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UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES
GENÈVE

CONSEIL

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Genève, 11 avril 2008

**EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI SUR LA PROTECTION
DU DROIT D'OBTENTEUR DE LA RÉPUBLIQUE DE SERBIE
AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV**

Document établi par le Bureau de l'Union

Introduction

1. Dans une note datée du 25 février 2008, adressée au secrétaire général de l'UPOV, la Mission permanente de la République de Serbie auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège à Genève transmet une lettre de Son Excellence Slobodan Milosavljevic, ministre de l'agriculture, de la sylviculture et de l'hydrologie de la République de Serbie (ci-après dénommée "Serbie"), demandant l'examen du "projet de loi sur la protection du droit d'obtenteur" (ci-après dénommé "projet de loi") 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. L'annexe II contient une traduction en anglais du projet de loi fourni par les autorités serbes.

2. 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".

Fondement de la protection des obtentions végétales en Serbie

3. En Serbie, la protection des obtentions végétales sera régie par le projet de loi lorsqu'il aura été adopté. On trouvera ci-après une analyse de ce projet de loi dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

4. L'article 2 du projet de loi contient des définitions conformes aux définitions correspondantes que contient l'article premier de l'Acte de 1991.

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

5. L'article 1.1) du projet de loi dispose que la loi "contient les dispositions régissant les critères et la procédure applicables à l'octroi et à la protection du droit d'obtenteur (ci-après dénommé 'droit d'obtenteur')"; ce faisant, il satisfait à l'obligation fondamentale prévue à l'article 2 de l'Acte de 1991.

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

6. L'article 1.2) du projet de loi dispose que la loi "s'applique à tous les genres et espèces végétaux". Cette disposition est conforme à l'article 3.2)ii) de l'Acte de 1991. Il convient de noter que, en vertu de l'article 36.1)ii) de l'Acte de 1991, lorsqu'elle déposera son instrument d'adhésion, la Serbie devra notifier dans une déclaration que la loi s'applique à tous les genres et espèces végétaux.

Article 4 de l'Acte de 1991 : Traitement national

7. L'article 2.3) du projet de loi dispose que "on entend par 'personne' toute personne physique ou morale". En outre, l'article 3 prévoit que "en ce qui concerne l'octroi et la protection du droit d'obtenteur en République de Serbie, les personnes étrangères bénéficient des mêmes droits que les ressortissants nationaux". Ces dispositions satisfont aux exigences de 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

8. Les articles 5 à 9 du projet de loi énoncent les conditions de la protection de manière conforme aux dispositions des articles 5 à 9 de l'Acte de 1991.

9. L'article 45 du projet de loi prévoit un régime de nouveauté transitoire pour les "variétés de création récente" sur la base de l'article 6.2) de l'Acte de 1991.

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

10. Les articles 14 à 16 du projet de loi traitent du dépôt de demandes. Le projet de loi ne contient aucune disposition contraire à l'article 10 de l'Acte de 1991.

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

11. L'article 17 du projet de loi contient des dispositions relatives au droit de priorité qui sont conformes à l'article 11 de l'Acte de 1991.

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

12. Les articles 18 à 24 du projet de loi contiennent des dispositions relatives à l'examen de la demande qui sont conformes aux dispositions de l'article 12 de l'Acte de 1991.

Article 13 de l'Acte de 1991 : Protection provisoire

13. L'article 28 du projet de loi contient des dispositions relatives à la protection provisoire qui sont conformes à l'article 13 de l'Acte de 1991.

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

14. En ce qui concerne l'article 25.4) du projet de loi, qui contient la disposition facultative prévue à l'article 14.3) de l'Acte de 1991, il est recommandé de supprimer le membre de phrase "Chaque Partie contractante peut prévoir que". Une fois la modification recommandée apportée, l'article 25.4) du projet de loi se lit comme suit :

~~"Chaque Partie Contractante peut prévoir que s~~ Sous réserve des articles 26 et 27, les actes visés aux points 1) à 6) de l'alinéa 2) accomplis à l'égard de produits fabriqués directement à partir d'un produit de récolte de la variété protégée couvert par les dispositions de l'alinéa 3 par utilisation non autorisée dudit produit de récolte requièrent l'autorisation de l'obtenteur, à moins que ce dernier ait raisonnablement pu exercer son droit en relation avec ledit produit de récolte."

