2) Within the meaning of paragraph (1) of this Article, the following shall not be deemed as selling or commercial exploitation of the new variety:
 - transfer of the rights to the variety by an agreement,
 - contracted production, reproduction, finalisation or storing the propagating material or the products from that variety at the expense of the holder of the right, under the condition that the holder of the right keeps the exclusive ownership right to reproduction of the propagating material, the variety products or the products thereof,
 - examination of the variety on the field or in a laboratory, i.e. in an experimental production, in order to determine the variety use value if that is done by the right holder or a person authorized by the right holder,
 - official variety examination for the purpose of registration in the National Variety List, i.e. risk assessment for genetically modified varieties and
 - selling agricultural products created as side-products, i.e. as surplus during the development of the new variety, under the condition that those products be intended for end use and that the denomination of the variety not be given.

Article 6
Distinct variety

- (1) The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the day of submitting the application for protection of a new variety.
- (2) The variety shall be deemed to be a matter of common knowledge if on the day of submitting the application in the Republic of Macedonia:
 - it is registered in the National Variety List in any country by the day of submitting the application,
 - an application is submitted and the procedure is completed by which the variety is registered in the National Variety List in any country; and
 - the propagating material of the variety or a product of the variety has already been traded or it has been used for making profit.

Article 7
Uniform variety

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics, which are of relevant importance for differentiation from other varieties.

Article 8
Stable variety

The variety shall be deemed to be stable if its characteristics, which are of relevant importance for differentiation from other varieties, remain permanent and unchanged after repeated propagation or, in case of a particular cycle of propagation, at the end of each such cycle.

Article 9
Designation of New Variety

The protected variety should be designated by a denomination which will be its generic designation for differentiation from other protected varieties, pursuant to Article 10 of this Law.

Article 10
Denomination of Protected New Variety

- (1) Any designation can be registered as denomination of a protected new variety, which enables differentiation of the variety from another variety and can be a word, a word combination, a combination of words and figures or a combination of letters and figures unless it is not otherwise agreed upon this law.
- (2) A designation cannot be registered as a denomination of a protected new variety if it:
 - is not adequate in terms of the language,
 - disables the variety to be identified,
 - consists solely of figures, unless otherwise provided in the country,

- is equal or similar to the denomination of any other variety whose existence is a matter of common knowledge of a group of plants species, while it is in use,
 - is liable to mislead or to cause confusion concerning the origin, characteristics, values, use, and recognition of the geographical origin,
 - consists of a botanical or a denomination whose existence is a matter of common knowledge of a genus or species or includes such denomination which is liable to mislead,
 - includes words such as genus, species, variety, form, hybrid or a translation of those words into another language,
 - is liable to mislead concerning the breeder or the holder of the breeder's right,
 - is against the public order and moral; and
 - is against the industrial property regulations.
- (3) In case a certain variety has already been registered in the National Variety List or an application has been submitted for such an entry in any signatory country of international agreements or conventions which are signed i.e. acceded by the Republic of Macedonia, in the Republic of Macedonia only the denomination of the variety that was registered can be registered, entered in the National Variety List or listed in the application in another state.
- (4) As an exception of paragraph (3) of this Article in the Republic of Macedonia a certain variety can be registered under another denomination only if the use of the first denomination was not adequate in the terms of the language or because that would be against the public order and moral.
- (5) The manner of registering the denomination of the protected new variety of the separate types of agricultural plants referred to in paragraph (4) of this Article shall be prescribed by the Minister for Agriculture, Forestry and Water Economy (hereinafter referred to as: the Minister).

Article 11 **Use of the Denomination**

- (1) The use of the denomination of the protected new variety shall be mandatory. The propagating material of the protected new variety can be released in trade only if the denomination has been attached on the protected new variety. The obligation for use of the denomination of the protected new variety continues even after the termination of the protection of the variety pursuant to Article 21 paragraph (6) of this Law.
- (2) The provision of paragraph (1) of this Article shall not apply if the propagating material of the protected new variety is used for non-commercial purposes.
- (3) The protected new variety must be designated by the same registered denomination in all states, except in the case referred to in Article 10 paragraph (4) of this Law.
- (4) In trade in propagating material of the protected new variety, apart from the registered denomination, the denomination of a trade mark can be used i.e. another designation provided that the registered denomination is clearly visible and recognisable.
- (5) The denomination of the protected new variety or a denomination which can be replaced with that denomination must not be used for another variety of the same or closely related species of agriculture plants.

III. EXERCISING THE RIGHT TO PROTECTION

Article 12

Right to Protection

- (1) The breeder shall be entitled to ask for a protection of the new variety, as well as his/her legal successor or legal heir.
- (2) If during the process of creating the variety several breeders have participated together, the collective right of protection shall belong to them or to their legal heirs. In case when one or more persons who participated in the creation of the new variety waive the right to protection the other persons, who participated in the creation of the variety may exercise that right.
- (3) If the variety creation is based on an employment agreement between the employee and the employer, in accordance with the tasks, the employee to create new varieties, the right to protection of the new variety shall belong to the employer. When the mutual rights and obligations have been regulated by this agreement, the right to protection of the new variety shall be determined by this agreement.