15. Sous réserve de la modification recommandée au paragraphe 14, l'article 25 du projet de loi contient des dispositions relatives à l'étendue du droit d'obtenteur qui sont conformes à l'article 14 de l'Acte de 1991.

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

16. En ce qui concerne le point 3) de l'alinéa 1 de l'article 26 du projet de loi, le renvoi à l'alinéa 6 devrait être remplacé par un renvoi à l'alinéa 5, comme suit :

"3) accomplis aux fins de la création de nouvelles variétés ainsi que, à moins que les dispositions de l'alinéa 6 de l'article 25 ne soient applicables, les actes mentionnés aux alinéas 2) à 4) de l'article 25 accomplis avec de telles variétés."

17. Sous réserve de la modification recommandée au paragraphe 16, l'article 26.1) du projet de loi énonce les exceptions obligatoires au droit d'obtenteur de manière conforme à l'article 15.1) de l'Acte de 1991.

18. L'article 26 du projet de loi contient en ses alinéas 2) à 5) des dispositions relatives à l'exception facultative au droit d'obtenteur qui sont conformes aux dispositions de l'article 15.2) de l'Acte de 1991.

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

19. En ce qui concerne l'article 27 du projet de loi, il est recommandé d'introduire la formulation de l'article 16 de l'Acte de 1991, comme suit :

“Le droit d'obtenteur ne s'étend pas aux actes concernant du matériel de la variété protégée, ou d'une variété visée à l'alinéa 5 de l'article 25, qui a été vendu ou commercialisé d'une autre manière par l'obtenteur, ou avec ~~l'autorisation du titulaire du droit d'obtenteur~~ son consentement, en République de Serbie, à moins que ces actes ...”

20. Sous réserve des modifications recommandées au paragraphe 19, l'article 27 du projet de loi contient des dispositions relatives à l'épuisement du droit d'obtenteur qui sont conformes à l'article 16 de l'Acte de 1991.

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

21. Les articles 30 à 34 du projet de loi contiennent des dispositions relatives à l'octroi de licences obligatoires qui sont conformes à l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

22. Le projet de 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

23. En ce qui concerne l'article 22 du projet de loi, il est recommandé d'apporter la modification suivante :

“Le droit d'obtenteur sur la variété protégée expire 20 ans après l'octroi, ~~e'est-à-dire~~ ou 25 ans après l'octroi en ce qui concerne les arbres et la vigne.”

24. Sous réserve des modifications recommandées au paragraphe 23, l'article 22 du projet de loi contient des dispositions relatives à la durée du droit d'obtenteur qui sont conformes à l'article 19 de l'Acte de 1991.

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

25. En ce qui concerne l'alinéa 5 de l'article 11 du projet de loi, le renvoi à l'alinéa 4 devrait être remplacé par un renvoi à l'alinéa 3, comme suit :

“L'obligation d'utiliser la dénomination de la variété enregistrée ne s'éteint pas à l'expiration de la protection de la variété en vertu de l'article 22 de la présente loi sauf lorsque, conformément aux dispositions de l'alinéa ~~4~~³, des droits antérieurs s'opposent à cette utilisation.”

26. Sous réserve de la modification recommandée au paragraphe 25, les articles 10 à 13 du projet de loi contiennent des dispositions relatives aux dénominations variétales qui sont conformes à l'article 20 de l'Acte de 1991.

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

27. L'article 36 du projet de loi contient des dispositions relatives à la nullité du droit d'obtenteur qui sont conformes à l'article 21 de l'Acte de 1991.

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

28. L'article 37.2) du projet de loi prévoit que “l'obtenteur renonce à ce droit [au droit d'obtenteur] par déclaration écrite adressée à l'institut à compter de la date indiquée ou à compter de la date de réception de la déclaration”. Cette disposition est contraire à l'article 22.2) de l'Acte de 1991, qui exclut d'autres motifs de déchéance que ceux qui sont énoncés à l'article 22.1) de l'Acte de 1991. La teneur de l'article 37.2) du projet de loi semble viser une extinction anticipée du droit d'obtenteur. Il est recommandé de transférer cette disposition à l'article 35 du projet de loi.

29. Sous réserve de la modification recommandée au paragraphe 28, l'article 37 du projet de loi contient des dispositions relatives à la nullité du droit d'obtenteur qui sont conformes à l'article 22 de l'Acte de 1991.

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

30. 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 39 à 43 du projet de loi traitent des recours civils, des sanctions et des amendes disponibles. Il est recommandé de mentionner dans le projet de loi tout instrument législatif de la Serbie prévoyant des mesures provisoires et douanières.