Article 13

Persons Entitled to Submit an Application for Protection of New Variety

- (1) An application for protection of new variety can be submitted, pursuant to Article 12 paragraph (1) of this Law, by a person or a breeder, which is a citizen of the Republic of Macedonia, other natural persons with permanent stay in the Republic of Macedonia or legal entities established in the Republic of Macedonia.
- (2) The foreign legal entities and natural persons as far as the breeder's right is concerned in the Republic of Macedonia shall have the same rights as the national persons, if it derives from the international agreements signed or acceded by the Republic of Macedonia, or on the grounds of reciprocity. The reciprocity shall be proved by the person referring to the reciprocity.
- (3) The foreign legal entities and natural persons, in the action before the authority, pursuant to Article 19 form this Law, shall exercise their rights by submitting an application through authorised representatives who are national legal entities or natural persons and who deal with representing in the procedure for new variety protection.

IV. THE RIGHTS OF THE BREEDER

Article 14

Acquiring the Breeder's Right

- (1) The breeder shall acquire the breeder's right for new variety protection by entry of that right in the register for protected novelties referred to in Article 21 of this Law.
- (2) The breeder's right shall be right to economic use of the protected new variety.

Article 15
Authorisation of the Breeder

- (1) The authorisation of the breeder shall be required when the protected new variety is used by legal entities and natural persons for:
 - production or reproduction,
 - selling; and
 - exporting and importing.
- (2) The authorisation referred to in paragraph (1) of this Article shall be required when:
 - the propagating material has been obtained without the authorisation for reproduction of the protected new variety; and
 - the breeder has not had reasonable opportunity to require breeder's right for the material for the propagating material of that variety due to justified reasons.
- (3) In the cases referred to in paragraph (1) of this Article an authorisation shall not be required for:
 - varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
 - varieties which are not clearly distinguishable from the protected variety; and
 - varieties i.e. hybrids whose production requires the repeated use of the protected variety.
- (4) A variety shall be deemed to be essentially derived from another variety when:
 - it is mostly predominantly derived from the initial (original) variety, or from a variety which is itself predominantly derived from the initial variety; and
 - it is clear distinguishable from the initial variety by at least one characteristic.

Article 16
Exceptions to the Breeder's Right

- (1) The breeder's right can be used without the breeder's authorisation:
 - for acts done privately and for non-commercial purposes,
 - for acts done for experimental purposes,
 - for acts done for the purpose of breeding other varieties and
 - if the protected new variety from separate species of agriculture plants is produced on the producer's own property for personal use and he/she pays a certain fee to the holder of the breeder's right, with the exception of the small producers of propagating material.
- (2) The fee referred to in paragraph (1) indent 4 of this Article shall be less than the licensed production of the reproduction material from that variety on the same territory.
- (3) The producer who uses it for further harvest pursuant to paragraph (1) indent 1 of this Article shall be bound to provide all data concerning the further reproduction to the breeder upon request of the holder of the breeder's right.
- (4) The small producers of propagating material from the protected new variety shall be determined by the minister depending on the genera and species of the plants.

Article 17
Exhaustion of the Breeder's Right

The authorisation of the breeder shall not be required for the use of certain parts of plants for further multiplication with the exception when it:

- involves further propagation of the variety; or
- involves an export into a country which does not protect the new varieties of the plant genus or species to which the variety belongs.

Article 18

Duration and Termination of the Right to Protection

- (1) The breeder's right for grapevine, fruit plants, hop and potato shall last for 25 years, while for all other genera or species it shall last for 20 years from the day of obtaining the breeder's right by the end of the calendar year.
- (2) If during the procedure for protection of the new variety it has been used for commercial purposes, contrary to Article 15 of this Law, the person who submitted an orderly application for granting a breeder's right shall be entitled to a suitable damage compensation, according to the general regulations for damage compensation, but only for the period from the date of publication of the application in the Official Gazette of the Republic of Macedonia by the date of recognition of the breeder's right.
- (3) The breeder's right shall cease to be valid if:
 - the holder of the breeder's right has cancelled,
 - the time frame referred to in paragraph (1) from this Article has expired; and
 - the decision with which the right was gained is annulled.

V. PROCEDURE FOR VARIETY PROTECTION

Article 19

Authority

The Directorate shall be authorised to:

- conduct an administrative procedure for protection of the new variety and registration of the denomination of the new variety ,
- keep a register of applications for protection of novelties and a register for the protected novelties,
- publish data in the Official Gazette of the Republic of Macedonia concerning the applications, including the proposal for the variety denomination, the rejection of the applications, the entry and possible changes of the registration in the register of applications, the withdrawal of the applications, the decisions for protection of the new variety and its possible changes, as well as other official notifications,
- cooperate with other state bodies within the Directorate, international organisations and associations, with associations of citizens, as well as with nongovernmental organisations in the area of protection of the new variety,
- exchange results from the examinations of the varieties and other information within their competences with the authorities from other states,
- control the fulfilment of the obligations of the holders of the breeder's right; and
- perform other activities laid down by this Law.