31. L'article 1.3) du projet de loi prévoit que les “activités en rapport avec le droit d'obtenteur régies par la présente loi sont menées en Serbie par l'Institut des plantes (ci-après dénommé ‘institut’).” En outre, l'alinéa 1 de l'article 21 du projet de loi prévoit que le “directeur de l'institut se prononce, sur la base des résultats de l'examen de la variété et de la proposition du comité, sur l'octroi du droit d'obtenteur ...”. Le projet de loi satisfait donc à l'obligation prévue à l'article 30.1)ii) de l'Acte de 1991.

32. Les articles 10 (alinéa 2), 16 (alinéa 1) et 21 (alinéa 5) du projet de loi contiennent des dispositions conformes à l'obligation de publier les informations requises en vertu de l'article 30.1)iii) de l'Acte de 1991.

Conclusion générale

33. De l'avis du Bureau de l'Union, le projet de loi incorpore les dispositions de fond de l'Acte de 1991. Dès que les modifications recommandées auront été incorporées (voir les paragraphes 14, 16, 19, 23, 25 et 28 du présent document) et que la loi aura été adoptée, la Serbie sera en mesure de "donner effet" aux dispositions de l'Acte de 1991, ainsi qu'il est prévu à l'article 30.2).

34. *Le Conseil est invité*

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

b) *sous réserve de l'incorporation dans le projet de loi des modifications signalées dans le présent document, à prendre, quant à la conformité du projet de loi sur la protection du droit d'obteneur de la République de Serbie avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, une décision positive qui permette à la Serbie de déposer son instrument d'adhésion à l'Acte de 1991, après que les modifications auront été incorporées dans le projet de loi et une fois la loi adoptée et entrée en vigueur;*

c) *à demander au Bureau de l'Union d'offrir son assistance au Gouvernement serbe pour incorporer dans le projet de loi les modifications signalées dans le présent document; et*

d) *à autoriser le secrétaire général à informer le Gouvernement serbe de cette décision.*

[Les annexes suivent]

ANNEXE I

Traduction d'une lettre datée du 25 février 2008 (n° 303/1)

adressée par : La Mission permanente de la République de Serbie
auprès de l'Office des Nations Unies et
des autres organisations internationales
ayant leur siège à Genève
5, chemin Thury
CH-1206 Genève

à : M. Kamil Idris
Secrétaire général de l'UPOV
34, chemin des Colombettes
CH-1211 Genève 20

Objet : Note accompagnant une lettre du ministre de l'agriculture, de la sylviculture et de l'hydrologie de la République de Serbie

Monsieur le Secrétaire général,

La Mission permanente de la République de Serbie auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège à Genève présente ses compliments à M. Kamil Idris, secrétaire général de l'Union internationale pour la protection des obtentions végétales (UPOV) et a l'honneur de lui transmettre la lettre de M. Slobodan Milosavljevic, ministre de l'agriculture, de la sylviculture et de l'hydrologie.

La Mission permanente de la République de Serbie joint à la présente le *Projet de loi sur la protection du droit d'obtenteur* pour examen et analyse par le Conseil de l'UPOV.

La Mission permanente de la République de Serbie saisit cette opportunité pour renouveler à M. Kamil Idris, secrétaire général de l'UPOV, les assurances de sa plus haute considération.

Veillez agréer,

(Signé : illisible)

Traduction d'une lettre datée du 5 février 2008

adressée par : M. Slobodan Milosavljevic
Ministre de l'agriculture, de la sylviculture
et de l'hydrologie de la République de Serbie
Nemangina St. 22-26
Belgrade

à : M. Kamil Idris
Secrétaire général de l'Union internationale pour
la protection des obtentions végétales (UPOV)
34, chemin des Colombettes
CH-1211 Genève 20

Monsieur le Secrétaire général,

J'ai le plaisir de vous informer que le Projet de loi sur la protection du droit d'obtenteur sera présenté au Parlement de la République de Serbie pour adoption.

La République de Serbie 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).

Je saurais gré au Conseil de l'UPOV d'examiner la conformité du projet de loi de la République de Serbie avec les dispositions de la Convention UPOV.

Veillez agréer,

(Signé : Slobodan Milosavljevic)

Pièce jointe : traduction officielle en anglais du projet de loi sur la protection du droit d'obtenteur

[L'annexe II suit]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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

REPUBLIC OF SERBIA

DRAFT LAW ON THE PROTECTION OF PLANT BREEDER'S RIGHTS

Chapter I

GENERAL PROVISIONS

Article 1

This Law contains provisions governing the criteria and the procedure for grant and protection of plant breeder's rights (hereinafter referred to as: breeder's rights).

The Law will apply to all plant genera and species.

Breeder's rights activities, regulated by this Law, in the Republic of Serbia are carried out by the Plant Institute (hereinafter referred to as "the Institute").

For the purpose of monitoring the situation in the field of protection of breeder's rights, and issuing of the professional opinions and proposals within the Ministry of Agriculture, Forestry and Water Management (hereinafter referred to as "the Ministry") will be established National Plant Breeder's Rights Board.

The National Plant Breeder's Rights Board (hereinafter referred to as "the Board") from paragraph 4 of this Article is appointed by the Minister of Agriculture, Forestry and Water Management (hereinafter referred to as "the Minister").

The Minister can establish other working bodies for the implementation of specific activities from paragraph 4 of this Article.

Article 2

For the purpose of this Law:

1) "Plant variety" (hereinafter referred to as "the variety") means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, 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 with regard to its suitability for being propagated unchanged;

2) "Protected variety" means a variety protected in accordance with the provisions of this Law;

- 3) “Person” means any natural or legal person;
- 4) “National person” means a person who has a domicile, or corporate domicile, in the Republic of Serbia;
- 5) “Foreign person” means a person who has a domicile, or corporate domicile, outside the Republic of Serbia;
- 6) “Breeder” means
 - the person who bred, or discovered and developed, a variety,
 - the person who is the employer of the aforementioned person or who has commissioned the latter’s work, or
 - the successor in title of the first or second aforementioned person, as the case may be;
- 7) “Breeder’s right” means the right of the breeder provided for in this Law;
- 8) “Register of Applications for Plant Breeder’s Rights” means the register of all applications filed for protection of breeder’s rights;
- 9) “Register of Protected Plant Varieties” means the register of protected varieties and granted breeder’s rights;
- 10) “UPOV” means the International Union for the Protection of New Varieties of Plants.

Article 3

With respect to grant and protection of breeder’s rights in the Republic of Serbia foreign persons shall enjoy the same rights as national persons.

Article 4

In the proceedings before the Institute, a foreign person shall be represented by his authorized representative who has domicile in the Republic of Serbia.

Chapter II

CONDITIONS FOR THE GRANT OF THE BREEDER’S RIGHT

Article 5

The breeder’s right shall be granted in accordance with the provisions of this Law where a variety is new, distinct, uniform, and stable and given a denomination which is acceptable for granting protection.

Article 6

A variety shall be considered to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or his successor, for purposes of exploitation of the variety in the Republic of Serbia earlier than one year, or within foreign territory earlier than four years and in the case of vine and tree varieties earlier than six years before the filing date.

The variety referred to in paragraph 1 of this Article shall not lose its novelty if it is disposed of to others under the following conditions:

- 1) by a contract on the transfer of rights to the successor in title;
- 2) by a contract on the multiplication of the propagating material in the name of the breeder, provided that the multiplied propagating material is returned to the breeder, and that the multiplied propagating material is not used for the production of another variety;
- 3) by a contract on testing in trial fields or laboratory for the purpose of variety evaluation.

Article 7

A variety shall be considered to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

The Minister shall prescribe the procedural arrangements of variety distinctness evaluation.

Article 8

A variety shall be considered 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.

The Minister shall prescribe the procedural arrangements of variety uniformity evaluation.

Article 9

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

The Minister shall prescribe the procedural arrangements of variety stability evaluation.

Article 10

The applicant for a breeder's right shall propose the variety denomination in his application.

Any interested person may, within 90 days as of the date of publication of the proposed denomination and entry into the Register of Applications for Plant Breeder's Rights (hereinafter referred to as: "the Register of Applications"), file an objection to the proposed variety denomination.

The Institute shall notify the applicant about the objection referred to in paragraph 2 of this Article and invite him to submit a reply to the objector within 30 days as of the date of the receipt of notification.

In his reply to the objection, the applicant may propose a new denomination of the variety.

Where the proposed denomination does not comply with the provisions of this Law, the Institute shall order the applicant to submit a proposal for a new denomination within 30 days as of the date of receipt of the notification.