Article 20

Commission for Protection of New Varieties

- (1) The procedure for protection of the new variety on the basis of the application and the submitted documentation shall be conducted by Expert Commission for Protection of New Varieties of Agriculture Plants.
- (2) The commission for protection of new varieties of agriculture plants (hereinafter referred to as: the Commission) shall be appointed by the Government upon a proposal of the minister. The Commission shall consist of five members, of which four members are selected from among experts with at least seven years of work experience in the area of plant production and one member of the Directorate's employees which elect a president and his/her deputy from among themselves.
The president of the Commission shall be elected by the members. The president and members of the Commission shall be elected for a period of four years with the right to re-election. The president and the members shall be entitled to remuneration in the amount determined by the minister, and provided in accordance with the Programme for Protection of New Varieties of Agriculture Plants.
- (3) The manner of operation of the Commission shall be laid down by the Commission's Rules of Procedure.
- (4) The Commission shall submit a report for its operation to the minister at least once a year.

Article 21

Registers

- (1) The Directorate shall keep a register of application for protection of new varieties and a register for protected new varieties.
- (2) Data concerning the submitted applications and the granted rights shall be entered in the register.
- (3) The register of registered and protected new varieties shall keep records, for at least 15 types of agriculture plants, and after the membership of the Republic of Macedonia in UPOV within ten years records shall be kept for all species and varieties of agriculture plants.
- (4) The register of applications shall keep records on the following:
 - data on the applicant, breeder or the authorised representative,
 - date of submission of the application,
 - plant genera and species,
 - proposal for temporary designation on the variety i.e. application for the denomination of the variety,
 - application for stopping i.e. termination of the action and
 - comments on the court decision in terms of the right of submitting an application.
- (5) The register of protected new varieties shall keep records on the:
 - plant genera and species and the registered denomination of the variety with all synonyms,
 - variety description and appropriate documents,
 - varieties the breeding of which requires constant use of certain ingredients for the production of propagating material of the protected variety, those ingredients are also stated,
 - the name and surname of the holder of the breeder's right, the breeder and the authorised representative,

- the date of the commencement and termination of the variety protection with the reasons for the termination,
 - the name and address of the person who has transferred the right for commercial use of the variety by a license agreement,
 - the name and address of the person who has been granted a forced license, followed by the conditions under which it has been granted and the date of termination of that right; and
 - comments on the court decisions concerning the breeder's right.
- (6) The Directorate must keep the collection of documents for individual cases in original and copies for at least five more years after the withdrawal or rejection of the application, i.e. five years after the termination of the breeder's right.
- (7) The species and varieties subject to mandatory protection, the form and contents and the manner of keeping the register of applications for protection of new variety and the register for protected new varieties shall be prescribed by the minister.

Article 22
Public Access to Registers

- (1) The register of applications and the register of protected new varieties shall be public. The registers shall be available to the public only in the presence of an official person. Upon written request of the interested persons, the Directorate shall issue a statement from the registers within 30 days from the submission of the application.
- (2) The Directorate shall be bound to provide access to its documentation and the information on the submitted applications and the recognised rights i.e. granted rights upon written request of every person who will prove to be entitled, with the exception of the documentation which is not published in the Official Gazette of the Republic of Macedonia and concerning the following:
- documents which are submitted with the applications,
 - documents which refer to the breeder's rights that have been obtained, and
 - documentation on official examinations of the varieties.
- (3) The applicant can request for the data concerning the composition of the variety not to be available to the public.
- (4) With the exception of paragraph (1) of this Article it can be requested for the data not to be available to the public in case of hybrid, in the course of the duration of the procedure for protection of the new variety, as well as after the protection has been performed.
- (5) The documentation and information referred to in paragraph (2) of this Article, as well as other services connected to protection of the new variety protection and obtaining the breeder's right shall be available if the claimant has borne all costs incurred.

Article 23
Costs for Procedure

- (1) In a procedure for protection of new variety and maintaining the breeder's right, the applicants i.e. the holder of the breeder's right shall pay the costs for the conducted procedure for recognition i.e. granting the right.
- (2) The amount of the separate costs of the procedure referred to in paragraph (1) of this Article and the amount of the costs for providing informative services referred to in Article 22 paragraph (5) of this Law depending on the type of the plant, the complexity of the procedure and the time needed for professional evaluation of the variety shall be

determined by the Government of the Republic of Macedonia upon proposal of the Minister of Finance and they will be revenues in the Budget of the Republic of Macedonia.

Article 24

Administrative procedure for Protection of New Variety

- (1) The Directorate shall make initial decision in the procedure for protection of the new variety and for obtaining the breeder's right.
- (2) In the administrative procedure the Directorate shall act according to the provisions of this Law and the regulations adopted on the basis of this Law, and the Law on General Administrative Procedure will apply for all that has not been provided for with this Law.
- (3) Against the decision adopted by the Director of the Directorate, the party shall be entitled to file a complaint to the minister.
- (4) The complaint shall be submitted within 30 days from the day of delivery of the decision to the party.

Article 25

Commencement of the Procedure for Protection of New Variety

- (1) The procedure for protection of new variety shall commence with the submission of an application to the Directorate:
- (2) For every new variety for which protection has been requested a separated application shall be submitted.
- (3) The orderly application should contain at least the following data:
 - data on the variety the protection of which has been requested,
 - data on the applicant i.e. a orderly power of authority from his/her representative,
 - data on the breeder in case he/she is not the applicant himself/herself,
 - data on the mutual representative, in case several breeders have participated in the creation of the variety,
 - the Latin and Macedonian denomination of the species to which the new variety belongs,
 - proposal on the denomination of the new variety i.e. a temporary designation of the new variety,
 - technical description of the variety,
 - data that the variety has been created by means of genetic engineering. In that case, in addition to the application previous consent for examination of that variety should be enclosed, in accordance with the regulations of the genetically modified organisms; and
 - paid prescribed tax for the application and evidence for completion of the payment.
- (4) In addition to the application referred to in paragraph (1) of this Article other data and attachments are also enclosed upon request of the Directorate.
- (5) If the Directorate finds that the application is not orderly, it shall summon the applicant to eliminate the determined drawbacks within 30 days from the day of summoning.
- (6) Upon an explained request of the applicant, for justified reasons, the time limit referred in paragraph (1) of this Article may be prolonged for 60 days.
- (7) If the applicant fails to eliminate the determined drawbacks and fails to pay the costs within the set time limit referred to in Article 23 paragraph (1) of this Law, the application shall be rejected with a conclusion.

- (8) The data from the rejected or withdrawn application shall be entered in the register of applications and published in the Official Gazette of the Republic of Macedonia.
- (9) The manner and form of the application referred to in paragraph (3) of this Article shall be prescribed by the minister.

Article 26

Date of Submitting and Publishing the Applications

- (1) The date of receipt of the completed application in the Directorate shall be deemed as date of submission of the application.
- (2) The data in the completed application shall be entered in the register of applications and the applicant is issued the application, while the Directorate publishes the application in the Official Gazette of the Republic of Macedonia.
- (3) If the applicant eliminates the drawbacks on the application within the time limit set out in Article 25 paragraph (5) and (6) of this Law, the Directorate shall determined the date of submitting the application.

Article 27

Right of Priority

- (1) The legal entity or natural person who has submitted an orderly application for protection of a new variety in a member state of international agreements and treaties signed and acceded to by the Republic of Macedonia, shall be recognised the right of priority in the Republic of Macedonia from the day of submission of the application.
- (2) An orderly application shall be deemed to be an application whose date of submission is determined according to the national legislation of the country where the application has been submitted.
- (3) If the applicant claims right of priority pursuant to paragraph (1) of this Article, he/she shall be bound to enter all data for the application to which the applicant refers to (state, date and application number) in the application submitted in the Republic of Macedonia and within 12 months from the submission of the application to enclose a transcript of the first application certified by the authority of the member state where the first application has been submitted, as well as translation of the first application into Macedonian language.
- (4) The applicant must explicitly claim the right of priority referred to in paragraph (1) of this Article in the application.
- (5) The applicant may claim right of priority in the Republic of Macedonia within two years form the day of submitting the first orderly application in the member state.

Article 28

Appeal to the Published Application

- (1) The appeal to the published application in the Official Gazette of the Republic of Macedonia pursuant to Article 26 paragraph (1) of this Law can be submitted by a person who is entitled to this. The appeal can be submitted to the Directorate while the procedure for submitting the right to protection of new variety is in progress.
- (2) The appeal can be submitted only regarding the fulfilment of the conditions for protection of the new variety pursuant to Articles 4, 5, 6, 7, 8 and 10 of this Law, i.e. the legitimacy for protection pursuant to Article 12 of this Law.

- (3) The appeal shall be submitted in a written form with an explanation. Appropriate evidence concerning the appeal shall also be enclosed in addition to the appeal.
- (4) For every published application, a separate appeal shall be submitted if the rights of the owner have been violated.

Article 29

Examination of the Appeal

- (1) The Directorate shall examine whether the appeal has been submitted by a person who has the right to file an appeal pursuant to Article 28 paragraph (1) of this Law and whether the appeal has been submitted within the prescribed time limit.
- (2) If the conditions referred to in paragraph (1) of this Article have not been fulfilled, the Directorate shall make a conclusion for rejection of the appeal.
- (3) If the conditions referred to in paragraph (1) of this Article have been fulfilled, the Directorate shall submit the appeal to the applicant and shall summon applicant within 30 days to explain the reasons stated in the appeal.
- (4) If the applicant does not explain the reasons stated in the appeal within the determined time limit referred to in paragraph (3) of this Article, the Directorate will decide on the grounds of the findings in the appeal.
- (5) The Directorate shall inform the applicant of his/her opinion for a period no longer than 90 days.

Article 30

Examination of the Contents of the Application and the Denomination of the Variety

- (1) The Directorate shall examine the contents of the application and on the basis of the data stated in the application it shall check whether the variety is new, stable, permanent and whether the applicant has the right to obtain a breeder's right. If it is found that the conditions for obtaining a breeder's right have not been fulfilled, the application shall be rejected pursuant to the Articles 5 and 12 of this Law.
- (2) The Directorate shall examine the adequacy of the denomination of the new variety. In case the proposed denomination of the new variety is contrary to the provisions of Article 10 of this Law, the Directorate shall summon the applicant to propose a new denomination for the variety within 60 days from the summoning.
- (3) The Directorate will use solely the denomination of the variety, in the procedure for protection of the new variety, which has been entered in the register of applications for protection of the new variety.

Article 31

Professional Evaluation of the Variety

- (1) If the conditions provided for in Articles 26 and 29 of this Law have been fulfilled, professional assessment shall be made of the new variety in order to:
 - check whether the variety belongs to the systematic unit, i.e. plant genera or species which is stated in the application,
 - determine whether the variety is distinct, uniform and stable pursuant to Articles 6, 7 and 8 of this Law; and
 - prepare a description of the variety if it fulfils the conditions referred to in indents 1 and 2 of this paragraph.