Where the applicant fails to submit a proposal for a new variety denomination within the prescribed time limit, the application shall be rejected.

Head of the Institute shall approve the denomination of a variety in the decision on the grant of the breeder's right.

Article 11

The variety shall be designated by a denomination which will be its generic designation. The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

Where the variety is already protected by a member of UPOV or where an application for the protection of the same variety is filed in a member of UPOV, only the variety denomination which has been proposed or registered in that other member of UPOV may be submitted by the breeder to the Institute. The Institute shall register the denomination so

submitted, unless it considers the denomination unsuitable within the Republic of Serbia. In the latter case, it shall require the breeder to submit another denomination.

Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph 4 and 5, is obliged to use it, the Institute shall require the breeder to submit another denomination for the variety.

Any person who offers for sale or markets the propagating material of a protected variety shall use the registered variety denomination.

The obligation to use the registered variety denomination shall not cease after the expiration of variety protection under Article 22 of this Law, except where, in accordance with the provisions of paragraph 4, prior rights prevent such use.

When a protected variety is offered for sale or marketed, a trademark, trade name or another similar identification may be associated with the registered variety denomination provided that the denomination is easily recognizable.

The Minister shall prescribe which plant species are considered closely related.

The Institute shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

Article 12

The Institute shall reject the application for variety denomination if it determines that the proposed denomination is a designation which:

- 1) does not enable the variety to be identified;
- 2) is contrary to Article 11 of this Law.

Article 13

The Institute shall cancel any registered variety denomination if it is contrary to Article 11 or based on the court decision forbidding the use of a given denomination.

When a variety denomination has been cancelled, the Institute shall notify the right holder thereof and invite him to submit a proposal for a new variety denomination within 30 days as of the date of receipt of such notification.

Chapter III

GRANT OF THE PLANT BREEDER'S RIGHT

1. Application

Article 14

The procedure for the grant of the breeder's right shall be initiated based on the application for the grant of the breeder's right filed by the breeder or his authorized representative to the Institute.

With the application referred to in paragraph 1 of this Article, the breeder, or his authorized representative shall submit the information on the breeding history of the variety and at the request of the Institute the identity samples of the propagating material of the variety for the purpose of testing.

When the production of a variety requires the repeated use of another variety, i.e. of its components, the applicant may request in his application that the documents and results of component testing be treated as confidential.

Where two or more breeders have independently bred, or discovered and developed a variety, the breeder who was the first to file the application for breeder's right with the Institute shall avail himself of the first filing date.

The Minister shall more closely prescribe the form and the contents of the application envisaged in paragraph 1 of this Article, and the regulations related to paragraph 2 of this Article.

Article 15

Upon the receipt of the application, the Institute shall determine whether the application is complete, i.e. whether it meets the conditions prescribed by the provisions of this Law.

When it determines that the application is not complete, the Institute shall, stating the reasons, invite the applicant to eliminate the determined defects within 30 days as of the date of receipt of such notification.

Where the applicant fails to eliminate the defects within the prescribed period of time, the application shall be rejected.

Article 16

Any application assessed as complete by the Institute shall be entered into the Register of Applications and shall be published in the official Gazette of the Institute.

The data from the Register of Applications are public, except for information to be treated as confidential in accordance with paragraph 3 of Article 14 of this Law.

The Minister shall more closely prescribe the form and the manner of keeping of the Register of Applications.

2. Right of Priority

Article 17

The breeder or his authorized representative who has duly filed an application for the grant of a breeder's right with the competent authority of another UPOV member, shall enjoy the right of priority for a period of 12 months. In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application.

In order to avail himself of the right of priority, the applicant shall submit to the Institute within 90 days of filing the application the proof regarding the priority date, which consist of a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

If the Institute accepts the proof regarding the priority date, the application shall be deemed to have been filed at the date of the filing of the first application. The day of filing shall not be included in the latter period.

The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, a period of 12 months after such rejection or withdrawal, in which to furnish, to the Institute, any necessary information, document or material required for the purpose of the examination.

3. Examination of the Application

Article 18

The variety shall be examined with the aim to establish whether it fulfills the conditions for grant of breeder's right.

For the purposes of examination, the Institute may require the breeder to furnish all the necessary information, documents or material. The material should be submitted in the quantity and in the manner prescribed by the Minister.

Where the breeder fails to fulfill the requirements from paragraph 2 of this Article, his application shall be rejected.