- (2) The professional evaluation of the new variety shall be made on the basis of the results obtained in the examination of the variety on field and in laboratory (DUS – test) conducted in the Republic of Macedonia or in another state by an authority.
- (3) The professional evaluation of the new variety can be made by:
 - the Directorate or the Professional Commission referred to in Article 20 of this Law or the authority abroad,
 - in case the examinations are made in comparative agro climate, i.e. agro ecological conditions according to the prescribed procedures and methods; and
 - upon request of the registrator and applicant after the consent of the Directorate.
- (4) In the course of the professional evaluation of the new variety, the Directorate can use the results from the examination of the variety obtained from another country which has the adequate agro ecological conditions as in the Republic of Macedonia, if the examination has been made within the frames of the international examination systems and if the evidence for the results have been derived on the basis of the international agreements signed or acceded to by the Republic of Macedonia.
- (5) The manner of operation and the procedures for professional evaluation shall be prescribed by the minister.

Article 32

Providing Conditions for the Professional Evaluation of the Variety

- (1) The applicant has to deliver the necessary data, documents and propagating material within the time limit referred to in Articles 26 and 29 of this Law for professional evaluation of the new variety pursuant to Article 31 paragraph (1) of this Law.
- (2) If the applicant does not fulfil the requirements referred paragraph (1) of this Article for justified reasons, the Directorate shall reject the application with a decision.

Article 33

Decision and Certificate for Protection of a New Variety

- (1) If the professional evaluation determines that the variety fulfils the conditions referred to in Article 31 of this Law and the applicant fulfils all the necessary conditions, the minister will adopt a decision for protection of the new variety.
- (2) The data from the effective decision for protection of the new variety shall be entered in the register of applicants and in the register for protected new varieties and published in the Official Gazette of the Republic of Macedonia.
- (3) With the effectiveness of the decision for protection of a new variety the minister shall issue a certificate for obtaining a breeder's right to the holder of the breeder's right. The certificate for obtaining the breeder's right shall be valid from the day the decision for protection of a new variety becomes effective, and is issued within six months from the day the decision becomes effective and it is published in the Official Gazette of the Republic of Macedonia.
- (4) An appeal can be submitted to the Government of the Republic of Macedonia – Second Instance Commission for Settling Administrative Affairs in the field of Agriculture, Forestry, Water Economy and Veterinary against the decision referred to in paragraph (1) of this Article.
- (5) The form and contents of the decision and the certificate for protection of a new variety shall be prescribed by the minister.

Article 34

Termination of the Breeder's Right

- (1) The breeder's right shall be terminated before the expiry of its validity if that is requested with a written statement of the holder of the breeder's right.
- (2) If the holder of the breeder's right submits a written statement to the Directorate by which he waives the breeder's right pursuant to Article 18 paragraph (3) indent 1 of this Law, the Directorate shall issue a decree for termination of the breeder's right.
- (3) The breeder's right shall be terminated the following day from the day of orderly submission of the statement of the holder of the breeder's right referred to in paragraph (2) of this Article.
- (4) On the basis of the effectiveness of the decision, the termination of the breeder's right shall be entered in the register of new protected varieties and published in the Official Gazette of the Republic of Macedonia.

Article 35

Procedure for Annuling the Decision for Protection of a New Variety

- (1) The decision for protection of the new variety will be annulled if it is found that there were no conditions provided for with this Law for recognition of that right, i.e. if it is found that:
 - on the day of receipt of the completed application pursuant to Article 5 of this Law the variety was not new or pursuant to Article 6 of this Law it was not different,
 - the variety that was protected, above all, on the basis of the data which were delivered by the applicant on the day of receipt of the completed application pursuant to Article 7 of this Law or it was not uniform or pursuant to Article 8 of this Law was not stable; and
 - the breeder's right is granted to a person without legal basis to be holder of the right, while the person was entitled to this, pursuant to Article 37 of this Law did not ask for a forced transfer of the breeder's right.
- (2) The decision for protection of the new variety can be annulled for the entire duration of the protection ex officio, upon proposal of the interested person or in by a court decision.
- (3) The proposal for annulment of the decision shall be submitted in written form to the Directorate.
- (4) In addition to the proposal referred to in paragraph (2) of this Article the applicant shall be bound to provide the necessary evidence.
- (5) The Directorate shall be bound to provide the proposal to the holder of the right within 15 days from the receipt of the proposal and to summon him/her to make a statement within a determined period which cannot be longer than 60 days from the day of receiving the announcement.
- (6) The decision for annulment of the decision for protection of a new variety shall be entered in the register of the protected new varieties and published in the Official Gazette of the Republic of Macedonia.
- (7) If it is found that there were no conditions provided for in paragraph (1) of this Article, the minister shall annul the previously adopted decision for protection of the new variety by a decision.

Article 36
Annulment of the Decision

The Directorate shall annul the decision for protection of the new variety without the consent or upon request of the parties if it claims that the holder of the breeder's right:

- has not fulfilled the obligations pursuant to Article 44 of this Law or pursuant to Article 7 of this Law the variety is no longer uniform or pursuant to Article 8 of this Law the variety is not stable.
- upon written request to the Directorate within the determined time limit, fails to provide material for multiplication and other documents as confirmation for maintenance of the variety pursuant to Article 44 of this Law,
- upon written request to the Directorate within the determined time limit, fails to provide a new proposal on the denomination of the variety pursuant to Article 38 paragraph (1) of this Law; and
- fails to pay the tax for maintaining the validity of the breeder's right pursuant to Article 43 of this Law.

Article 37
Transfer of the Breeder's Right

- (1) If a person which did not have the right to submit an application for protection of a new variety, has submitted an application or has been recognised the breeder's right, the person who had the right to submit an application for protection of a new variety may initiate a procedure to transfer the breeder's right to himself/herself and to claim damage compensation from that person.
- (2) The request referred to in paragraph (1) of this Article may be submitted the following day after publication of the application but no longer than five years from the publication of the application in the Official Gazette of the Republic of Macedonia.
- (3) If the right obtained without legal grounds pursuant to paragraph (1) of this Article has been transferred to a third person, the decision for transfer of the right will be revoked by the Directorate upon request of the person who has legal grounds.
- (4) An appeal can be submitted to the Government of the Republic of Macedonia – Second Instance Commission for Settling Administrative Affairs in the field of Agriculture, Forestry, Water Economy and Veterinary against the decision referred to in paragraph (1) of this Article.

Article 38
Deletion of Variety Denomination

- (1) The registered denomination of the new variety shall be deleted from the register of applications for protection of a new variety and the register of protected new varieties in cases when:
 - the applicant or the holder of the breeder's right request so, while the request for deletion of the variety denomination must state the reasons for deletion and proposal for a new denomination,
 - it is additionally determined that the variety denomination is registered despite the existence of reasons for rejection pursuant to Article 10 of this Law; and
 - the holder or another person has been prohibited to use that denomination.
- (2) The Directorate shall inform in written form the applicant or the holder of the breeder's right of the proposal or of the request for deletion of the denomination of the new

- variety and shall summon him/her to submit a proposal for a new denomination within three months from the receipt of the request.
- (3) After the conducted procedure pursuant to Article 30 of this Law, the proposed denomination shall be entered in the appropriate register and published in the Official Gazette of the Republic of Macedonia, while at the same time the previous denomination shall be deleted from the register.

Article 39

Return to Previous Condition

- (1) If the application, the holder of the breeder's right or a third person fails to pay the costs and taxes or fails to fulfil the other liabilities to the Directorate in the procedure for protection of a new variety, due to justified reasons, within the prescribed period, due to which he/she has lost his/her rights pursuant to Article 36 of this Law, he/she may request return of those rights.
- (2) The request shall be submitted within two months after the reasons for non-fulfilment, non-settlement and non-performance of the liabilities have ceased, but no longer than one year from the expiry of the time limit for non-fulfilment, non-settlement and non-performance of the liabilities.
- (3) In addition to the request, an explanation for the non-fulfilment, non-settlement and non-performance of the liabilities shall be enclosed, as well as evidence for non-payment of tax and costs.
- (4) If the request for return in previous condition is accepted, the Directorate shall set a new time limit within which the non-settled liabilities should be completed or settled, which may not be longer than one year, starting from the day of receipt of the decision for acceptance of the request.
- (5) The person submitting the request for return in previous condition shall not be entitled to claim damage compensation, if during the time between losing the right and its return, the protected new variety was not subject to use or to a concluded agreement for use of the protected new variety.

VI. TRANSFER AND CONCESSION OF THE BREEDER'S RIGHT

Article 40

Agreement for Transfer of the Breeder's Right

- (1) The holder of the breeder's right may be entirely or partially transfer the breeder's right to another person.
- (2) The person who has the right to submit an application, i.e. the applicant may transfer the right for submission of an application for protection of a new variety or the rights deriving from the submitted application for protection of the new variety to another person.
- (3) The agreement for transfer of the breeder's right must be drawn up in written form and the signatures of the contracting parties must be certified by a public notary.
- (4) The agreement referred to in paragraph (3) of this Article shall be entered in an appropriate register kept in the Directorate.
- (5) The agreement referred to in paragraph (3) of this Article which has not been drawn up in written form and not certified by a public notary shall not have legal effect.

- (6) The agreement for transfer of the breeder's right which has not been entered in the appropriate register referred to in Article 21 of this Law shall not have legal effect towards third persons.

Article 41
License Agreement

- (1) The holder of the breeder's right may transfer the breeder's right for commercial use of the protected new variety to a third person with a license agreement. The license agreement must be drawn up in written form.
- (2) If several persons are holders of the breeder's right, consent from all persons shall be necessary for conclusion of the license agreement.
- (3) If there is no consent for conclusion of the license agreement referred to in paragraph (2) of this Article for concession of the breeder's right for usage, the regulations in the area of the ownership shall apply.
- (4) The license agreement which has not been drawn up in written form shall not have legal effect.
- (5) The license agreement, upon request of one of the parties, shall be entered in the appropriate register kept in the Directorate.
- (6) The license agreement which has not been entered in an appropriate register referred to in Article 21 of this Law shall not have legal effect towards third persons.