Article 19

In the course of the examination, the Institute may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out.

In particular, the Institute may assign the variety testing upon a person who meets the requirements for the performance of such testing in terms of personnel, equipment and facilities (hereinafter referred to as: the trial contractor).

The Minister shall more closely prescribe the conditions from paragraph 2 of this Article.

The Minister shall establish the fulfillment of the conditions from paragraph 2 of this Article.

For the technical examination of a variety the Institute can use the examination results obtained in another UPOV member.

Article 20

The Institute shall conclude with the trial contractor a contract on variety testing.

4. Decision on Grant of the Breeder's Right

Article 21

Head of the Institute shall, based on the results of variety testing and the proposal of the Board, pass the decision on grant of the breeder's right or rejection of the application for grant of the breeder's right.

The variety that has been granted protection shall be entered into the Register of Protected Plant Varieties by the Institute.

The data from the Register of Protected Plant Varieties are public.

The Minister shall more closely prescribe the contents and the manner of keeping of the Register of Protected Plant Varieties.

The list of protected varieties, also including the data on variety denomination, the breeder, his domicile, or corporate domicile, and other data shall be published in the "Official Gazette of the Republic of Serbia" and official Gazette of the Institute.

Article 22

The breeder's right to the protected variety shall expire 20 years after the grant thereof, i.e. 25 years after the grant thereof in case of trees and vines.

The date of the grant of the breeder's right shall be the date of the decision of the compliance with the conditions of protection.

5. Opposition

Article 23

A person who deems that an applicant is not entitled to the breeder's right or that he is not entitled to the right of priority, may file an opposition to the entry of the application into the Register of Applications, i.e. to the entry of the variety into the Register of Protected Plant Varieties with the Institute within 90 days from the date of publication of the application or from the date of publication of the decision concerning the grant of the breeder's right.

Article 24

The opposition to an entry into the Register of Protected Plant Varieties may be filed by person who deems that the applicant is not the breeder, that the variety is not new, distinct, uniform or stable or that the variety denomination fails to meet the conditions regarding the protected variety denomination.

The Institute may order additional testing of the variety for the purpose of assessing the statements cited in the opposition.

At the request by the Institute, the plaintiff shall within 30 days submit additional information and documents which his objection has been based on.

Where the plaintiff fails to fulfill the request envisaged in paragraph 3 of this Article, the opposition shall be rejected.

Chapter IV

RIGHTS OF THE BREEDER

1. Scope of the Breeder's Right

Article 25

The breeder shall have the right to have his name i.e. title cited in the application, documentation, registers, public documents and publications.

Subject to Articles 26 and 27, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- 1) production or reproduction (multiplication);
- 2) conditioning for the purpose of propagation;
- 3) offering for sale;
- 4) selling or other marketing;
- 5) exporting and importing;

- 6) stocking for any of the purposes referred to in subsections 1) to 5).

The breeder shall determine the conditions for granting such authorization.

Subject to Articles 26 and 27, the acts referred to in paragraph 2 of this Article in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of the propagating material of the protected variety, shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

Each Contracting Party may provide that, subject to Articles 26 and 27, the acts referred to in items 1) to 6) of paragraph 2 in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph 3 through the unauthorized use of the said harvested material shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

The provisions of paragraphs 2 to 4 shall also apply in relation to:

- 1) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- 2) varieties which are not clearly distinguishable from the protected variety;
- 3) varieties whose production requires the repeated use of the protected variety.

A variety shall be deemed to be essentially derived from another variety (the initial variety) when:

- 1) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or from the combination of genotypes of the initial variety;
- 2) it is clearly distinguishable from the initial variety;
- 3) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of the genotypes of the initial variety.

Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

2. Exceptions to the Breeder's Right

Article 26

The authorization of the breeder shall not be necessary for acts:

- 1) done privately and for non-commercial purposes;
- 2) done for experimental purposes;
- 3) done for the purpose of breeding other varieties, and except where the provisions of Article 25 paragraph 6 apply, acts referred to in Article 25 paragraphs 2 to 4 in respect of such other varieties.

In relation to varieties included in a list of agricultural plant species prescribed by the Minister, the breeder's right shall not be infringed by a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeders, uses for propagating purposes, on his own holding, the product of the harvest which he has obtained by planting, on his own holding, the protected variety or a variety covered by paragraph 6 section 1) and 2) of Article 25 (hereinafter "farm saved seed").

When using farm saved seed the farmers are obliged to pay to the breeder reasonable remuneration for the use of farm saved seed which is significantly lower than the level of remuneration of the purchased seed. Small farmers are exempted from the obligation to pay remuneration for the use of the farm saved seed. The criteria for small farmers will be prescribed by the Minister.

The breeder is entitled to request necessary information in writing from farmers in relation to the farm saved seed.

Varieties of fruit, ornamentals, vegetables and forest trees shall be excluded from the provisions of paragraph 2 of this Article.

3. Exhaustion to the Breeder's Right

Article 27

The breeder's right shall not extend to acts concerning any material of the protected variety, which has been sold or otherwise marketed by the breeder, or with the authorization of the holder of the breeder's right, in the Republic of Serbia, unless such acts involve:

- further propagation of the variety in question, or
- exports of the material of the variety into a country which does not protect varieties of the plant genus or species to which the variety belongs, except to where the exported material is for final consumption purposes.

For the purposes of paragraph 1, "material" means, in relation to a variety,

- propagating material of any kind,
- harvested material, including entire plants and parts of plants, and
- any product made directly from the harvested material.

Article 28

Throughout the period starting from the publication of the application for a breeder's right to the passing of the decision of a breeder's right, the holder of the breeder's right shall be entitled to an appropriate remuneration from any person who has carried out acts which, once the right is granted, required the right holder's authorization.

Chapter V

ASSIGNMENT OF RIGHTS, CONTRACTUAL AND COMPULSORY LICENSES

1. Assignment and contractual licenses

Article 29

The breeder may assign his rights with respect to the protected variety.

The contractual license must be in written form and include provisions on the scope of the rights, the terms of the license and the amount of remuneration agreed upon.

The breeder shall submit the contractual license to the Institute for entry into the Register of Protected Plant Varieties.

Article 30

Where the holder of a breeder's right refuses to grant a contractual license or sets unjustified conditions for such a license, the Institute may, following the evaluation of each individual case, grant a compulsory license only for reasons of public interest at the request of any interested person, if the breeder, alone or through another person, fails to exploit or inadequately exploits the protected variety in the Republic of Serbia.

The interested person shall be under the obligation to prove that, prior to filing the request referred to in paragraph 1 of this Article, he has tried to obtain from the breeder the authorization for the acts covered by Article 25 of the Law under reasonable economic conditions and terms, and that he was not granted such authorization within a reasonable period of time.

The interested person referred to in paragraph 1 of this Article may only be a person who proves to dispose of capacities and facilities necessary for economic exploitation of a protected plant variety.

Article 31

The request for the grant of a compulsory license may not be filed prior to the expiration of the period of four years from the filing date of the application, i.e. 3 years from the date of the grant of a breeder's right, whichever of the periods expires later.

The compulsory license shall not be granted if the holder of a breeder's right proves that there are reasons justifying his failure to exploit or adequately exploit the protected variety.

Article 32

A person to whom a compulsory license has been granted shall pay the holder of the breeder's right an equitable remuneration determined by mutual agreement of the parties. When there is no agreement on the amount and modality of payment, the remuneration shall be determined by the competent court.

Article 33

The Institute may cancel the compulsory license when the person who has been granted the license fails to fulfill the conditions under which the license was granted.

Article 34

The breeder shall be under the obligation to deliver, at the request of the Institute and following the payment of an appropriate remuneration, the quantity of the propagating material necessary for the exploitation of the compulsory license, to the person to whom the compulsory license has been granted.

Chapter VI

TERMINATION OF THE BREEDER'S RIGHT

Article 35

The breeder's right shall terminate before the expiration of the term referred to in Article 22 of this Law when the breeder dies or ceases to exist, i.e. has no heirs or successors in rights, as of the date of death or ceased existence.

1. Nullity of the Breeder's Right

Article 36

The Institute shall declare a breeder's right granted by it null and void, *ex officio* or at the proposal of the interested party when it is established:

- 1) that the variety was not new or not distinct at the time of the grant of the breeder's right;
- 2) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the variety was not sufficiently stable or was not uniform at the time of the grant of the breeder's right;
- 3) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

After declaring the decision on the grant of a breeder's right null and void, the Institute shall delete that variety from the Register of Protected Plant Varieties.