Article 42
**Contents of the Agreement for Forced License
and Granting a Forced License**

- (1) The license agreement must contain provisions on the case, duration of the license, scope of the license, determination whether the license is exclusive, as well as provisions on the amount of the compensation for the conceded use of the breeder's right, if the compensation has been agreed.
- (2) In the license agreement, every provision which determines limitations to the user of the license shall be null and void, which do not derive from the breeder's right which is subject to an agreement or is necessary for retaining that right.
- (3) If there is public interest, and the protected new variety is not used for commercial purposes or is insufficiently used by the holder of the breeder's right or with his authorisation by other persons and there is no interest for conclusion of an agreement for transfer of the right to another person for the purpose of using or unjustified conditions are set, a forced license may be granted to another person.
- (4) The forced license may be granted only to a person which will prove to have at disposal material for reproduction, as well as professional, technical and financial conditions for use of the breeder's right.
- (5) The forced license shall not be granted if the holder of the breeder's right proves that there are justified reasons for non-utilisation or insufficient utilisation of the protected new variety.
- (6) The forced license shall not be granted if from the day of granting the breeder's right by the day of submitting the request for granting the forced license at least three years have not passed.
- (7) With the forced license, only the holder of the license shall have the right for full or partial performance of the activities referred to in Article 15 of this Law, partially or as a whole, for the purpose of supplying the domestic market.

- (8) A forced license may be granted for a period of at least three years, but no longer than five years.
- (9) The forced license may be continued if when re-examining the conditions referred to in paragraph (1) of this Article it is determined that there are reasons to grant a forced license. The Directorate shall make decisions concerning the request for granting, i.e. continuing the forced license.
- (10) Prior to adopting the decision to grant a forced license, the Directorate may ask for opinion from the interested associations.
- (11) In case of granting a forced license, the owner of the breeder's right shall be entitled to appropriate remuneration.
- (12) The holder of the breeder's right shall determine the amount of the remuneration referred to in paragraph (11) of this Article with the person who has been granted the forced license.
- (13) If no agreement is reached on the amount of the remuneration referred to in paragraph (12) of this Article, it shall be determined by the Directorate depending on the genera and species and the category of the propagating material.
- (14) On the basis of the forced license, the Directorate may require the holder of the breeder's right to provide a sufficient quantity of propagation material for reproduction and use of the variety to the holder of the forced license. The holder of the breeder's right shall receive an appropriate remuneration for the reproduction material from the holder of the forced license depending on the genera and species and the category of the propagating material.
- (15) In the case of a forced license, the holder of the breeder's right may request information on the production of the material for reproduction of the protected variety from a professional institution, authorised to perform professional control of the production of the reproduction material.

VII. LIABILITIES OF THE HOLDER OF THE BREEDER'S RIGHT

Article 43

Means for Performing Activities for Maintaining the Breeder's Right

- (1) The means for financing the setup of comparative examinations and keeping the definite samples in Gen bank shall be provided in accordance with the annual Programme for Protection of New Varieties.
- (2) Besides the funds referred to in paragraph (1) of this Article for maintaining the breeder's right, the funds shall also be provided from the remuneration paid by the holder of the breeder's right.
- (3) The remuneration referred to in paragraph (2) of this Article shall be paid at the beginning of the calendar year, by 31 January at the latest.
- (4) The time limit referred to in paragraph (3) of this Article may be extended up to six months from the orderly submission of the notification upon an explained request of the holder of the breeder's right.
- (5) If the remuneration for maintaining the breeder's right has not been paid even after the expiry of the additional time limit referred to in paragraph (3) of this Article, the right shall cease to be valid.
- (6) The amount of the remuneration referred to in paragraph (2) of this Article shall be determined by the Government of the Republic of Macedonia, upon proposal of the

Minister for Finance depending on the plant genera and species and the category of the propagating material and they are revenue of the Budget of the Republic of Macedonia.

Article 44

Maintaining the Protected Variety

- (1) While the protection of the new variety is ongoing, the holder of the breeder's right shall be bound to maintain the protected variety, i.e. to keep its inherited characteristics unchanged.
- (2) Upon request of the Director, the holder of the breeder's right must provide the Directorate with documents or material for reproduction necessary to examine the maintenance of the variety.
- (3) If during the examination it is found that the holder of the breeder's right does not maintain the variety the Directorate shall initiate a procedure for repealing i.e. annulling that breeder's right.

Article 45

Protected Variety

- (1) The holder of the breeder's right must provide a protected variety from the propagating material for reproduction of the protected new variety to the Directorate within a determined time limit, for:
 - renewal of the protected sample,
 - conducting comparative examinations with the other varieties which are in procedure for protection; and
 - storing in a Gen bank.
- (2) The Directorate may authorise the holder of the breeder's right to keep or renew the protected material for reproduction himself/herself, if there are appropriate storing conditions.

Article 46

Right to Information in Case of Violation of the Right

- (1) If a person economically exploits and produces reproducing material of a protected new variety with no agreement to that purpose in place i.e. contrary to an agreement concluded with the holder of the breeder's right, this person shall be bound to provide all necessary data upon request from the holder of the right.
- (2) If data is not provided voluntarily, the holder of the breeder's right may request that the Inspectorate adopt a decision ordering the violator to submit the data requested.
- (3) The decision referred to in paragraph (2) hereunder may be appealed in front of the Minister.
- (4) The appeal shall not delay the enactment of the decision.

VIII. COURT PROTECTION

Article 47

Damage Compensation Lawsuit

- (1) A person having violated the right with the reported i.e. protected new variety shall be considered responsible for the damage in accordance with general damage compensation regulations.
- (2) A person whose rights have been violated may, in addition to damage compensation, request that further violation of rights be prohibited to the person having violated the rights.
- (3) Breeder's right violation shall refer to any unauthorised economic exploitation of a protected new variety i.e. production, finishing, release in trade, export or import, without previous consent thereto from the holder of the breeder's right to the specific protected new variety.

Article 48

Lawsuit for Breeder's Right Violation

- (1) A lawsuit for breeder's right violation may be launched within three years following the date on which the plaintiff learned about the violator i.e. the violation. No lawsuit may be launched if more than five years have passed the date of the violation.
- (2) The lawsuit referred to in paragraph (1) of this Article shall be launched with the competent court.

IX. SUPERVISION

Article 49

Enactment

Supervision over the enactment of provisions contained in the present Law and of regulations adopted on the basis of the present Law shall be performed by the Ministry of Agriculture, Forestry and Water Economy.

Article 50

Supervision Performed by Agriculture Inspectors

- (1) Supervision over the enactment of provisions contained in Articles 11, 15, 16 and 46 of the present Law shall be performed by the State Agricultural Inspectorate via state agriculture inspectors and by phytosanitary inspectors located on border crossings.
- (2) Should justified doubt arise with the state agriculture inspector during supervision of a violation having been done, the state agriculture inspector shall temporarily seize objects having been used or intended to be used within the violation or objects having been obtained with the violation as such.
- (3) The state agriculture inspector shall with no delay hand over objects he/she has temporarily seized, accompanied by a proposal for initiating a misdemeanour procedure.

Article 51

Supervision Performed by Phytosanitary Inspectors

- (1) In case an owner of a breeder's right draws attention to the possibility of his/her breeder's right being violated with the export of certain protected new varieties from the Republic of Macedonia or during import to the Republic of Macedonia, the phytosanitary inspector may, upon proposal from this breeder's right owner, order that the following be done at the border crossing:
 - that the owner or owner's representative inspect the material in question; and
 - that the material in question be seized, removed from trade and stored.
- (2) Within the proposal referred to in paragraph (1) of this Article, the breeder's right holder shall have to submit the following to the phytosanitary inspector: a more detailed description of the protected new variety material, satisfactory evidence towards the existence of the breeder's right and of potential violation thereof;
- (3) Upon request from the phytosanitary inspector, the breeder's right owner shall be bound to deposit security for any damage likely to occur with the enactment of such measures.
- (4) The phytosanitary inspector shall immediately inform the importer, exporter or receiver of the protected new variety propagating material on measures undertaken if import is involved of a protected new variety propagating material to the Republic of Macedonia;
- (5) The phytosanitary inspector shall revoke measures undertaken if the holder of the breeder's right does not launch an appeal thereto within seven days.

X. MISDEMEANOUR PROVISIONS

Article 52

Fines

- (1) A fine of EUR 3,000 to 5,000 in denar countervalue shall be imposed for a misdemeanour to a legal entity in the following cases:
 - it has, without any previous permission from the owner of the breeder's right, produced or reproduced propagating material of the protected reproduction variety (Article 15, paragraphs (1) and (2)); and
 - it has released into trade, imported or exported any propagating material of the protected new variety without having fulfilled conditions pursuant to the present Law (Articles 14, 15, 16, 17 and 18).
- (2) A fine of EUR 500 to 1,000 in denar countervalue shall be imposed for the misdemeanour mentioned in paragraph (1) of this Article also to the responsible person at the legal entity.
- (3) A fine of EUR 200 to 800 in denar countervalue shall be imposed to a natural person for the misdemeanour referred to in paragraph (1).

Article 53

Fines

- (1) A fine of EUR 1,000 to 3,000 in denar countervalue shall be imposed for a misdemeanour to a legal entity in the following cases:
 - it has, contrary to Article 11, paragraph (1) of the present Law, released in trade propagating material of the protected new variety, in case the variety's registry

- denomination has not been specified or in case the specific denomination has not been stated correctly,
- it has, contrary to Article 11, paragraph (5) of the present Law, used the denomination of a new variety protected by the present Law or another denomination that may easily be confused with the denomination of another variety belonging to the same or related species, and
 - it has, contrary to Article 16, paragraph (3) of the present Law i.e. Article 46 of the present Law, fail to issue requested data to the owner of the breeder's right.
- (2) A fine of EUR 200 to 500 in denar countervalue shall be imposed for the misdemeanour referred to in paragraph (1) of this Article also to the responsible person at the legal entity.
- (3) A fine of EUR 300 to 500 in denar countervalue shall be imposed to a natural person for the misdemeanour referred to in paragraph (1).

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 54

Coordination of Work

- (1) A breeder's right over a variety having been protected prior to the entry into force of the present Law shall continue to exist by the expiration of the obtained breeder's right validity.
- (2) A breeder's right over a variety referred to in paragraph (1) of this Article may be annulled or cancelled prior to the expiration of its validity period only if it be found that conditions in terms of distinctness, uniformity and stability have not been fulfilled with the granting of such right.

Article 55

Cessation of Validity of the Previous Law

The day this Law enters into force, the provisions of Articles 61 through 85 of the Law on Seeds, Seedlings and Propagating Materials, and Variety Recognition, Approval and Protection (Official Gazette of the Republic of Macedonia No. 41/2000) shall cease to be valid.

Article 56

Entry into Force

This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Republic of Macedonia.

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