2. Cancellation of the Breeder's Right

Article 37

The Institute may cancel the breeder's right and enter the data thereof in the Register of Protected Plant Varieties if:

- 1) it is established that the variety is no longer uniform or stable;
- 2) the breeder renounces to it by written declaration addressed to the Institute as of the date stated or as of the date of receipt of the declaration;
- 3) the breeder fails to provide the Institute with the information, documents or material deemed necessary for verifying the maintenance of the variety;
- 4) the breeder fails to propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination within 30 days;
- 5) the breeder fails to pay the annual fees to keep his right in force.

Chapter VII

FEES

Article 38

The fees for the testing of varieties in trial fields and laboratory and the annual fees for a breeder's right shall be paid by the breeder.

The amount of fees referred to in paragraph 1 of this Article shall be determined by the Government of the Republic of Serbia.

Chapter VIII

JURIDICAL PROTECTION OF THE BREEDER

Article 39

A person that violates the rights of the breeder provided in this Law shall be responsible for the damage according to the general provisions on damage compensation.

The breeder whose right has been violated may, in addition to damage compensation, also request an injunction to prohibit the committing or continuation of committing an infringement of the breeder's right by suspension of the activity resulting in such infringement, and that the expenses of the proceedings for infringement be charged to the defendant.

Article 40

The complaint against the violation of the breeder's right may be filed within three years after the date when the prosecutor has become aware of the violation.

The complaint can not be filed after five years following the violation.

Proceedings according to complaints for infringement of the breeder's right shall be treated expeditiously, and will be done by competent Court.

Chapter IX SUPERVISION

Article 41

The Ministry shall perform the supervision over the implementation of this Law and the regulations passed on the basis of this Law, also as activities carried out by the Institute.

The Institute has the obligation to inform the Ministry about the activities carried out by the Institute.

Chapter X PENALTY PROVISIONS

Article 42

Any person commits an offence and shall be liable to a fine of 300,000 to 3,000,000 CSD if he:

- 1) willfully offers for sale or markets propagating material of a variety protected in Republic of Serbia without using the registered variety denomination;
- 2) willfully makes use of the registered variety denomination of a variety protected in Republic of Serbia for another variety of the same plant species or closely related species;
- 3) fails to comply with the decision of the inspector taken for the implementation of this Law.

The responsible person in a legal entity shall be liable to a fine of 50,000 to 200,000 CSD for the commercial offences referred to in paragraph 1 of this Article.

In case of offences referred to in paragraph 1 of this Article, in addition to the fine, any legal person may also be prohibited to conduct a certain business activity, i.e. the responsible person in the legal entity may be prohibited to discharge certain duties for a period from six months to three years.

Article 43

Any person shall be liable to a fine of 100,000 to 1,000,000 CSD if he fails to deliver, at the request of the competent authority, the quantity of propagating material necessary for the exploitation of the compulsory license referred to in Article 34 of this Law.

Responsible person in a legal entity shall be liable to a fine of 10,000 to 50,000 CSD in case of the offences referred to in paragraph 1 of this Article.

Chapter XI

TRANSITIONAL AND FINAL PROVISIONS

Article 44

All Applications for plant breeder's rights that have been submitted prior to the date of entry into force of this Law, and for which the grant of breeder's rights has not been completed shall be granted in keeping with the provisions of this Law.

Article 45

Notwithstanding Article 6, a variety may still be considered new on the date of entry into force of this Law, and the application for the said variety could be filed within the 5 years following the date of entry into force of this Law if the variety:

- 1) has been entered in the Official Register of Varieties Admitted to Trade, or
- 2) has been the subject of a breeder's right in a member of UPOV, or is the subject of an application in a member of UPOV, provided that the application subsequently leads to the granting of the breeder's right, or
- 3) is the subject of proof acceptable to the Institute concerning the existence and the date on which the variety ceased to be new under the provisions of Article 6.

Article 46

Until the adoption of regulations by the authority provided for in this Law, the regulations passed in keeping with the Law on the Protection of Agricultural Crop and Forest Plant Varieties ("Official Gazette of FRY", no. 28/2000 and "Official Gazette of RS", no. 101/05 / second law) shall be applied, provided that they are not contrary to the provisions of this Law.

Article 47

The Law on the Protection of Agricultural and Forest Plant Varieties (“Official Gazette of FRY”, no. 28/2000 and “Official Gazette of RS”, no. 101/05 / second law) shall cease to be valid on the day this Law enters into force.

Article 48

This Law shall enter into force on the eight day following its publication in the “Official Gazette of the Republic of Serbia”.

[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]